ATTACHMENT 2

FAÇADE AND TENANT IMPROVEMENT LOAN AGREEMENT
FAÇADE AND TENANT IMPROVEMENT LOAN AGREEMENT

FOR PROPERTY LOCATED AT 1001 MARKET STREET AND 4 SIXTH STREET

By and between the Redevelopment Agency

of the City and County of San Francisco

and

Pearl's Deluxe Burgers, LLC

Dated: October 19, 2010
ARTICLE 1. LOAN PROVISIONS

1.1 Loan(s) for Tenant Improvement Work
1.2 Use of Loan Funds
1.3 Borrower's Matching Funds Obligation
1.4 Term
1.5 Repayment
1.6 Requirements for Loan Forgiveness
1.7 Procedures and Restrictions Governing Loan Disbursements
1.8 Accounting

ARTICLE 2. DESIGN, CONSTRUCTION AND COMPLETION OF THE WORK

2.1 Design, Permits and Governmental Approvals
2.2 Compliance with Construction Documents
2.3 Procedure for Initiating Construction
2.4 Extra Work or Changes
2.5 Protection Against Lien Claims
2.6 Completion of Construction
2.7 Maintenance of Tenant Improvements

ARTICLE 3. COVENANTS OF THE BORROWER

3.1 Transfer of Retail Business During Loan Term
3.2 Completion Date
3.3 Compliance with Laws
3.4 Compliance with Limitations on Contributions
3.5 Compliance with Prevailing Wage Requirements
3.6 Nondiscrimination and Equal Benefits
3.7 Compliance with Small Business Enterprise Program
3.9 Compliance with Construction Workforce Agreement
3.10 Assignment

ARTICLE 4. DEFAULT AND REMEDIES

4.1 Events of Default
4.2 Declaring Default
4.3 Remedies
4.5 No Waiver
4.6 Indemnity

ARTICLE 5. INSURANCE

5.1 Insurance Requirements for Borrower

ARTICLE 6. MISCELLANEOUS

6.2 Third Party Claims
6.3 Conflict of Interest
6.4 Notices
6.5 Successors and Assigns
6.7 Severability
6.9 Joint and Several Liability
6.10 Time
6.11 Governing Law
6.12 Non-Liability of Agency and City Officials, Employees and Agents
6.14 Counterparts, Facsimile Copies
6.15 Exhibits

Façade and Tenant Improvement Loan Agreement
South of Market Redevelopment Project Area
(Rev. February 2011)
FAÇADE AND TENANT IMPROVEMENT LOAN AGREEMENT
FOR PROPERTY LOCATED AT 1001 MARKET STREET AND 4 SIXTH STREET

This Loan Agreement (this "Agreement") dated as of October 19, 2010 (the "Effective Date") by and between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the "Agency"), and Pearl's Deluxe Burgers, LLC, a California limited liability company (the "Borrower") (collectively, the "Parties") is entered into based upon the following facts, intentions and understandings of the Parties:

RECATALS

I. The Agency is authorized under California Community Redevelopment Law (Health and Safety Code, Section 33000 et. seq.) to provide assistance and advance funds from its tax increment income for the purpose of funding improvements necessary for the redevelopment of blighted areas and the implementation of the area redevelopment plan.

II. The South of Market Redevelopment Plan as amended in 2005 (the "Redevelopment Plan") for the South of Market Redevelopment Project Area (the "Project Area") provides, among other things, for economic development assistance to neighborhood-serving businesses and related establishments.

III. On November 26, 2002, by Resolution No. 203-2002, the Agency authorized the creation of the Sixth Street Economic Revitalization Program, (the "Program"), which seeks to encourage investment in the Project Area by providing loans and technical assistance to businesses and property owners. The Program provides for three types of loans (1) façade improvement loans (forgivable and non-forgivable), (2) tenant improvement loans (forgivable and non-forgivable), and (3) business assistance loans (forgivable and non-forgivable).


A. Changed the participation and loan criteria for businesses and property owners to increase participation and simplify the Program; and

B. Authorized the Executive Director to execute loan agreements in excess of $50,000 for each retail space, including higher amounts for multiple retail spaces within the same building;

C. Changed the terms for forgivable loans with respect to the "most deteriorated" buildings/retail spaces on or near Sixth Street identified in the 2005 Report on the Plan Amendment for the South of Market Redevelopment Plan Amendment (the "Plan Amendment Report") for the following addresses: 26, 28, 65-77, 72-76, 99, 100, 101, 109-115, 132-134, 137-139, 138, 144, 148-160, 162-164, 200-212, and 228-232 Sixth Street, and 201 Howard Street, 496-498 Natoma Street, 501-505 Minna Street, and 1003 Mission Street; and

D. Changed the terms for forgivable loans with respect to the "catalyst corner sites", including the sites located at Sixth and Market and Sixth and Howard Streets.

V. The Borrower is a tenant in the building located at 1001 Market and 4 Sixth Streets more particularly described in the Property Legal Description, Exhibit "A" (the "Property"). The Property, which is owned by Terry L. Bogart and Peggy Mullin-Bogart, husband and wife, as community property,
as to an undivided 1/2 interest and John Gall and Megan Cydney Gall, husband and wife, as community property with right of survivorship and Amy Bogart, a single woman and Haley Bogart, a single woman, as tenants in common, as to an undivided 1/2 interest (the Property Owner”), is identified as a “corner catalyst site”. The Property Owner and the Borrower have entered into a lease agreement dated September 15, 2010, which expires on September 14, 2020, for two retail spaces that compromise one contiguous retail space. The Borrower owns and operates Pearl’s Deluxe Burgers on the Property (the “Retail Business”).

VI. Under the Program, the Agency provides no more than three dollars for every one dollar spent by a business owner for tenant improvement work per retail space in a catalyst corner site. The Agency's contribution is limited to a maximum forgivable loan amount of $200,000 per retail space. The Borrower’s expenditure of its matching funds (“Borrower’s Matching Funds Obligation”) must also comply with this Agreement. In this case, the Borrower has submitted a loan application and is requesting a $200,000 forgivable loan for each retail space. Therefore, Borrower is eligible to receive two forgivable tenant improvement loans for its 1001 Market Street and 4 Sixth Street retail spaces.

VII. The Agency has reviewed the loan application submitted by the Borrower and has agreed to provide the Borrower with a forgivable tenant improvement loan for its retail spaces in the principal amount of Four Hundred Thousand Dollars ($400,000) forgivable over a five-year term, subject to the terms and conditions of this Agreement.

VIII. To enable the Borrower to carry out the tenant improvement work for the Retail Business and to allow the Agency to fulfill the goals of its Program, the Agency desires to make the Loan (defined below), and the Borrower desires to accept the Loan on the terms described below. The Agency has relied on the accuracy of the statements contained in the Borrower’s loan application.

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

AGREEMENT

ARTICLE 1. LOAN PROVISIONS

1.1 Loan(s) for Tenant Improvement Work.

(a) The Agency agrees to lend to Borrower, and Borrower agrees to borrow from Agency, the principal amount of Four Hundred Thousand Dollars ($400,000) forgivable over a 5-year term, for the retail space(s) at 1001 Market Street and 4 Sixth Street (the “Loan”) to finance the approved tenant improvement work related to the Retail Business, as described in Exhibit “B,” Scope of Work, and the construction documents or construction estimates (the “Construction Documents”) submitted by the Borrower and approved by the Agency (the “Work”), subject to the terms, conditions, representations, warranties and covenants in this Agreement. The following is a breakdown of the cost of the Work, the Borrower’s Matching Funds Obligation, and the Agency’s Loan:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of the General Contractor Work</td>
<td>$436,275</td>
</tr>
<tr>
<td>Cost of Restaurant Equipment</td>
<td>$99,521</td>
</tr>
<tr>
<td>Cost of Restaurant Equipment Installation</td>
<td>$9,968</td>
</tr>
<tr>
<td>Total Cost of Work</td>
<td>$545,764</td>
</tr>
<tr>
<td>Borrower’s Matching Funds Obligation</td>
<td>$133,333</td>
</tr>
<tr>
<td>Additional Borrower’s Contribution</td>
<td>$12,431</td>
</tr>
<tr>
<td>Agency’s Loan amount</td>
<td>$400,000</td>
</tr>
</tbody>
</table>

Façade and Tenant Improvement Loan Agreement
South of Market Redevelopment Project Area
(Rev. February 2011)
(b) The Agency shall not charge any interest on the Loan, unless Borrower defaults on any of its obligations as described in Article 4.1 below. If Borrower defaults and fails to cure such default within the time allowed under Article 4.2, simple interest shall accrue on the principal amount due under the promissory note at the rate of six percent (6%) per annum from the first day following expiration of the Borrower’s cure period until the default is cured.

(c) The Loan will be evidenced by a promissory note in the maximum principal amount of Four Thousand ($400,000) executed by Borrower in favor of the Agency (“Promissory Note”), attached to the Agreement as Exhibit “D,” Form of Promissory Note. The Loan and the Promissory Note are to be secured by a Deed of Trust on the Property, described more particularly in Attachment “A,” to the Deed of Trust and Assignment of Rents (“Deed of Trust”), attached hereto as Exhibit “F,” executed by the Property Owner in favor of Old Republic Title Company, a California corporation (the “Trustee”) for the benefit of the Agency, which Deed of Trust will be recorded in the Records of the City and County of San Francisco.

(d) Borrower shall deliver to the Agency concurrently with this Agreement the Promissory Note, the Deed of Trust, and any further security that the Agency may require.

1.2 Use of Loan Funds.

(a) Borrower agrees to use the Loan funds solely for the Work described on the Scope of Work and Construction Documents and for those costs listed in Exhibit “C,” Budget, and

(b) Borrower agrees that no Loan funds shall be used to pay for any Work done before the Agency executes this Agreement or before the issuance of a Notice to Proceed (as defined in Section 1.3 of this Agreement) from the Agency.

1.3 Borrower’s Matching Funds Obligation.

(a) Pursuant to the terms of the Program, the Agency provides no more than three dollars for every one dollar spent by a business owner for tenant improvement work in a corner catalyst site.

(b) The Borrower agrees that Borrower will not spend any of its Matching Funds before the Agency executes this Agreement and provides a written notice authorizing the Borrower to proceed with construction (“Notice to Proceed”).

(c) If any funds are spent by the Borrower before the Agency executes this Agreement and issues a Notice to Proceed, then (i) the amount so spent will not be counted toward the Borrower’s Matching Funds Obligation and (ii) the Agency shall reduce the Agency’s Loan amount immediately and without notice to Borrower pursuant to Section 4.2 by the amount the Borrower has spent without authorization.

(d) In addition, Borrower must provide satisfactory evidence that it can meet Borrower’s Matching Funds Obligation before Borrower asks the Agency to disburse any Loan funds.
1.4 **Term.**

The term of this Agreement (the “Loan Term”) shall commence on the Effective Date and shall terminate upon repayment or forgiveness of the Loan by the Agency pursuant to Sections 1.5 and 1.6 below, unless earlier terminated pursuant to the terms of this Agreement.

