AMENDED AND RESTATED LOAN AGREEMENT
(OCII LOW MODERATE INCOME HOUSING FUND)

By and Between

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO,
a public body, organized and existing under the laws of California

and

MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P.,
a California limited partnership,

for

BLOCK 7W, MISSION BAY SOUTH
Block 7W, Mission Bay South
$16,975,000

Dated as of August 5, 2014
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AMENDED AND RESTATED LOAN AGREEMENT
(UCSF Liqurated Damages)
(Affordable Housing Fees)
(Tax Increment Funds)
OCII Low Moderate Income Housing Fund Balance
(Block 7W – Mission Bay South)

THIS AMENDED AND RESTATED LOAN AGREEMENT ("Agreement") is entered into as of August 5, 2014, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body organized and existing under the laws of the State of California ("OCII"), and MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P., a California limited partnership ("Borrower").

RECITALS

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

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

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

D. The Mission Bay South Owner Participation Agreement (the “OPA”) between the Agency and FOCIL-MB, LLC (the “Master Developer”) provides that the Master Developer will contribute land to the Agency, at no cost, for the development of affordable housing and the Agency will oversee the development of up to one thousand four hundred forty-five (1,445) affordable housing units in the Project Area.

E. Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session) ("AB 26"), as amended by California State Assembly Bill No. 1484 ("AB 1484") (together the “Dissolution Laws”) the Agency dissolved as a matter of law on February 1, 2012. On October 2, 2012 the San Francisco Board of Supervisors, acting as legislative body of OCII as the successor to the Agency, passed Ordinance 215-12, which outlined the rights and responsibilities of OCII as the Agency’s successor agency, including but not limited to certain
retained existing enforceable obligations for the development of affordable housing. Accordingly, under Ordinance 215-12 and Dissolution Law, OCII has the obligation and authority to enter into this Agreement to allow for the development of the Project as defined in Recital G below.

F. The University of California San Francisco ("UCSF") and the Agency entered into a Disposition and Development Agreement ("2005 DDA") for Block 7 East in the Project Area, on October 18, 2005 to develop affordable housing with occupancy preferences for UCSF employees. The Agency and UCSF entered into a second Disposition and Development Agreement recorded in the Official Records of San Francisco County as Document No. 2010-1939099-00 on March 18, 2010 to, among other things, develop affordable housing on Block 7 West (the “2010 DDA,” and together with the 2005 DDA, the “DDA”).

G. Borrower wishes to ground lease Block 7 West, as modified by a lot line adjustment between Block 7 West and Block 7 East (the “Lot Line Adjustment”) and as more particularly described on Exhibit P hereto (the “Site”), and develop, own and operate an affordable housing project with approximately 200 residential units that shall be affordable on average up to 60% of Median Income (the “Residential Space”) and approximately 10,000 square feet of retail space thereon (the “Commercial Space,” and together with the Residential Space, the “Project”). In connection therewith: (i) the 2005 DDA was terminated; (ii) the 2010 DDA has been assigned from UCSF to Borrower; (iii) UCSF will has made a payment of $2,400,000 to OCII in lieu of the liquidated damages payment required under the 2010 DDA; and (iv) the 2010 DDA has been amended and restated (the “Amended Housing Project DDA”).

H. On June 3, 2011, the Citywide Affordable Housing Loan Committee (the “Loan Committee”) reviewed and recommended to the Agency Commission to provide Borrower with a predevelopment loan of Mission Bay Restricted Tax Increment funds (the “Funds”) subject to certain terms and conditions in an amount equal to $2,000,000 (the “Existing Predevelopment Loan”).

I. On or about June 18, 2013, Borrower and OCII executed that certain Loan Agreement Low Moderate Income Housing Fund, promissory note and assignment of work product, pursuant to which OCII evidencing and governing the Existing Predevelopment Loan (the “Existing Predevelopment Loan Documents”).