1.5 **Repayment.**

Borrower shall repay the Loan provided to Borrower, together with accrued interest, if any, on the earlier of (a) the date on which Borrower sells, assigns, conveys, closes, or otherwise transfers the Retail Business, or (b) the date on which Borrower defaults and fails to cure within the specified time provided under this Agreement (the “Repayment Date”) as determined by the Agency, provided that all or a portion of the Loan may be forgiven as set forth in Article 1.6 herein. If repayment of the Loan is required, Borrower agrees to repay the Loan as described in the Promissory Note.

1.6 **Requirements for Loan Forgiveness.**

Borrower shall provide notice to the Agency of the date that it begins continuous operations of the Retail Business (the “Start of Operations”). Over the Loan Term, the Agency shall forgive four-fifths (4/5) or $320,000 of the $400,000 Loan amount at the end of four (4) years from the Start of Operations provided that Borrower has complied in all material respects with the terms of this Agreement and has cured any default. At the end of the fifth year following the Start of Operations, provided that the Borrower has complied in all material respects with the terms of this Agreement and has cured any default, the Agency shall forgive the remaining Loan and any interest which may have accrued. The Agency and the Borrower agree to cooperate in the execution and recordation of a Substitution of Trustee and Deed of Full Reconveyance concerning the Deed of Trust recorded as security for the Loan pursuant to this Agreement, and any other documents which may be necessary to effect such termination. The Borrower’s obligations under this Agreement shall then be deemed to be discharged pursuant to this Agreement.

1.7 **Procedures and Restrictions Governing Loan Disbursements.**

The Agency agrees to disburse Loan funds according to the procedures and rules in this Section; provided, however, that no default by Borrower shall have occurred and remain uncured under this Agreement.

(a) **Procedures.**

i. **Draw Requests.** The Borrower is required to submit requests for disbursement of Loan funds in a form acceptable to the Agency (the "Draw Request"). Draw Requests must be submitted to the Agency with the form of Draw Request Application, attached hereto as Exhibit "E" and must include the following supporting evidence:

1. outstanding invoices for Work already completed; and
2. an accounting of all the Loan funds requested to date including the remaining balances for each line item listed in the Budget; and
3. proof to the Agency’s satisfaction that all building, encroachment, and other permits necessary for the construction of the Work have been issued by the City and County of San Francisco (the “City”); and
4. satisfactory evidence that the Borrower can meet its Borrower’s Matching Funds Obligation requirement; and

Façade and Tenant Improvement Loan Agreement
South of Market Redevelopment Project Area
(Rev. February 2011)
(5) Certified Payroll Form(s) for Work completed; and 
(6) Conditional lien releases and waivers. After payment is made, 
Borrower must, in following Draw Requests, provide the Agency with unconditional lien releases and 
waivers from each such contractor and supplier who has received payment for Work-related supplies, 
services and expenses funded in whole or in part by the Loan.

Notwithstanding the above, the Agency will consider the first draw request to be complete upon 
submittal of a Draw Request Application without proof that all necessary permits have been issued, in 
order to allow Borrower’s contractor to mobilize and obtain all permits necessary for the construction 
of the Work upon issuance of Notice to Proceed.

ii. Agency Review. The Agency shall review the Draw Request and 
determine whether the amount will be approved for disbursement or whether any additional supporting 
evidence must be submitted. Upon approval of the Draw Request, the Agency shall make 
disbursements payable jointly to the Borrower and the Contractor identified in Exhibit “B,” Scope of 
Work within twenty (20) business days of receipt of the Draw Request and other items required 
hereunder.

iii. Final Disbursement Deadline. No Loan funds may be disbursed later 
than eighteen (18) months after the Effective Date of this Agreement, unless that time period is 
extended by the Agency.

(b) Restrictions. The Borrower acknowledges and agrees that the Agency will not 
disburse Loan funds for any Work performed:

i. Before the Agency executes this Agreement; and

ii. Before the Agency issues a Notice to Proceed.

2/5/11 [Initial(s)] (Borrower’s acknowledgement)

1.8 Accounting.

Borrower shall establish a bookkeeping account for the Loan and shall maintain Loan 
records that accurately and fully show the date, amount, purpose, and payee of each expenditure drawn 
on the Loan. Borrower shall allow the Agency to inspect all records pertaining to such account and 
agrees to submit to an independent audit, if requested by the Agency, at the Borrower’s expense. All 
records shall be retained by Borrower for at least three years after the termination of this Agreement.

ARTICLE 2. DESIGN, CONSTRUCTION AND COMPLETION OF THE WORK

2.1 Design, Permits and Governmental Approvals.

Borrower will engage an architect or other appropriate licensed design professional to 
design and prepare Construction Documents for the Work and obtain at least three (3) estimates from a 
list of licensed contractors qualified to do the Work. Upon the Agency’s request, Borrower shall submit 
a copy of the design and construction drawings for the Agency’s review and approval. Borrower shall 
diligently apply for and obtain all necessary governmental approvals, including but not limited to all 
builing and encroachment permits necessary for the construction of the Work. Borrower shall comply
with all requirements and conditions imposed by such governmental entities; provided that, except as set forth in Article 1.5, nothing in this Agreement, including failure to obtain any required or necessary permits or approvals, shall release Borrower from its obligation to repay the Loan to Agency, subject to Article 1.6.

2.2 Compliance with Construction Documents.

In performing any construction activity for the Work, Borrower shall comply with all requirements governing construction in accordance with the Construction Documents prepared by the Borrower's architect, approved by the Agency's architecture division and approved by the City's Departments of Public Works and Building Inspection, which by this reference are incorporated herein as if fully set forth below.

2.3 Procedure for Initiating Construction.

(a) Initial Phase of the Work. Borrower may not begin the Initial Phase of the Work until all of the following requirements are met: (i) the Agency has executed this Agreement, (ii) the City has issued all building and encroachment permits necessary for the construction of the Work, and (iii) the Borrower has received the Agency's Notice to Proceed with the Initial Phase of the Work as described in Exhibit "B," Scope of Work.

(b) Later Phases of the Work. Before beginning the later phases of the Work, as described in Exhibit "B," Scope of Work, the Borrower must submit a signed letter to the Agency that (i) states the phase of Work to be initiated, (ii) describes the Work to be undertaken as part of that phase, (iii) estimates the construction schedule for that phase of Work, and (iv) includes evidence of insurance pursuant to Article 5 for the contractor(s) performing that phase of the Work. Once the Agency has received all of the above information, and has determined it to be complete and satisfactory, the Agency shall issue a Notice to Proceed to the Borrower for that particular phase of the Work. Once the Borrower has received the Agency's Notice to Proceed, it may begin that phase of the Work allowed under the Notice to Proceed.

(c) The Agency will not pay for any Work that was performed prior to issuance of a Notice to Proceed and the Agency has the right to reduce the amount of the Loan if Borrower initiates construction without a Notice to Proceed.

2.4 Extra Work or Changes.

Borrower shall not order extra work, authorize any material changes in the Construction Documents, or implement any changes to the design approved by, and on file with, the Agency without the Agency's prior review and written consent to each change pursuant to this Agreement. Extra work, changes in the Construction Documents, and/or design changes made without the Agency's prior approval will not be reimbursed by the Agency. The Agency shall promptly review any changes requested by the Borrower.

2.5 Protection Against Lien Claims.

(a) Borrower agrees to pay and discharge promptly any claims or liens for labor done and materials and services furnished in connection with the Work on the Property, and to take all other reasonable steps to forestall the assertion of claims or liens against the Property, subject to Borrower's right to contest in good faith the performance of any work or any charge.

Façade and Tenant Improvement Loan Agreement
South of Market Redevelopment Project Area
(Rev. February 2011)
(b) If any disbursement is sought for work which may be subject to liens, the Borrower shall submit lien releases from all applicable parties in a form satisfactory to the Agency.

2.6 **Completion of Construction.**

Completion of construction of the Work shall be determined by the Agency’s architect and confirmed in writing by the Agency to the Borrower ("Completion of Construction").

2.7 **Maintenance of Improvements.**

Borrower agrees to maintain the improvements in good repair and in a safe and clean condition, to provide regular maintenance, and to cooperate with the San Francisco Police Department and other public agencies to prevent and counteract any illegal activities on or adjacent to the Property.

**ARTICLE 3. COVENANTS OF THE BORROWER**

3.1 **Transfer of Retail Business During Loan Term.**

If Borrower transfers the Retail Business or closes the Retail Business before completing four (4) years of operations of the Retail Business, Borrower shall pay, at the time of transfer or closing, the full Loan amount to the Agency. If Borrower transfers the Retail Business or closes the Retail Business after completing four (4) years of operations of the Retail Business but before the completion of five (5) years of operation, Borrower shall pay, at the time of transfer or closing, four-fifths of the Loan amount to the Agency (collectively, the “Repayment Provisions”). The Borrower must provide the Agency at least thirty (30) business days advance notice of the transfer or close of the Retail Business.

Notwithstanding the above, if the Borrower enters into an agreement with the Property Owner to transfer the ownership and/or operation of the Retail Business at the Property, the Repayment Provisions would not apply to such a transfer.

3.2 **Completion Date.**

Borrower agrees to complete the Work under this Agreement within eighteen (18) months of the Effective Date of this Agreement, unless that time period is extended by the Agency.

3.3 **Compliance with Laws.**

Borrower shall, in the performance of this Agreement, comply with all laws, ordinances, rules, regulations or requirements, whether federal, state or local, pertaining to the Work.

3.4 **Compliance with Limitations on Contributions.**

Through execution of this Agreement, as such requirements are applicable, 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 political committee controlled by such office holder or candidate, at any time from the commencement
of negotiations for the Agreement until the later of either the termination of negotiations for such Agreement or six months after the date the Agreement is approved. Borrower acknowledges that the foregoing restriction applies only if the Agreement or a combination or series of Agreements 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 Agreement; 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 Agreement; 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.

3.5 Compliance with Prevailing Wage Requirements.

California Labor Code section 1720(a)(1) defines the Work at the Property as a form of public works and Borrower must pay or caused to be paid prevailing wages to any employees who carry out the Work in accordance with California Labor Code sections 1770 et seq., thus the Agency's Prevailing Wage Provisions, attached hereto as Exhibit “G” must apply to all of the Work. The Borrower agrees to require its contractors and subcontractors to complete the Certified Payroll Form, attached hereto as Exhibit “H,” and Borrower agrees to submit completed Certified Payroll Forms to the Agency with the Borrower Draw Requests.

3.6 Nondiscrimination and Equal Benefits.

(a) Borrower agrees that 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 this Agreement. Borrower 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 to clients or the general public.

(b) Borrower will, in all solicitations or advertisements for employees placed by it or on its behalf, state it is an equal opportunity employer.

(c) Borrower will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

(d) Borrower agrees not to discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, and to comply fully with all provisions of the Agency's Nondiscrimination in Contracts and Equal Benefits Policy (“Policy”), adopted by Agency Resolution No. 175-97, as such Policy may be amended from time to time, pursuant to the Borrower's execution of Exhibit “I,” “Nondiscrimination in Contracts and Benefits Form.”
(e) Borrower shall provide all services to the public after completion of the Work funded by this Agreement in facilities that are accessible to persons with disabilities as required by state and federal law.

3.7 **Compliance with Small Business Enterprise Program.**

The Agency has adopted a Small Business Enterprise ("SBE") Program, which provides first consideration in awarding contracts in the following order: (a) Project Area SBEs, (b) Local SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (c) Non-local SBEs (outside of San Francisco). Non-local SBEs should be used to satisfy participation goals only if Project Area SBEs or Local SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-local SBEs. Borrower shall make good faith efforts to achieve the goals of the SBE Program, which are 50% SBE participation for professional, personal services, and construction contracts. SBEs must be certified with the Agency. If Borrower intends to utilize subcontractors/subconsultants in the provision of services, it must consult with the Agency's Contract Compliance Division and comply with all the provisions of the Small Business Enterprise Agreement, attached hereto as Exhibit "J," which Borrower has executed.

3.8 **Compliance with Minimum Compensation Policy & Health Care Accountability Policy.**

Borrower agrees to comply with the Agency's Minimum Compensation Policy and Health Care Accountability Policy (the "Policies"), adopted by Agency Resolution 168-2001 on September 25, 2001, attached hereto as Exhibit "K" and Exhibit "L," as such policies may be amended from time to time. Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the Policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City's Department of Public Health, or to participate in a health benefits program developed by the City's Director of Public Health.

3.9 **Compliance with Construction Workforce Agreement.**

Borrower agrees to comply with the Agency's Construction Workforce Agreement, attached hereto as Exhibit "M," which Borrower has executed.

3.10 **Assignment.**

The Borrower may not cause or permit any voluntary transfer, assignment or conveyance of this Agreement, without the prior written consent of the Agency. Any attempted transfer, assignment or conveyance shall be voidable and, at the Agency's election, shall constitute a breach of this Agreement. No consent by Agency to any transfer, assignment or conveyance shall constitute a consent to any subsequent transfer, assignment or conveyance.

3.11 **Acknowledgment and Consent.**

The Property Owner owns the Property pursuant to the Grant Deed recorded November 17, 2010 as Document No. 2010-J081252-00, at Reel K272, Image 0003, Official Records. Terry J. Bogart and John Gall and acknowledge that they authorized on behalf of the Property Owner, pursuant to that certain authorization attached hereto as Exhibit “O”, to execute the Acknowledgment and Consent attached as Exhibit “N” hereto and the Deed of Trust and Assignment of Rents attached as Exhibit “F” hereto.

Façade and Tenant Improvement Loan Agreement
South of Market Redevelopment Project Area
(Rev. February 2011)
ARTICLE 4. DEFAULT AND REMEDIES

4.1 Events of Default.

At the option of the Agency, and Agency’s notice to Borrower, each of the following events will constitute an event of default:

(a) Borrower’s failure, neglect or refusal to perform any promise, agreement, covenant or obligation contained in this Agreement, the Deed of Trust, or the Promissory Note.

(b) Borrower’s failure to timely comply with any governmental requirements, including but not limited to obtaining licenses and permits.

(c) Any material deviation from the Construction Documents approved by the City and Agency pursuant to Article 2.2 above, but only if Borrower fails to correct the foregoing or to diligently proceed to correct such deviation to the Agency’s satisfaction within thirty (30) business days after the Agency’s written demand to do so.

(d) Borrower’s failure to complete the Work within eighteen (18) months of the Effective Date.

(e) The filing of any lien against the Property or the serving on the Agency of any bonded stop notice related to this Loan, or the attachment, levy, execution, or other judicial seizure of any portion of the Property that is not released, discharged, bonded over or provisions satisfactory to the Agency made within twenty (20) business days after Borrower learns of the filing, serving, or attachment, levy, execution or seizure.

(f) Any material representation or disclosure made to the Agency by Borrower in this Agreement, the Promissory Note, the Deed of Trust, or the loan application which proves to be false or misleading in any way.

(g) The filing by or against Borrower of a voluntary or involuntary petition in bankruptcy or the adjudication of Borrower as bankrupt or insolvent, or the filing of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or the seeking or consenting to or acquiescing in the appointment of any trustee, receiver, liquidator of Borrower or any substantial part of or all of the property of Borrower.

4.2 Declaring Default.

Whenever any event of default has occurred, the Agency shall give written notice of default to Borrower. If the default is not cured within thirty (30) business days after the Date of Default (defined herein), or such longer period as may be reasonably required to cure such default (provided Borrower commences such cure within the initial 30-day period and diligently prosecutes such cure to completion), the Agency may enforce its rights and remedies under Article 4.3. Any default that has occurred shall be deemed to commence on the date that written notice of default is given to Borrower (the "Date of Default").
4.3 Remedies.

(a) Default Remedies. Upon the occurrence of any event of default, in addition to its other rights in this Agreement, the Promissory Note, at law, or in equity, the Agency may exercise any one or more of the following rights and remedies: (i) terminate disbursements; (ii) terminate this Agreement and declare the outstanding principal balance of the Loan, all interest thereon, if any, and all other sums owing to the Agency immediately due and payable; (iii) continue disbursements without waiving any other rights or remedies; or (iv) proceed as authorized at law or in equity with respect to the event of default, and in connection with that, remain entitled to exercise all other rights and remedies described in this Agreement, the Deed of Trust, or the Promissory Note.

(b) Special Remedy for Violation of Matching Funds Obligation Requirements. Notwithstanding any provision in this Article 4 or elsewhere in this Agreement, the Agency reserves the right to reduce the amount of its Loan by providing written notice of Loan reduction to Borrower if Agency determines that Borrower has not complied with the Borrower's Matching Funds Obligation.

4.4 Disclaimer.

If the Agency elects to employ any of the remedies available to it in connection with any event of default, in the absence of gross negligence or willful misconduct, the Agency will not be liable to any person or entity for: (i) the construction of or failure to construct, complete, or protect the Work; (ii) the payment of any expenses incurred in connection with the exercise of any remedy available to the Agency; or (iii) the performance or nonperformance of any other obligation of Borrower.

4.5 No Waiver.

No failure by the Agency to insist upon the strict performance of any covenant of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term or condition.

4.6 Indemnity.

Borrower shall defend, hold harmless and indemnify the Agency, the City and County of San Francisco, and their respective officers, agents, employees and Commissioners from and against all claims, liability, costs, expenses, loss or damages of any nature whatsoever, including reasonable attorney's fees, arising out of or in any way connected with Borrower's failure to perform Borrower's covenants and obligations under this Agreement. Such indemnification obligations shall also apply to any claim against the Agency described in Section 6.2 of this Agreement.

ARTICLE 5. INSURANCE

5.1 Insurance Requirements for Borrower.

Borrower must procure and maintain, or cause its Contractor to procure and maintain, until the Work is completed, insurance against claims for injuries to persons or damages to the Property which may arise from or in connection with the performance of work related to this Agreement by the Borrower, its agents, representatives, employees or subcontractors or in connection with the Borrower's operation and use of the Property.
Minimum Types of Insurance. Coverage must be at least as broad as:

(i) Commercial General Liability coverage (ISO occurrence form CG 00 01 0196).

(ii) Automobile Liability coverage (ISO form number CA 00 01 12 93 code 1 (any auto)).

(iii) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

(iv) Professional Liability Insurance. Professional Liability Insurance is applicable only if the Borrower hires design professionals. Borrower must require that professional design consultants who perform work related to the Property have liability insurance covering negligent acts, errors and omissions. Borrower must provide the Agency with copies of insurance certificates showing such coverage.

By initialing here, the Borrower certifies that it __________ has or has not hired design professionals.

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

(i) General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other insurance with a general aggregate limit is used, either the general aggregate limit will apply separately to this Property or the general aggregate limit must be twice the required occurrence limit.

(ii) Automobile Liability: $1,000,000 per accident for bodily injury and property damage.

(iii) Workers’ Compensation and Employer’s Liability: Workers’ Compensation limits as required by the State of California and Employer’s Liability limits of $1,000,000 for bodily injury by accident and $1,000,000 per person and in the annual aggregate for bodily injury by disease.

(iv) Professional Liability Insurance: $1,000,000 per occurrence, if applicable.

Other Insurance Provisions. The general liability and automobile liability policies must contain, or be endorsed to contain, the following provisions:

(i) The San Francisco Redevelopment Agency, the City and County of San Francisco and their respective officers, agents, employees and Commissioners are to be covered as insureds for: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Borrower; and liability arising out of work or operations performed by or on behalf of the Borrower.
(ii) For any claims related to Borrower’s activities related to this Loan, the Borrower’s insurance coverage must be primary insurance with respect to the “San Francisco Redevelopment Agency, the City and County of San Francisco and their respective Commissioners, officers, agents, and employees.” Any insurance or self-insurance maintained by the Agency, the City and County of San Francisco and their respective Commissioners, officers, agents or employees must be in excess of Borrower’s insurance and must not contribute with it.

(d) Reporting. Any failure to comply with reporting provisions of the policies must not affect coverage provided to the San Francisco Redevelopment Agency, the City and County of San Francisco and their respective Commissioners, officers, agents or employees.

(e) Notice. Each insurance policy required by this clause must be endorsed to state that coverage must not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after prior written notice satisfactory to the Agency in its reasonable discretion.

(f) For Workers’ Compensation and Employer’s Liability Coverage. The insurer must agree to waive all rights of subrogation against the Agency, the City and County of San Francisco and their respective Commissioners, officers, agents and employees for losses arising from work performed by Borrower or for the Agency.

(g) Acceptability of Insurers. Borrower must not obtain insurance from insurers with a current Best’s rating of no less than A: VII.

(h) Verification of Coverage. Borrower must furnish the Agency with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Agency reserves the right to require, at all time, complete certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

(i) Subcontractors. Borrower must include all subcontractors as insureds under its policies or must furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors must be subject to all the requirements stated herein.

ARTICLE 6. MISCELLANEOUS

6.1 Relationship of Parties.

Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between the Agency and Borrower or the Borrower’s agents or employees, and Borrower shall at all times be deemed a borrower and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required by the terms of this Agreement.
6.2 Third Party Claims.

Nothing contained in this Agreement shall create or justify any claim against the Agency by any third person whom the Borrower may have employed or contracted or may employ or contract relative to the purchase of any material, supplies or equipment, or the furnishing or the performance of any work or services with respect to any programs or projects being undertaken by the Borrower relative to the Work under this Agreement and Borrower shall defend and indemnify the Agency against any such claim in accordance with Section 4.6 of this Agreement.

6.3 Conflict of Interest.

(a) Prohibited Economic Interests. Government Code section 87100 and the Agency’s Personnel Policy apply to any Agency commissioner, employee, agent or consultant, who participates in any decision-making function or responsibility with respect to this Agreement. Such Agency Commissioner, employee, agent or consultant: (1) may not obtain an economic or financial interest in or benefit from the activities assisted under this Agreement and (2) shall not have an economic interest, direct or indirect, in any contract, subcontract or agreement with respect to the Work funded by this Agreement, or in the Loan proceeds provided by this Agreement, for himself/herself or for those persons or entities with whom he/she has family or business ties.

(b) Void Contracts. Government Code section 1090 and those portions of the Agency’s Personnel Policy also prohibit this Agreement, if it is approved by any Agency Commissioner, official, employee or consultant who has a direct or indirect financial or economic interest in the Property, the Retail Business or other subject of this Agreement. A violation of either restriction shall render this Agreement void and Borrower agrees to return to the Agency all Loan funds provided to Borrower, within ten days after the Agency provides Borrower with written notice of such violation.