J. At its June 6, 2014 meeting, the Loan Committee reviewed and approved a $14,975,000 financing request which includes $1,600,000 in additional predevelopment funding and $13,775,000 in gap funding, all to be recommended to the OCII Commission for approval.

K. Under Resolution No. 9-2013 adopted by the City's Oversight Board as of September 19, 2013, the loan evidenced by this Agreement was approved by the Oversight Board as part of the Recognized Obligation Payment Schedule for the January 1, 2014 to June 30, 2014. On November 7, 2013, the State Department of Finance approved the expenditure of these project funds.

L. Pursuant to OCII Commission Resolution No._______, OCII has agreed to provide additional predevelopment loan funds totaling One Million Six Hundred Thousand Dollars ($1,600,000) to Borrower for a total predevelopment loan amount of Three Million Six Hundred Thousand Dollars ($3,600,000)( the “Predevelopment Loan Amount”), and a gap loan in an
amount of Thirteen Million Three Hundred Seventy Five Thousand Dollars ($13,375,000) for a total not to exceed amount of Sixteen Million Nine Hundred Seventy Five Thousand Dollars ($16,975,000) (the "Funding Amount") under this Agreement to fund certain costs related to the development of the Project the (“Loan”).

M. Upon completion of the project, OCII intends to transfer the affordable housing loan obligation, asset, and ground lease to MOHCD as the designated Successor Housing Agency of the City and County of San Francisco under Board Resolution 11-12, as required by Dissolution Law.

AGREEMENT

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

ARTICLE 1  DEFINITIONS.

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

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

"Acquisition Date" has the meaning set forth in Section 3.1.

"Administrative General Partner" means Related/Mission Bay Block 7 Development Co., LLC, a California limited liability company.

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

"Amended Housing Project DDA" has the meaning set forth in Recital G.

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

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

"Authorizing Resolutions" means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company, a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Borrower's authority to execute, deliver and perform the obligations under the OCII Documents to which Borrower is a party or by which it is bound.
"Borrower" means Mission Bay Block 7 Housing Partners, L.P., a California limited partnership, and its authorized successors and assigns.

"CFR" means the Code of Federal Regulations.

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

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

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

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

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

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

“Commercial Shell” means all components of an unfinished Commercial Space as further defined by MOHCD’s commercial space policy, as it may be amended from time to time.

"Commercial Space" has the meaning set forth in Recital G and further defined in MOHCD’s commercial space policy as it may be amended from time to time. As used in this Agreement, the term excludes non-residential space in the Project to be used primarily for the benefit of the Tenants.

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

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

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

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

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

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

"Developer" means Mission Bay Block 7 Housing Partners, L.P., a California limited partnership whose general partners are: Related/Mission Bay Block 7 Development Co., LLC, a California limited liability company and CCDC-MBB7 LLC, a California limited liability company, and its authorized successors and assigns.

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

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

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

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

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

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

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

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

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

“Existing Predevelopment Loan Documents” has the meaning set forth in Recital I.

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

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

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

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

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

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

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

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or
is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed "Hazardous Substances" for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

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

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

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

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

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

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

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

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency, including the CRL.
"Loan" has the meaning set forth in **Recital L**.

“Loan Closing” means the date on which all conditions to closing of the loan under **Section 4.3** have been met and Borrower and OCII authorize recordation of the Deed of Trust and Declaration of Restrictions.

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

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

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

"Maturity Date" has the meaning set forth in **Section 3.1**.

"Median Income" means area median income as determined by HUD for the San Francisco area, adjusted solely for household size.

"MOHCD" means the Mayor's Office of Housing and Community Development or its successor.

"Note" means the promissory note executed by Borrower in favor of OCII in the original principal amount of the Funding Amount.

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

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

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

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

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

"Opinion" means an opinion of Borrower's California legal counsel, satisfactory to OCII and its legal counsel, that Borrower is a duly formed, validly existing California limited partnership in good standing under the laws of the State of California, has the power and authority to enter into the OCII Documents and will be bound by their terms when executed and delivered, and that addresses any other matters OCII reasonably requests.
"Payment Date" means the first May 1st following the Completion Date and each succeeding until the Maturity Date.