(c) Economic Interest Disclosure Requirements. Borrower also acknowledges that Borrower and any of its contractors may be subject to economic interest disclosure, if any such person or entity is defined as a “consultant or “designated employee” pursuant to the Agency’s conflict of interest code adopted pursuant to section 87300 of Government Code.

(d) Borrower’s Acknowledgments. Borrower certifies that it knows of no facts which constitute a violation of the conflict of interest provisions mentioned in this Section 6.3, and Borrower agrees to immediately notify the Agency if Borrower shall at any time obtain knowledge of facts that may constitute a violation of any provision in this Section 6.3.

6.4 Notices.

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

If to the Borrower: c/o Sylvia Yi & Young Yi
263 Blackstone Drive
San Rafael, CA 94903

With a copy to: John Gall
1005 Market St #310
San Francisco CA 94103
If to the Agency:  
San Francisco Redevelopment Agency  
One South Van Ness Avenue, 5th Floor  
San Francisco, CA 94103  
Attention: Executive Director

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

6.5 **Successors and Assigns.**

All of the terms of this Agreement shall apply to and be binding upon, and inure to the benefit of, the successors and assigns of the Agency and Borrower, respectively, and all persons claiming under or through them.

6.6 **Attorneys' Fees.**

If any party to this Agreement files an action to enforce this Agreement or to collect any sums due hereunder or pursuant to the Promissory Note or the Deed of Trust, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in that action.

6.7 **Severability.**

If one or more provisions of this Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Agreement shall remain in full force and effect.

6.8 **Amendments/Entire Agreement.**

The Agency and Borrower reserve the right to amend the Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alteration or variation of the terms of this Agreement shall be valid unless in writing and signed by both parties. The Agreement constitutes the entire agreement of the parties and no oral understandings or agreement not incorporated herein shall be binding on either party.

6.9 **Joint and Several Liability.**

If the Borrower consists of more than one person or entity, each shall be jointly and severally liable to the Agency for the performance of this Agreement.

6.10 **Time.**

Time is of the essence in the performance of the terms and conditions of this Agreement.

6.11 **Governing Law.**

This Agreement shall be governed by the laws of the State of California.
6.12 **Non-Liability of Agency and City Officials, Employees and Agents.**

No member, official, employee, Commissioner or agent of the Agency or the City and County of San Francisco shall be personally liable to Borrower, or any successor in interest to Borrower, in the event of any default or breach by the Agency or for any amount which may become due to the Borrower or such successor under the terms of this Agreement.

6.13 **Duration/Survival.**

This Agreement shall continue in full force and effect until the Promissory Note is paid in full or until the Term expires, or until the Loan is forgiven pursuant to Article 1.5, whichever shall occur earlier; **provided however,** that the provisions of Article 4.6 shall survive termination of this Agreement.

6.14 **Counterparts, Facsimile Copies.**

This Agreement shall be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. In case of any conflict, the counterparts maintained by the Agency shall be deemed to be determinative.

6.15 **Exhibits.**

The following exhibits are attached to and a part of this Agreement:

- **EXHIBIT A** Property Legal Description
- **EXHIBIT B** Scope of Work
- **EXHIBIT C** Budget
- **EXHIBIT D** Form of Promissory Note
- **EXHIBIT E** Form of Draw Request Application
- **EXHIBIT F** Form of Deed of Trust and Assignment of Rents
- **EXHIBIT G** Prevailing Wage Provisions
- **EXHIBIT H** Certified Payroll Form
- **EXHIBIT I** Nondiscrimination in Contracts and Benefits Form
- **EXHIBIT J** Small Business Enterprise Agreement
- **EXHIBIT K** Minimum Compensation Policy Declaration
- **EXHIBIT L** Health Care Accountability Policy Declaration
- **EXHIBIT M** Construction Workforce Agreement
- **EXHIBIT N** Form of Acknowledgement and Consent
- **EXHIBIT O** Property Owner Authorization/Power of Attorney
IN WITNESS WHEREOF, the Agency and the Borrower have executed this Agreement as of the date first above written.


AGENCY:

Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic

By

Amy Lee
Deputy Executive Director
Finance and Administration

BORROWER:

Pearl's Deluxe Burgers, LLC, a California limited liability company

By
Sylvia Park Yi

By
Young Han Yi

Recommended:

By
Michael J. Grisso
Senior Project Manager

Approved as to Form:

By
James B. Morales
Agency General Counsel
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Francisco

On 2/25/11 before me, Tracy Everwine
personally appeared Sylvia Park Yi and Young Han Yi

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: ____________________________

Document Date: ____________________________ Number of Pages: ____________________________

Signer(s) Other Than Named Above: ____________________________

Capacity(ies) Claimed by Signer(s)

Signer’s Name: ____________________________

□ Corporate Officer — Title(s): ____________________________

□ Individual

□ Partner — □ Limited □ General

□ Attorney in Fact

□ Trustee

□ Guardian or Conservator

□ Other: ____________________________

Signer Is Representing: ____________________________

Signer’s Name: ____________________________

□ Corporate Officer — Title(s): ____________________________

□ Individual

□ Partner — □ Limited □ General

□ Attorney in Fact

□ Trustee

□ Guardian or Conservator

□ Other: ____________________________

Signer Is Representing: ____________________________
Exhibit A

Property Legal Description

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Commencing at the point of intersection of the Southeasterly line of Market Street with the Southwesterly line of 6th Street; running thence Southwesterly along said Southeasterly line of Market Street 50 feet; thence at a right angle Southeasterly 85 feet; thence at a right angle Southwesterly 25 feet; thence at a right angle Southeasterly 25 feet; thence at a right angle Northeasterly 75 feet to the Southwesterly line of 6th Street; thence Northwesterly along said Southwesterly line of 6th Street 110 feet to its intersection with the Southeasterly line of Market Street and the point of commencement.

Being a portion of 100 Vara Block No. 393.

Assessor's Lot 001; Block 3703
Exhibit B

Scope of Work

The façade and tenant improvement Work described below will be performed at the Retail Business located at 1001 Market Street and 4 Sixth Street after a Notice to Proceed has been issued by the Agency.

A. THE WORK

1) Interior/Exterior Build Out

Contractor: Urban Design & Construction, Co.

According to its bid dated 2/17/2011, Contractor will provide all labor and materials necessary for: renovation of the existing dining, kitchen, food prep and dishwashing areas; installation of a new food storage area, walk-in cooler/freezer, accessible restrooms and entrance, awnings, storefront windows and doors; and renovation of electrical, plumbing and mechanical systems.

2) Restaurant Equipment Installation

Contractor: Castino restaurant Equipment and Supply

According to its bid dated 2/22/2011, Contractor will install restaurant equipment and custom stainless steel fabricated items

B. PHASING THE WORK

Not Applicable - All Work will be performed in the Initial Phase.
Exhibit C

Budget

The following is the overall budget for Work at the Retail Business, which Borrower has calculated in accordance with the terms of the Agency’s Prevailing Wage Provisions:

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interior/Exterior Build Out</td>
<td>$436,275</td>
</tr>
<tr>
<td>Restaurant Equipment</td>
<td>$ 99,521</td>
</tr>
<tr>
<td>Restaurant Equipment Installation</td>
<td>$ 9,968</td>
</tr>
<tr>
<td><strong>Total Budget</strong></td>
<td><strong>$545,764</strong></td>
</tr>
</tbody>
</table>

The Retail Business located at the Property qualifies for a forgivable tenant improvement loan for its 1001 Sixth Street and 4 Sixth Street retail spaces. Under the Program for Catalyst Corner Sites, the Agency provides no more than three dollars for every one dollar spent by a property or business owner for tenant improvement work per retail space, which is limited by a maximum forgivable loan amount of $200,000 per retail space.

The overall budget is broken out as follows:

<table>
<thead>
<tr>
<th>Retail Space</th>
<th>A (Agency Loan Amount)</th>
<th>B (Borrower's Matching Funds Obligation)</th>
<th>C (Cost of Work Exceeding Loan &amp; Matching Amounts (Borrower Pays))</th>
<th>Total Cost of Work (A+B+C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1001 Market Street</td>
<td>$200,000</td>
<td>$66,667</td>
<td>$12,431</td>
<td>$279,098</td>
</tr>
<tr>
<td>4 Sixth Street</td>
<td>$200,000</td>
<td>$66,666</td>
<td>--</td>
<td>$266,666</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>$400,000</strong></td>
<td><strong>$133,333</strong></td>
<td><strong>$12,431</strong></td>
<td><strong>$545,764</strong></td>
</tr>
</tbody>
</table>

**DISBURSEMENT RESTRICTIONS:**

1. The Agency will not disburse any Loan funds for any Work started before the Agency executes this Agreement and issues a Notice to Proceed. (Agreement Sections 1.2 and 1.3)

2. The Borrower is not authorized to spend any of its Matching Funds until the Agency executes this Agreement and issues a Notice to Proceed. (Agreement Section 1.3)

3. If the Borrower’s spends any of its Matching Funds Obligation in violation of the Agreement then (i) the funds spent will not be counted toward the Borrower’s Matching Funds Obligation and (ii) the Agency shall reduce the Agency’s Loan amount immediately by the amount the Borrower has spent without authorization. (Agreement Section 1.3)

4. The Borrower must show satisfactory evidence that it can meet the Borrower’s Matching Funds Obligation in accordance with the Agreement before applying for any Loan disbursement. (Agreement Section 1.3)
Exhibit D

Form of Promissory Note

US $_________
San Francisco, California

FOR VALUE RECEIVED, the undersigned ________________("Borrower" or "Maker"), promises to pay to the order of the Redevelopment Agency of the City and County of San Francisco ("Agency" or "Holder") the principal sum of ________________ Dollars ($_________), or so much of that sum as may be advanced under this Promissory Note (the "Note"), pursuant to the terms of that certain loan agreement between the Borrower and the Agency described in Section 2 below.

1. Secured by a Deed of Trust. The indebtedness evidenced by this Note is secured by a Deed of Trust and Assignment of Rents dated ____________, 20__ executed by ___________________ (the "Deed of Trust") as to the real property located at ______________________, described more particularly in Attachment "A" to the Deed of Trust and Assignment of Rents (the "Property"), which will be recorded in the Records of the County of San Francisco.

2. The Loan. The Note is given and shall be effective under the terms of the Tenant Improvement Loan Agreement dated ____________, 20__ (the "Loan Agreement") between the Borrower and Holder for the purpose of making tenant improvements, as such terms are defined and such purpose is further described in the Loan Agreement. The rights and obligations of the Maker under this Note shall be governed by the Agreement and by the terms set forth in this Note. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Loan Agreement.

3. Repayment of Loan. As described in Article 1.5 of the Loan Agreement, Borrower agrees to pay all or a portion of the loan within the earliest of the following events: (i) if the Borrower sells, assigns, conveys or otherwise transfers the Business at ________ Street in San Francisco, known as ____________ (the "Business"); or (ii) defaults on the Loan Agreement and fails to cure within the specified time, provided that all or a portion of the loan may be forgiven pursuant to Article 1.6 of the Loan Agreement.

4. Due Date. The entire unpaid principal balance under this Note, plus accrued but unpaid interest, shall be due and payable in accordance with this Note and the Loan Agreement; provided that all or a portion of the Loan may be forgiven as set forth in Article 1.6 of the Loan Agreement. Amounts due under this Note may be prepaid at any time without penalty or other charge.

5. Forgiveness of Note. The Loan is subject to forgiveness pursuant to Article 1.6 of the Loan Agreement.

6. Interest. If Borrower defaults on any of its obligations pursuant to Section 9 of this Note and fails to cure such default within the time allowed under Article 4.2 of the Loan Agreement, simple interest shall accrue on the principal amount due under this Note commencing on the day following expiration of the cure period at the rate of six percent (6%) per annum until the default is cured.
7. **Events of Default and Remedies.**

   (a) **Events of Default.** The events of default are those defined in Article 4.1 of the Loan Agreement.

   (b) **Remedies.** Upon the occurrence of any event of default following expiration of the cure period provided in Article 4.2 of the Loan Agreement, in addition to its other rights in this Note, the Loan Agreement, the Deed of Trust, at law, or in equity, the Agency may exercise any one or more of the rights and remedies specified in Article 4.3 of the Loan Agreement.

8. **Maker's Waiver.** The obligations of Maker under this Note shall be absolute and Maker waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever that are inconsistent with this Note.

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

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

    If to the Holder:

    ______________________________
    ______________________________
    San Francisco, CA 94103

    If to the Agency:

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

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

11. **Successors and Assigns.** This Note may not be assigned by Maker without Holder's prior written consent and shall be binding on all successors and assigns of Holder and Maker.

12. **Attorneys' Fees.** If any action is instituted by Holder to enforce this Note or collect any sums due hereunder or pursuant to the Deed of Trust, the Holder shall be entitled to collect from Maker all costs and expenses of such action, including, but not limited to, reasonable attorneys' fees.
13. **Severability.** If any provisions of this Note are found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall not in any way be affected or impaired thereby, and all other provisions of this Note shall remain in full force and effect.

14. **Time.** Time is of the essence in the performance of the terms and conditions of this Note.

15. **Governing Law.** This Note shall be governed by the laws of the State of California.

16. **Amendment.** This Note may not be changed orally, but only by an amendment in writing signed by the Maker and acknowledged by Holder.

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

EXECUTED AT SAN FRANCISCO, CALIFORNIA ON ________________, 20__.

MAKER: ____________________________

By ____________________________

DO NOT DESTROY THIS NOTE: When paid this note must be surrendered to the trustee described in the Deed of Trust for cancellation before re-conveyance will be made.
Exhibit E
Form of Draw Request Application

Project: _______________________________  Draw Request No. ______

Date: __________________________

Total project amount: ____________________________________________
Amount paid to contractor to date: __________________________________
Percent completed: _____________________________________________

SFRA forgivable loan amount: ______________________________________
Loan funds disbursed to date: _______________________________________
Amount requested for payment: _____________________________________

Please find attached:
☐ Outstanding invoices and bills for Work already completed
☐ Accounting of all Agency Loan funds requested to date including remaining balances for each item listed in the budget
☐ Proof that building, encroachment, and other permits necessary for construction have been issued by the City and County of San Francisco (with first Draw Request only)
☐ Evidence that Borrower has met its matching funds obligation, including cancelled checks and/or other proof of contractor/vendor payments (with first Draw Request only)
☐ Certified Payroll Forms for Work completed to date
☐ Conditional Waiver(s) and Lien Release(s) for Work completed in this Draw Request Application from each contractor and supplier who has received payment for Work-related supplies, services and expenses funded in whole or in part by the Loan.
☐ Unconditional Waiver(s) and Lien Release(s) for Work previously completed and paid for in prior Draw Requests from each contractor and supplier who has received payment for Work-related supplies, services and expenses funded in whole or in part by the Loan.

We have reviewed the enclosed documents and approve of the Draw Request Application. We certify that no notice of any mechanics' or other liens or right to liens should be satisfied or discharged before such payment is made. We also certify that all proceeds from all previous Draw Request Applications have been disbursed to all parties making claim on said monies.

_________________________________________  DATE: _____________
Contractor

_________________________________________  DATE: _____________
Borrower

Based on an inspection made on ________, I certify that the actual value of the work completed corresponds to the amounts and percentages herein stated.

_________________________________________  DATE: _____________
Tracy Everwine, Project Director, Urban Solutions

FOR SFRA OFFICE USE ONLY

_________________________________________  DATE: _____________
Christine Maher, Development Specialist

_________________________________________  DATE: _____________
Mike Grisso, Senior Project Manager
South of Market Redevelopment Project Area

_________________________________________  DATE: _____________
Kimberly Wilson, Contract Compliance Specialist

Façade and Tenant Improvement Loan Agreement
Exhibit E
Form of Draw Request Application
Exhibit F

Form of Deed of Trust and Assignment of Rents

Free Recording Requested Pursuant to
Government Code Section 27383 By:
Redevelopment Agency of the
City and County of San Francisco

When Recorded, Please Mail To:
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Attn: Development Services Division

APN: 3703-001
1001 Market Street; 4 Sixth Street

Space Above for Recorder's Use

Deed of Trust and Assignment of Rents

This Deed of Trust is made as of __________, 20__, by ________________, a California limited liability company ("Truster"), concerning the real property located at ____________________, San Francisco, California, 94102, to Old Republic Title Company, a California Corporation (the "Trustee") located at 475 Sansome Street, Suite 1700, San Francisco, California 94111, for the benefit of the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic ("Beneficiary").

1. Truster irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, its interest in that certain property located in the City and County of San Francisco, commonly known as ________________, San Francisco, California, 94102 and more particularly described in Attachment "A," attached hereto and made a part hereof (the "Property") as though fully set forth herein, together with all present and future easements and other rights benefiting such property, all buildings and improvements at any time located on it; all rents and other income at any time earned from such real property, buildings, and improvements, insurance proceeds, condemnation awards, claims arising from damage to the Property; and all additions and accretions to, substitutions and replacements for, and changes in the Property including window coverings, floor coverings, fixtures, equipment and appliances now or in the future attached to such buildings and improvements or used to operate them. All of the above are collectively called the "Property."

2. For the purpose of securing, Trustor promises to guarantee:

   a) the performance of each agreement set forth in the Tenant Improvement Loan Agreement dated as of __________, 20__, by and between ________________________, a California limited liability company and the Beneficiary (the "Loan Agreement"), in the Promissory Note dated __________, 20__, ("Note") executed by ________________, as maker in favor of Beneficiary, and the performance by Trustor of their obligations pursuant to this Deed of Trust.
b) the payment of the indebtedness evidenced by the aforesaid Promissory Note in the principal amount of ________ Thousand Dollars ($______,000.00), with interest, according to the terms of said Promissory Note, executed by Trustor, in favor of Beneficiary or order.

c) the payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

3. If an Event of Default by the Trustor under the Note or this Deed of Trust has occurred and is continuing (subject to the notice and cure periods set forth in the Loan Agreement applicable to defaults thereunder, which notice and cure periods shall apply to this Deed of Trust), or except as permitted by the Loan Agreement, if the herein described property or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, or alienated by the Trustor, or by the operation of law or otherwise, without the written consent of the holder hereof, all obligations secured by this instrument irrespective of the maturity dates expressed therein, at the option of the holder hereof and without demand or notice shall immediately become due and payable.

4. The provisions of this Deed of Trust are subject and subordinated to that certain:

   a) First Deed of Trust, .......

5. The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to its trustees at the address set forth above.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust on the date first written above.

TRUSTOR:

_________________________________________, a California

limited liability company

By

______________________________

Name

Title

[Attach acknowledgment for each signatory]

Façade and Tenant Improvement Loan Agreement
Exhibit F
Form of Deed of Trust and Assignment of Rents
ATTACHMENT “A”

Property Legal Description

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

APN: _______________
11.1 **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Agreement between the Borrower and the Agency of which these Labor Standards are a part.

11.2 **All Contracts and Subcontracts shall contain the Labor Standards. Confirmation by Construction Lender.**

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

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

11.3 **Definitions.** The following definitions shall apply for purposes of these Labor Standards:

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

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

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

11.4 **Prevailing Wage.**

(a) All Laborers and Mechanics employed in the construction of the Improvements will be paid unconditionally and not less often than once a week, and without
subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §11.5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of escrow closing the Agency shall provide the Borrower with a copy of the applicable Wage Determination.

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

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

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Borrower that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §11.8. The Executive Director of the Agency may require the Borrower to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §11.4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

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

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

(a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
(b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.

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

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

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

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

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

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

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

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

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

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

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

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

11.8 **Payrolls and Basic Records.**

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

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

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

(d) The Contractor shall make the records required under this §11.8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

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

11.10 **Equal Opportunity Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in the SBE Agreement. Any conflicts between the language contained in these Labor Standards and the Exhibits shall be resolved in favor of the language set forth in the SBE Agreement, except that in no event shall less than the prevailing wage be paid.

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

11.12 **Posting of Notice to Employees.** A copy of the Wage Determination referred to in subsection (a) of §11.4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Borrower at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

11.13 **Violation and Remedies.**

(a) **Liability to Employee for Unpaid Wages.** The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
(b) **Stop Work—Contract Terms, Records and Payrolls.** If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by §11.2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §11.8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Borrower with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.

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

(d) Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Borrower shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §11.14.

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

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

11.14 **Arbitration of Disputes.**

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

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

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

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

(e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Borrower, or as appropriate to one or the other if the Borrower or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §11.4) and copies of all notices sent or received by the Agency pursuant to §11.13. Such material shall be made part of the arbitration record.

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

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

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

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

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

EQUAL OPPORTUNITY NON-DISCRIMINATION

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

PREVAILING WAGE

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

OVERTIME

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

APPRENTICES

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

PROPER PAY

If you do not receive proper pay, write:
San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
or call 749-2400 and ask for
Contract Compliance Supervisor
### Exhibit H

**Certified Payroll Form**

<table>
<thead>
<tr>
<th>GENDER</th>
<th>NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE</th>
<th>NO. OF WITHHolding EXEMPTIONS</th>
<th>WORK CLASSIFICATION</th>
<th>OT HOURS WORKED EACH DAY</th>
<th>DAY AND DATE</th>
<th>TOTAL HOURS</th>
<th>RATE OF PAY</th>
<th>TOTAL HOURS ALL PROJECT</th>
<th>GROSS AMOUNT EARNED</th>
<th>DEDUCTION $ (BASED ON)</th>
<th>GROSS AMOUNT EARNED ALL PROJECTS</th>
<th>TOTAL DEDUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Residence Code**

<table>
<thead>
<tr>
<th>CODE</th>
<th>DESCRIPTION</th>
<th>ETHNIC CODE</th>
<th>DESCRIPTION</th>
<th>GENDER CODE</th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td>Nonresident</td>
<td>S</td>
<td>Hispanic/Latino</td>
<td>W</td>
</tr>
<tr>
<td>R</td>
<td>San Francisco</td>
<td>O</td>
<td>Asian/Pacific Islander</td>
<td>M</td>
</tr>
<tr>
<td>D</td>
<td>Domiciled elsewhere in San Francisco</td>
<td>B</td>
<td>African American/Black</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>I</td>
<td>Native American/Alaskan Native</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>C</td>
<td>Caucasian/white</td>
<td></td>
</tr>
</tbody>
</table>

---

Façade and Tenant Improvement Loan Agreement
Exhibit H
Certified Payroll Form
STATEMENT OF COMPLIANCE
(CERTIFICATION UNDER PENALTY OF PERJURY)

Date________________ at ____________________________

I, ____________________________ Owner ____________________________ do certify under penalty of perjury:

(Name of signatory party) (Title)

(1) That all of the information in this report is true and correct.
(2) That I pay or supervise the payment of the persons employed by ____________________________

The ____________________________ that during the payroll period commencing on ____________________________ day of Wednesday (Building or work) and ending the ____________________________ day of Friday, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to on behalf of said ____________________________ from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other that permissible deductions, as described below:

(3) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete: that the wage rate for laborers or mechanics contained therein are not less that the applicable wage rates contained in any wage determination incorporated into the contract: that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(4) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.