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

"Predevelopment Funds” means the Loan Funds in an amount equal to $3,600,000 available for disbursement prior to Loan Closing.

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

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

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

"Project Expenses” means the following costs, which may be paid from Project Income to the extent of available Project Income pursuant to the Annual Operating Budget approved prior to the Loan Closing Date by OCII Executive Director and MOHCD Director as part of the Final Financial Plan: (a) all charges incurred in the operation of the Project for utilities, real estate taxes and assessments and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages and any other compensation due and payable to the employees or agents of Borrower employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) required payments of interest and principal, if any, on any senior financing secured by the Site and used to finance the Project that has been approved by OCII; (d) all other expenses actually incurred to cover operating costs of the Project, including maintenance and repairs and the fee of any managing agent as indicated in the Annual Operating Budget; (e) required, and necessary, deposits to the Replacement Reserve Account, and any other reserve account required under this Agreement; (f) annual base rent payments under the Ground Lease in an amount equal to $15,000; (g) amounts necessary to replenish the Operating Reserve pursuant to Section 12.2, and (h) any extraordinary expenses approved in advance by the OCII (other than expenses paid from any reserve account). Project Fees are not Project Expenses.

"Project Fees” means annual partnership management and asset management fees, in the initial aggregate amount which agrees with the City’s Asset Management Fee & Partnership Management Policy and increasing annually by 3.5%.

“Project Financing” has the meaning set forth in Section 4.3(a)(i).

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

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

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

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

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

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

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

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

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

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

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

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

"SFHA" means the San Francisco Housing Authority.

"Site" has the meaning given in Recital G of this Agreement and means the real property more particularly described on Exhibit P.

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

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

"TCAC" means the California Tax Credit Allocation Committee.

“TCAC AMI” means area median income as determined by TCAC.

"Tenant" means any residential household in the Project.

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

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

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

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

“Waiting List” has the meaning set forth in Section 6.5.

“Work Product” has the meaning set forth in Section 24.21.

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 FUNDING.

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

2.2 Use of Funds. Borrower acknowledges that the OCII's agreement to make the Loan is based in part on Borrower's agreement to use the Funding Amount solely for the purpose set forth in Section 2.1 and agrees to use the Funds solely for that purpose in accordance with the approved Table of Sources and Uses. Predevelopment expenses incurred by Borrower prior to the date of this Agreement that are consistent with Exhibit B-1 are reimbursable to Borrower. Such expenses are subject to all conditions of a Expenditure Request, including review and approval by OCII in accordance with the terms of this Agreement.

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

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

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

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

3.1 Interest. The outstanding principal balance of the Loan will bear simple interest at a rate of three percent (3%) per annum, as provided in the Note. However, the interest rate on the gap portion of $13,375,000 may be reduced to 0.5% at construction closing to meet the true debt test requirement, subject to justification from the Borrower, and review and approval by the OCII Executive Director and the MOHCD Director.