(5) That:
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 5 (c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ Each Laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 5 (c) below:

(c) EXCEPTIONS

<table>
<thead>
<tr>
<th>EXCEPTION (CRAFT)</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Remarks:

NAME AND TITLE SIGNATURE

Information in this report is submitted pursuant to Sections 1/70 thru 1/80 of the California Labor Code.
Also, the willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

Façade and Tenant Improvement Loan Agreement
Exhibit H
Certified Payroll Form
Exhibit I
Nondiscrimination in Contracts and Benefits Form

SAN FRANCISCO REDEVELOPMENT AGENCY
DECLARATION FORM
Nondiscrimination in Contracts and Benefits

1. Nondiscrimination—Protected Classes
   a. Is it your company/organization’s policy that you will not discriminate against your employees, applicants for employment, employees of the San Francisco Redevelopment Agency (Agency) or City and County of San Francisco (City), or members of the public for the following reasons:
      - Race □ Yes □ No
      - color □ Yes □ No
      - Creed □ Yes □ No
      - Religion □ Yes □ No
      - ancestry □ Yes □ No
      - national origin □ Yes □ No
      - Age □ Yes □ No
      - sex □ Yes □ No
      - sexual orientation □ Yes □ No
      - gender identity □ Yes □ No
      - marital status □ Yes □ No
      - domestic partner status □ Yes □ No
      - Disability □ Yes □ No
      - AIDS or HIV status □ Yes □ No
   b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?
      □ Yes □ No

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

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)
   a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?
      □ Yes □ No
   b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?
      □ Yes □ No

   If you answered “no” to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered “yes” to Question 2a or 2b, continue to 2c.
   c. If “yes,” please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Yes, for Spouses</th>
<th>Yes, for Partners</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical (health, dental, vision)</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Pension</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Bereavement</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Family leave</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Parental leave</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Employee assistance programs</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Relocation and travel</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Company discounts, facilities, events</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Credit union</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

Façade and Tenant Improvement Loan Agreement
Exhibit 1  Nondiscrimination in Contracts and Benefits Form
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.

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 25th day of February, 2001, at San Francisco, CA.

Name of Company/Organization: Pearl's Deluxe Burgers, LLC
Doing Business As (DBA): Pearl's Deluxe Burgers
Also Known As (AKA):
General Address: 1001 Market Street, San Francisco, CA 94103
(For General Correspondence)
Remittance Address: 263 Blackstone Drive, San Rafael, CA 94903
(if different from above address)
Name of Signatory: Young Han Yi, SYLVIA YI
Title: Member
(Please Print)
Signature: [Signature]
Phone Number: (415) 785-7888
Federal Tax Identification Number: 26-4751721
Approximate number of employees in the U.S.: 40
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
A. What is the Nondiscrimination in Contracts Policy?
The San Francisco Redevelopment Agency's Nondiscrimination in Contracts Policy (Policy) requires companies or organizations providing products or services to, or leasing a real property from, the Agency to agree not to discriminate against groups who are protected from discrimination under the Policy, and to include a similar provision in subcontracts and other agreements. Those provisions are the subjects of this form. The Policy is posted on the Web at: www.ci.sf.ca.us/sfra.

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

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

C. What are the groups protected from discrimination under the Policy?
You may not discriminate against:
- your employees
- an applicant for employment
- any employee of the Agency or the City and County of San Francisco
- a member of the public having contact with you.

D. What are prohibited types of discrimination?
You may not discriminate against the specified groups for the following reasons (see Question 1a on the declaration form).
- Race
- creed
- ancestry
- age
- sexual orientation
- marital status
- disability
- color
- religion
- national origin
- sex
- gender identity
- domestic partner status
- AIDS/HIV status

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

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

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

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

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

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

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

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

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

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

Small Business Enterprise Agreement

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

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

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

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

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

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

<table>
<thead>
<tr>
<th>Trainees</th>
<th>Design Professional Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>$0 – $99,000</td>
</tr>
<tr>
<td>1</td>
<td>$100,000 – $249,999</td>
</tr>
<tr>
<td>2</td>
<td>$250,000 – $499,999</td>
</tr>
<tr>
<td>3</td>
<td>$500,000 – $999,999</td>
</tr>
<tr>
<td>4</td>
<td>$1,000,000 – $1,499,999</td>
</tr>
<tr>
<td>5</td>
<td>$1,500,000 – $1,999,999</td>
</tr>
<tr>
<td>6</td>
<td>$2,000,000 – $4,999,999</td>
</tr>
<tr>
<td>7</td>
<td>$5,000,000 – $7,999,999</td>
</tr>
<tr>
<td>8</td>
<td>$8,000,000 – or more</td>
</tr>
</tbody>
</table>

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

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

VI. **CERTIFICATION.** Only businesses certified by the Agency as SBES will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the Policy (as defined in Section VII below).

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

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

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

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

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

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

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

Facade and Tenant Improvement Loan Agreement
Exhibit J
Small Enterprise Agreement (12/02/09)
Arbitration Party means all persons and entities who attend the arbitration hearing pursuant to Section XII, as well as those persons and entities who are subject to a default award provided that all of the requirements in Section XII.L. have been met.

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

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

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

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

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

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

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

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

Small Business Enterprise (SBE) means an economically disadvantaged business that: is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; has average gross annual receipts in the three years immediately preceding its application for certification as a SBE that do not exceed the following limits: (a) construction--$14,000,000; (b) professional or personal services--$2,000,000 and (c) suppliers--$7,000,000; and is (or is in the process of being) certified by the Agency as a SBE and meets the other certification criteria described in the SBE application.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm’s three most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations). Once a business reaches the 3-year average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

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

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

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

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

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

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

C. Follow-up. Follow up initial solicitations of interest by contacting the SBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work.
D. **Subdivide Work.** Divide, to the greatest extent feasible, the contract work into small units to facilitate SBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.

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

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

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

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

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

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

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

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

X. **ADDITIONAL PROVISIONS**

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

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

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

"Amounts for work performed by a subcontractor shall be paid within ten (10) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 et seq. Failure to include this provision in a subcontract or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity."

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

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

XI. **PROCEDURES**

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

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

B. **Affidavit.** If the Agency-Assisted Contractor or Contractor(s) contend that the contract has been awarded to a SBE, the Agency-Assisted Contractor or Contractor(s) shall, at the same time also submit to the Agency a SBE Application for Certification and its accompanying Affidavit completed by the SBE owner. However, a SBE that was previously certified by the Agency shall submit only the short SBE Eligibility Statement.
C. **Good Faith Documentation.** If the 50% SBE Participation Goals are not met in each category (Construction, Professional Services and Suppliers), the Agency-Assisted Contractor or Contractor(s) shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Agency-Assisted Contractor’s or Contractor’s good faith efforts is not resolved at this meeting, the Agency-Assisted Contractor or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts (“Submission”):

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

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

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

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

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

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

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

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

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

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

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

D. **Presumption of Good Faith Efforts.** If the Agency-Assisted Contractor or Contractor(s) achieves the Participation Goals, it will not be required to submit Good Faith Effort documentation.
E. **Waiver.** Any of the SBE requirements may be waived if the Agency determines that a specific requirement is not relevant to the particular situation at issue, that SBEs were not available, or that SBEs were charging an unreasonable price.

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

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

XII. **ARBITRATION OF DISPUTES.**

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

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

C. **Parties’ Participation.** The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Agency-Assisted Contractor or Contractor made an initial timely Demand for Arbitration pursuant to Section XII.B. above.
D. **Agency Request to AAA.** Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

P. **Severability.** The provisions of this SBE Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this SBE Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this SBE Agreement or the validity of their application to other persons or circumstances.
Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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

[Signatures]

Agency

Agency-Assisted Contractor

XIII. **AGREEMENT EXECUTION**

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

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

[Signature]  
Young Han Yi  
2/25/11

[Print Your Name]  
Sylvia Yi  
Young Han Yi

[member]  

[Title]  

[Company Name and Phone Number]  
Pean’s Deluxe Burgers, LLC  (415) 785-7538

Façade and Tenant Improvement Loan Agreement
Exhibit J
Small Enterprise Agreement (12/02/09)  
Page 11 of 11
Exhibit K

Minimum Compensation Policy (MCP) Declaration

What the Policy does. The Redevelopment Agency of the City and County of San Francisco adopted the Minimum Compensation Policy (MCP), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to provide the following to their employees covered by the MCP on Agency contracts and subcontracts for services: For Commercial Business MCP the wage rate is $11.69. For Nonprofit MCP the wage rate is $11.03; 12 days’ paid vacation per year (or cash equivalent); 10 days off without pay per year.

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

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

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

What this form does. If you can assure the Agency now that, beginning with the first Agency contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same, this will help the Agency's contracting process. The Agency realizes that it may not be possible to make this assurance now.

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

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

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

Declaration

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

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

Signature: [Signature]

Print Name: [Print Name]

Company Name: [Company Name]

Date: [Date]

Phone: [Phone]

Exhibit K
Minimum Compensation Policy (MCP) Declaration (1/4/11)
Exhibit L

Health Care Accountability Policy (HCAP) Declaration

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

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the Agency Commission (2) pay the Agency $3.00 per hour for each hour the employee works on the covered contract or subcontract or on property covered by a lease (but not to exceed $120 in any week) and the Agency will appropriate the money for staffing and other resources to provide medical care for the uninsured, or (3) participate in a health benefits program developed by the Agency.

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

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

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

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

What this form does. If you can assure the Agency now that, beginning with the first Agency’s contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same, this will help the Agency contracting process. The Agency realizes that it may not be possible to make this assurance now.

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

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

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

Declaration

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

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

Signature

Sylvia Yi

Print Name

Pearl's Deluxe Burgers, LLC

Company Name

Phone

2/25/11

Date

415) 785-7538
Exhibit M

Construction Work Force Agreement

I. PURPOSE. The purpose of the Agency and the Owner entering into this Construction Work Force Agreement is to ensure equal employment opportunities for minority group persons and women in the construction work force involved in constructing any of the Tenant Improvement work on the Site. To achieve this purpose, the Agency and the Owner adopt the standards and requirements set forth below, which are modeled on the standards and requirements of Executive Order 11246 and its implementing regulations including those contained in 41 Code of Federal Regulations ("CFR") 60-1.4, 60-4.2 and 60-4.3.

II. WORK FORCE GOALS.

A. The goals set forth below are expressed as a percentage of each Contractor's total hours of employment and training by trade on the Site. The goals represent the level of minority and female utilization each Contractor should reasonably be able to achieve in each construction trade in which it has employees on the Site. The Owner agrees, and will require each Contractor (regardless of tier), to use its good faith efforts to employ minority group persons and women to perform construction work upon the Site at a level at least consistent with said goals.

B. Goals

1. Goal for minority group participation in each trade: 25.6 percent of the total hours worked in the trade.

2. Goal for female participation in each trade: 6.9 percent of the total hours worked in the trade.

3. Goal for participation of San Francisco residents in each trade: 50 percent of the total hours worked in the trade. Residents of the South of Market Project Area shall be given first consideration for hiring followed by other San Francisco residents.

C. If a conflict arises, achieving the ethnic and gender goals shall take precedence over achieving the residency goal set forth in Section II.B.3.

The goals set forth in Section II.B shall be amended to reflect goals issued by the Agency shall either reflect the availability of minority group persons and/or women in the relevant labor area to perform construction work generally or by trade, or, be designed to correct the effects of past discrimination in situations where the Agency concludes that the facts establish a prima facie case of discrimination against a minority group or women, or otherwise meet the current judicial standards for setting employment goals. A judicial finding of discrimination shall not be a prerequisite to the establishment of new goals by the Agency. If the Owner believes that the new goals violate applicable legal standards, the Owner may challenge the goals either through arbitration under the SBE Agreement or in a de novo court action.
D. Amendments to the goals shall be prospective and go into effect 20 days after the Agency mails written notice of the amendments to the Owner. New goals shall not be applied retroactively.

E. Although paragraph B establishes a single goal for minority group persons and a separate, single goal for women, each Contractor is required to provide equal employment opportunity and to take equal opportunity for all ethnic groups, both male and female, and all women, both minority and non-minority. Consequently, a Contractor may be in violation of this Construction Work Force Agreement if a particular ethnic group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goal for women generally, the Contractor may be in violation if a specific ethnic group of women is underutilized.) If the Agency determines, after affording a Contractor notice and an opportunity to be heard, that the Contractor has violated its obligations under this paragraph, the Agency may set, for that Contractor, work force participation goals by particular ethnic group, e.g., Blacks, Latinos, etc.

F. Each Contractor is individually required to comply with its obligations under this Construction Work Force Agreement, and to make a good faith effort to achieve each goal in each trade in which it has employees employed at the Site. (See Section IV below.) The overall good faith performance by other contractors or subcontractors toward a goal does not excuse any covered Contractor's failure to make good faith efforts to achieve the goals.

G. The Contractor shall not use the goals or equal opportunity standards to discriminate against any person because of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

H. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS").

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

IV. EQUAL OPPORTUNITY REQUIREMENTS.
A. Each Contractor shall take specific equal opportunities to ensure equal employment opportunity ("EEO"). The evaluation of the Contractor’s compliance with this Construction Work Force Agreement shall be based upon its good faith efforts to achieve maximum results from its actions. Each Contractor shall document these efforts fully, and shall implement equal opportunity steps at least as extensive as the following:

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at the Site. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor’s obligation to maintain such a working environment with specific attention given to minority group persons or women working at the Site.

2. Provide written notification to community based organization and any other organizations identified for the Contractor by the Agency when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations’ responses.

3. Maintain a current file of the names, addresses and telephone numbers of each off-the-street, minority group, female or resident applicant and each minority, female and resident referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

4. Provide immediate written notification to the Agency when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority group person, a woman or a resident sent or requested by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor’s efforts to meet its obligations.

5. Develop on-the-job training opportunities and/or participate in training programs which expressly include minority group persons and women, including apprenticeship, trainee and upgrading programs relevant to the Contractor’s employment needs, especially those funded or approved by BAT or DAS. The Contractor shall provide notice of these programs to the sources compiled under Section IV.A.2 above.

6. Disseminate the Contractor’s EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority group and female employees at
least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at the Site.

7. Review, prior to beginning work at the Site and at least annually thereafter, the Contractor's EEO policy and equal opportunity obligations with the Owner and this Construction Work Force Agreement with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter. The Agency's contract compliance staff shall be invited to attend the meeting held prior to the beginning of work at the Site.

8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

9. Direct its recruitment efforts, both oral and written, to local minority group, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

10. Encourage present minority and female employees to recruit other minority group persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the Site and in other areas of a Contractor's work force.

11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

12. Conduct, at least annually, an inventory and evaluation of minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training etc., such opportunities.

13. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.

14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the genders.
15. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and equal opportunity obligations.

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

V. ADDITIONAL PROVISIONS.

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

B. A Contractor shall not enter into any subcontract with any person or firm that the Contractor knows or should have known is debarred from government contracts pursuant to Executive Order 11246.

C. No employee to whom the equal opportunity provisions of this Construction Work Force Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to this Construction Work Force Agreement.

D. Each Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Contractor's EEO policy is being carried out.

VI. DOCUMENTATION AND RECORDS.

A. Submission of certified payrolls to the Agency. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a report providing the information contained in the Agency's Optional Form of payroll report for the week preceding the previous week on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors.

B. Instructions for coding certified payrolls. In addition to maintaining the information required by Section VI.C, each Contractor shall include, on the weekly payroll
submissions, the code designating each employee's craft, skill level, protected class status and domicile in accordance with the following table:

Table for Coding Crafts, Minority Group Persons,
Women and Residents on Certified Payrolls

<table>
<thead>
<tr>
<th>CRAFT CODE</th>
<th>DESCRIPTION</th>
<th>CRAFT CODE</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Electrician</td>
<td>22</td>
<td>Carpet, Linoleum, Vinyl Tile Layer</td>
</tr>
<tr>
<td>2</td>
<td>Iron Worker</td>
<td>23</td>
<td>Elevator Constructor</td>
</tr>
<tr>
<td>3</td>
<td>Sheet Metal Worker</td>
<td>24</td>
<td>Cement Mason</td>
</tr>
<tr>
<td>4</td>
<td>Asbestos Wrkr/Heat &amp; Frost Insulator</td>
<td>25</td>
<td>Laborer or Allied Worker</td>
</tr>
<tr>
<td>5</td>
<td>Plumber, Pipe or Steamfitter</td>
<td>26</td>
<td>Glazier &amp; Glassmaker</td>
</tr>
<tr>
<td>6</td>
<td>Refrigeration</td>
<td>27</td>
<td>Painter, Paperhanger, Taper</td>
</tr>
<tr>
<td>7</td>
<td>Boilermaker</td>
<td>28</td>
<td>Sign Installer</td>
</tr>
<tr>
<td>8</td>
<td>Sprinkler Fitter</td>
<td>29</td>
<td>Scrapper</td>
</tr>
<tr>
<td>9</td>
<td>Brick, Caulk, Marble, Point, Terrazzo</td>
<td>30</td>
<td>Awning Installer</td>
</tr>
<tr>
<td>10</td>
<td>Hod Carrier</td>
<td>31</td>
<td>Drapery Hanger</td>
</tr>
<tr>
<td>11</td>
<td>Terrazzo Finisher</td>
<td>32</td>
<td>Low Voltage Electrician</td>
</tr>
<tr>
<td>12</td>
<td>Plasterer</td>
<td>33</td>
<td>Towboat Operator-Marine Engineer</td>
</tr>
<tr>
<td>13</td>
<td>Lather</td>
<td>34</td>
<td>Towboat Deckhand-Inland Boatworker</td>
</tr>
<tr>
<td>14</td>
<td>Carpenter or Drywall Hanger</td>
<td>35</td>
<td>Owner/Operator - Truck</td>
</tr>
<tr>
<td>15</td>
<td>Mill Worker or Cabinetmaker</td>
<td>36</td>
<td>Owner/Operator - Heavy Equipment</td>
</tr>
<tr>
<td>16</td>
<td>Millwright</td>
<td>37</td>
<td>Upholsterer</td>
</tr>
<tr>
<td>17</td>
<td>Roofer</td>
<td>38</td>
<td>Teamster, Construction</td>
</tr>
<tr>
<td>18</td>
<td>Pile Driver</td>
<td>39</td>
<td>Janitor</td>
</tr>
<tr>
<td>19</td>
<td>Surveyor/Operating Engineer</td>
<td>40</td>
<td>Environmental Control System</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Installer</td>
</tr>
<tr>
<td>20</td>
<td>Tile (Ceramic)/Marble Finisher</td>
<td>41</td>
<td>Window Cleaner</td>
</tr>
<tr>
<td>21</td>
<td>Tile (Ceramic)Setter</td>
<td>89</td>
<td>Security Guard</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CODE</th>
<th>DESCRIPTION</th>
<th>CODE</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>San Francisco-Domiciled</td>
<td>B</td>
<td>Black</td>
</tr>
<tr>
<td>R</td>
<td>Project Area Resident</td>
<td>I</td>
<td>American Indian</td>
</tr>
<tr>
<td>S</td>
<td>Latino</td>
<td>C</td>
<td>Caucasian/White</td>
</tr>
<tr>
<td>O</td>
<td>Asian/Pacific Islander</td>
<td>W</td>
<td>Woman</td>
</tr>
</tbody>
</table>

C. **Required records.** For each employee, the Contractor's payroll or similar record shall contain the name, address, whether an employee lives in the Project Area, telephone numbers, construction trade, classification, union affiliation (if any), employee
identification number, Social Security number, gender, race, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hourly wage rates (including rates of contributions for costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, the contractor shall not be required to maintain separate records.

D. **Additional information.** The report required by Section VI.B shall be accompanied by:

1. A statement of any problems encountered by the Contractor in obtaining minority, female or resident referrals from any union and

2. A statement of the reasons why the Contractor failed to meet the ethnic and gender employment goals (if the goals were not met), the reasons why the contractor failed to meet the 50 percent San Francisco residency goal (if that goal was not met) and the reasons why the contractor was not able to perform any of the equal opportunity steps set forth in Section IV.A.1 through 15 (if any of the steps were not taken).

E. **Inspection of records.** The Contractor shall make the records required under this section 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.

F. **Failure to submit reports.** If a Contractor fails or refuses to provide the reports to the General Contractor as required by Section VI.A, the Agency, upon notice from the General Contractor or the Owner, shall consider but not be required to institute arbitration proceedings against the noncompliant Contractor.

G. **Submission of good faith effort documentation.** If the Contractor's good faith efforts are at issue, the Contractor shall provide the Agency with the documentation of its efforts as required by Section IV.A.

**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 a 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 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 Owner made an initial timely Demand for Arbitration pursuant to Section V.B. above.

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

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

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

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

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

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

J. Arbitration Remedies and Sanctions. The arbitrator may impose only the remedies and sanctions set forth below:
1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.