3.2 Loan Repayment Terms. Interest shall accrue, and repayment of principal and interest shall be paid from Surplus Cash in accordance with Section 3.5, below. Notwithstanding the foregoing, the outstanding principal balance and any accrued but unpaid interest of the Loan will be due and payable on the fifty seventh (57th) anniversary of the date Deed of Trust is recorded on the leasehold interest in the Official Records (the “Maturity Date”) according to the terms set forth in full in the Note. At least sixty (60) days prior to the Maturity Date, the Borrower may apply to the City for an extension of the Maturity Date. In the event that, as of the date of such request the Borrower continues to be in compliance with the Loan Documents, the City may, in its discretion, agree to extend the Maturity Date pursuant to a written amendment to the Agreement and permit the Borrower to continue to defer repayment of principal and interest, or may require that the Borrower make amortized payments of principal and interest, depending on factors such as rental payments received from the commercial portion of the Site.
Notwithstanding the foregoing, in the event Loan Closing has not occurred on or prior to June 30, 2015 (the “Acquisition Date”), the Maturity Date shall be the Acquisition Date. The Acquisition Date may be extended upon mutual agreement of OCII and Borrower. If the Note becomes due and payable on the Acquisition Date, and provided no Event of Default under any of the OCII Documents is then continuing, the Borrower may satisfy the Note in full by either (i) making payment in full; or (ii) delivering to OCII all of the following: (x) all of the Work Product, (y) an absolute and unconditional assignment to OCII of all of Borrower’s right, title and interest in and to the Work Product; and (z) the written consent to such assignment of any architect, engineer or other person or firm that has any right, title or interest in or to the Work Product, to the extent Borrower is able to obtain such consent using commercially reasonable efforts. In addition to the foregoing, notwithstanding anything to the contrary contained in the OCII Documents, in the event the Amended Housing Project DDA is terminated by Borrower, including, but not limited to a termination pursuant to Sections 3.02(e), 3.05(b), 3.08, 3.12(c), or 9.04 of the Amended Housing Project DDA, or the Amended Housing Project DDA is terminated by OCII pursuant to Section 9.02 of the DDA, upon the delivery of the Work Product by Borrower to OCII, the Loan shall be deemed satisfied in full and Borrower shall be deemed to be released from all obligations or liability with respect to the OCII Documents and the Loan.

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

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

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

First, to pay any outstanding Deferred Developer Fee until paid in full;
Thereafter:

- One-third (1/3) of Surplus Cash shall be paid to the Administrative General Partner as an incentive management fee in an amount not to exceed Five Hundred Dollars ($500) per unit per year.
- The remaining two-thirds (2/3) of Surplus Cash, shall be allocated toward payment of residual rent until paid in full in accordance with the terms of the Ground Lease, and then to payment of outstanding principal and accrued but unpaid interest on the Loan and payment of outstanding principal and accrued but unpaid interest on any other debt payable from Surplus Cash. The allocation of the remaining two-thirds (2/3) of Surplus Cash may be changed subject to the written approval of the OCII Executive Director and the MOHCD Director prior to the Loan Closing if needed to ensure the repayment of the Loan complies with applicable financing requirements.

3.6 Repayment of Principal and Interest. In addition to any other payment requirements, within six (6) months after the Completion Date, the Borrower shall promptly repay to MOHCD any portion of the Loan Amount previously disbursed to Borrower and not used for eligible costs as described in this Agreement. No interest shall accrue on the Loan amount repaid pursuant to this Section 3.6.

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

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

3.10 Additional OCII Approvals. Borrower understands and agrees that OCII is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Borrower understands and agrees that neither entry by OCII into this Agreement nor any approvals given by OCII under this Agreement shall be deemed to imply that Borrower will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Property. By entering into this Agreement, OCII is in no way modifying or limiting the obligations of Borrower to develop the Property in accordance with all
local laws. Borrower understands that any development of the Property shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Property, which may include, without limitation, the San Francisco City Planning Commission and the San Francisco Board of Supervisors. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

ARTICLE 4  CLOSING; DISBURSEMENTS.

4.1  Generally. Subject to the terms of this Agreement, OCII will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses.
4.2 Conditions Precedent to Loan Closing. OCII will authorize the Loan Closing upon satisfaction of the conditions in this Section:

Borrower’s obligations to authorize Loan Closing shall be subject to the following preconditions:

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

(ii) the lenders and investors associated with the Project Funding are unconditionally prepared to close and fund their financing;

(iii) Borrower shall have approved the condition of the Site and executed the Ground Lease;

(iv) Borrower’s conditions to closing contained in Section 3.08 of the Amended Housing Project DDA shall have been met to Borrower’s reasonable satisfaction in accordance with the terms of the Amended Housing Project DDA.

Borrower shall the right to waive any of the foregoing conditions in whole or part in Borrower’s sole discretion.