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

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

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

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

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

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

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

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

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

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

Q. **Arbitration Notice:** BY INITIALIZING 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 INITIALIZING 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

VII. PRECONSTRUCTION MEETING.

A. Prior to the commencement of construction, the general contractor, any prime contractor, or any subcontractor at any tier shall attend a preconstruction meeting convened by the Agency and to which outreach organizations are invited to review the reporting requirements, the prospective construction work force composition and any problems that may be anticipated in meeting the construction work force goals.

B. Any subcontractor at any tier, who does not attend such a meeting shall not be permitted on the job site. The Agency shall convene additional preconstruction meetings within 24 hours of the Contractor's request. The Contractor shall endeavor to include as many prospective subcontractors as possible at these meetings in order not to protract unduly the number of meetings.

C. Failure to comply with this preconstruction meeting provision may result in the Agency ordering a suspension of work by the prime contractor and/or the subcontractor until the breach has been cured. Suspension under this provision is not subject to arbitration.

VIII. TERM. The obligations of the Owner and the Contractors with respect to their construction work forces, as set forth in this Construction Work Force Agreement, shall remain in effect until completion of all work to be performed by the Owner in connection with the construction of any of the phases.

I, hereby certify that I have authority to execute this Construction Work Force Agreement on behalf of the business, organization or entity listed below and that it will use good faith efforts to comply with the Agency’s Construction Work Force participation goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

Signature

Print Your Name

Date

Title

Company Name and Phone Number

Façade and Tenant Improvement Loan Agreement

Exhibit M

Construction Work Force Agreement (04-05-06)
Exhibit O

Property Owner Authorization/Power of Attorney
Free Recording Requested Pursuant to
Government Code Section 27313 By:
Redevelopment Agency of the
City and County of San Francisco

When Recorded, Please Mail to:
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Development Services Division

APN: 3703-001
1001 Market Street; 4 Sixth Street

ACKNOWLEDGEMENT AND CONSENT

Terry L. Bogart and Peggy Mullin-Bogart, husband and wife, as community property, as to an undivided 1/2 interest and John Gall and Megan Cydney Gall, husband and wife, as community property with right of survivorship and Amy Bogart, a single woman and Haley Bogart, a single woman, as tenants in common, as to an undivided 1/2 interest

Dated February 23, 2011
ACKNOWLEDGEMENT AND CONSENT

In consideration of the loan provided under the terms of the Façade and Tenant Improvement Loan Agreement (the “Loan Agreement”) between the Redevelopment Agency of the City and County of San Francisco, a public body corporate and politic (the “Agency”) and Pearl’s Deluxe Burgers, LLC (“Borrower”), Terry L. Bogart and Peggy Mullin-Bogart, husband and wife, as community property, as to an undivided 1/2 interest and John Gall and Megan Cydney Gall, husband and wife, as community property with right of survivorship and Amy Bogart, a single woman and Haley Bogart, a single woman, as tenants in common, as to an undivided 1/2 interest (collectively, the “Property Owner”), acknowledge and consent as follows:

1) That pursuant to the Grant Deed recorded November 17, 2010 as Document No. 2010-J081252-00, at Reel K272, Image 0003, Official Records of the County of San Francisco, Terry L. Bogart and Peggy Mullin-Bogart, husband and wife, as community property have a 50% ownership interest and John Gall and Megan Cydney Gall, husband and wife, as community property with right of survivorship and Amy Bogart, a single woman and Haley Bogart, a single woman, as tenants in common, have a 50% ownership interest in the real property located at 1001 Market Street, San Francisco, California, 94103, (the “Property”) more particularly described in Attachment “A” attached hereto.

2) That John Gall represents that he is authorized on behalf of Peggy Mullin-Bogart, Megan Cydney Gall, Amy Bogart, and Haley Bogart, pursuant to that certain acknowledgement attached hereto as Attachment “B”, to execute this Acknowledgment and Consent in connection with the Loan Agreement, which provides funding for certain façade and tenant improvements to 1001 Market Street and 4 Sixth Street, San Francisco, for the business known as Pearl’s Deluxe Burgers. John Gall is also authorized on behalf of Peggy Mullin-Bogart, Megan Cydney Gall, Amy Bogart, and Haley Bogart, to execute the Deed of Trust and Assignment of Rents, attached as Exhibit “F” to the Loan Agreement, as security for the loan to be provided by the Agency to the Borrower pursuant to the Loan Agreement.

3) That the Property Owner further agrees to cooperate in the execution of the Deed of Trust and Assignment of Rents concerning the Property in favor of the Agency, as beneficiary.

Executed under penalty of perjury on 2/23/11 at San Francisco, California.

Terry L. Bogart and Peggy Mullin-Bogart, husband and wife, as community property, as to an undivided 1/2 interest and John Gall and Megan Cydney Gall, husband and wife, as community property with right of survivorship and Amy Bogart, a single woman and Haley Bogart, a single woman, as tenants in common, as to an undivided 1/2 interest

By

[Attach acknowledgment for each signatory]
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Francisco

On 2/23/11 before me, Tracy Everwine, 
I hereby acknowledge that
personally appeared John Gall

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature]

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: 

Document Date: 

Number of Pages: 

Signer(s) Other Than Named Above: 

Capacity(ies) Claimed by Signer(s)

Signer’s Name: 

☐ Corporate Officer — Title(s): 
☐ Individual
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: 

Signer is Representing: 

SIGNATURE

[Signature]

© 2010 National Notary Association • NationalNotary.org • 1-800-US-NOTARY (1-800-876-6827)
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California                                    }}
County of San Francisco

On 2/23/11 before me, Tracy Everwine

Date  Here Insert Name and Title of the Officer

personally appeared Terry L. Bogart

Name(s) of Signer(s)

who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in
his/ her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the
laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature]

Signature of Notary Public

Though the information below is not required by law, it may prove valuable to persons relying on the document
and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: __________________________________________________________

Document Date: __________________________ Number of Pages: __________

Signer(s) Other Than Named Above: __________________________________________________

Capacity(ies) Claimed by Signer(s)

Signer's Name: __________________________

☐ Corporate Officer — Title(s): __________________________

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: __________________________

Signer Is Representing: __________________________

 ☐ Corporate Officer — Title(s): __________________________

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: __________________________

Signer Is Representing: __________________________
ATTACHMENT “A”

Property Legal Description

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Commencing at the point of intersection of the Southeasterly line of Market Street with the Southwesterly line of 6th Street; running thence Southwesterly along said Southeasterly line of Market Street 50 feet; thence at a right angle Southeasterly 85 feet; thence at a right angle Southwesterly 25 feet; thence at a right angle Southeasterly 25 feet; thence at a right angle Northeasterly 75 feet to the Southwesterly line of 6th Street; thence Northwesterly along said Southwesterly line of 6th Street 110 feet to its intersection with the Southeasterly line of Market Street and the point of commencement.

Being a portion of 100 Vara Block No. 393.

Assessor’s Lot 001; Block 3703
ATTACHMENT “B”

Property Owner Power of Attorney
Power of Attorney

We the undersigned, hereby authorize John Gall to act on our behalf in all manners relating to that certain Façade and Tenant Improvement Loan Agreement (the "Loan Agreement") dated as of October 19, 2010, by and between the Redevelopment Agency of the City and County of San Francisco and Pearl's Deluxe Burgers, LLC, which provides funding for certain façade and tenant improvements to the real property known as 1001 Market Street and 4 Sixth Street (Assessor's Block 3703, Lot 001). Any and all acts carried out by John Gall on our behalf in connection with the Loan Agreement shall have the same effect as acts of our own.

Amy Bogart
Date

Haley Bogart
Date

Peggy Mullin-Bogart
Date

Megan Gall
2/2/11
Date

Notary Public:

Name: __________________________
Title: __________________________
County: _________________________
State: __________________________
Date: __________________________

Please See Attached Acknowledgement From Notary Public
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California  __________________________
County of SAN MATEO _________________________

On 2/2/11 before me, ________________________,
SHASHI SHETH, NOTARY PUBLIC
Here Insert Name and Title of the Officer

personally appeared ________________________,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Power of Attorney

Document Date: _________________________ Number of Pages: 1

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: _________________________

☐ Individual  ☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited  ☐ General
☐ Attorney in Fact  ☐ Trustee
☐ Guardian or Conservator  ☐ Other:

Signer Is Representing: _________________________

__________________________________________
R I G H T H U M B R I N T
of signer
Top of thumb here

Signer's Name: _________________________

☐ Individual  ☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited  ☐ General
☐ Attorney in Fact  ☐ Trustee
☐ Guardian or Conservator  ☐ Other:

Signer Is Representing: _________________________

__________________________________________
R I G H T H U M B R I N T
of signer
Top of thumb here
Power of Attorney

We the undersigned, hereby authorize John Gall to act on our behalf in all manners relating to that certain Façade and Tenant Improvement Loan Agreement (the "Loan Agreement") dated as of October 19, 2010, by and between the Redevelopment Agency of the City and County of San Francisco and Pearl’s Deluxe Burgers, LLC, which provides funding for certain façade and tenant improvements to the real property known as 1001 Market Street and 4 Sixth Street (Assessor’s Block 3703, Lot 001). Any and all acts carried out by John Gall on our behalf in connection with the Loan Agreement shall have the same effect as acts of our own.

Amy Bogart

Date

1-27-2011

Haley Bogart

Date

Peggy Mullin-Bogart

Date

Terry Bogart

Date

Notary Public:

Name: Kristine L. Kerschner
Title: Notary Public
County: King
State: WA
Date: 1/27/2011
Power of Attorney

We the undersigned, hereby authorize John Gall to act on our behalf in all manners relating to that certain Façade and Tenant Improvement Loan Agreement (the "Loan Agreement") dated as of October 19, 2010, by and between the Redevelopment Agency of the City and County of San Francisco and Pearl's Deluxe Burgers, LLC, which provides funding for certain façade and tenant improvements to the real property known as 1001 Market Street and 4 Sixth Street (Assessor's Block 3703, Lot 001). Any and all acts carried out by John Gall on our behalf in connection with the Loan Agreement shall have the same effect as acts of our own.

Amy Bogart  1/27/11  Date

Haley Bogart

Peggy Mullin-Bogart  Date

Terry Bogart  Date

Notary Public:

Name: Paul Stanley
Title: Notary
County: San Diego
State: California
Date: Jan. 27, 2011
Power of Attorney

We the undersigned, hereby authorize John Gall to act on our behalf in all manners relating to that certain Façade and Tenant Improvement Loan Agreement (the "Loan Agreement") dated as of October 19, 2010, by and between the Redevelopment Agency of the City and County of San Francisco and Pearl's Deluxe Burgers, LLC, which provides funding for certain façade and tenant improvements to the real property known as 1001 Market Street and 4 Sixth Street (Assessor's Block 3703, Lot 001). Any and all acts carried out by John Gall on our behalf in connection with the Loan Agreement shall have the same effect as acts of our own.

Amy Bogart                     Date

Haley Bogart                      Date

Evelyn Mullin-Bogart                      1-27-2011

Terry Bogart                      Date

Notary Public: Bethine Lee

Name: BETINE LEE
Title: NOTARY PUBLIC
County: SAN MATEO
State: CALIFORNIA
Date: JAN. 25, 2011