4.3 Conditions Precedent to Predevelopment Loan Disbursements:

The Predevelopment Loan Amount is available for disbursement prior to the Loan Closing Date. Predevelopment Loan Funds in an amount equal to $710,872 were disbursed prior to execution of this Agreement pursuant to the Existing Predevelopment Loan Documents. OCII’s obligation to approve the expenditure of Predevelopment Funds prior to the Loan Closing Date is subject to Borrower’s satisfaction of the following conditions precedent:

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

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

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

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

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

4.4 Conditions Precedent to Disbursement on and after the Loan Closing Date:

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

(i) Borrower must have delivered to OCII an Expenditure Request in form and substance satisfactory to OCII, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. Any request from Borrower to reallocate Funds between the line items or to change the budget limits for a line item from what is shown in the Table of Sources and Uses must be approved as follows: (i) except for funds moved from the contingency line item to another line item, a requested reallocation of Funds in an amount up to ten percent (10%) of the Loan Amount in the aggregate may be made with the express written approval of OCII’s Housing Manager; and (ii) except for funds moved from the contingency line item to another line item, a requested reallocation of Funds in an amount that exceed ten percent (10%) of the Loan Amount may be made only with the express written approval of the OCII Executive Director. Reallocations of Funds from contingency line items to other line items shall not require the consent of OCII.
(ii) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(iii) With respect to any Expenditure Request that covers rehabilitation or construction costs, Borrower must have certified to OCII that the Project complies with the labor standards set forth in Exhibit E, Section 1, if applicable.

(c) MOHCD shall endeavor to either approve or disapprove each such Expenditure Request within 10 business days of receipt. In the event MOHCD disapproves an Expenditure Request MOHCD shall provide written notice thereof to Borrower specifying the reason for such disapproval. MOHCD shall endeavor to fund all approved Expenditure Requests within five (5) business days of approval.

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

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

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

ARTICLE 5 DEMOLITION, REHABILITATION OR CONSTRUCTION.
This Article shall apply only after Loan Closing.

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

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

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

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

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

5.6 **Commencement and Completion of Project.** Unless otherwise extended in writing by OCII, Borrower must: (a) commence construction by April 30, 2015; (b) complete demolition, rehabilitation or construction by September 30, 2016 (the "Completion Date"), in substantial accordance with the plans and specifications approved by OCII, as evidenced by a temporary certificate of occupancy or equivalent certification provided by the City’s Department
of Building Inspection, and an architect's or engineer's certificate of completion; and (c) achieve occupancy of Ninety Five percent (95%) of the Units by May 2017.

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

ARTICLE 6 MARKETING.

This Article shall apply only after Loan Closing.

6.1 Marketing Plan & Tenant Selection Plan. No later than thirty (30) days after the start of construction, Borrower must deliver to OCII for OCII's review and approval an affirmative marketing plan for initial and ongoing marketing of the Units (the “Marketing Plan”) and a written Tenant selection procedure for initial and ongoing renting of the Units (the “Tenant Selection Plan”), all in compliance with the restrictions set forth in Exhibit A and in form and substance acceptable to OCII. Borrower must obtain OCII's approval of reasonable alterations to the Marketing Plan or the Tenant Selection Plan. Borrower must market and rent the Units in the manner set forth in the Marketing Plan and the Tenant Selection Plan both as approved by OCII. Before marketing any Units, Borrower must provide OCII with updated implementation and contact information.

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

(a) Category #1: Per the Partnership DDA, first priority will be given to income-eligible applicants (“Applicants”) who are also eligible for a priority in OCII-assisted affordable housing under the Property Owner and Occupant Preference Program (October 1, 2008), as amended from time to time;

(b) Category #2: Twenty-five percent of the units available to rent (50 units) will be available to income-eligible applicants who score at least one point as follows. Applicants with highest points will be processed first. Those with the same point score will be processed in order as determined by lottery. One point will be assigned for each characteristic, for a total possible of 2 points:

i. Applicant is an employee of a public higher education institution located in San Francisco (1 point)

ii. Applicant is an employee of a public healthcare institution located in San Francisco (1 point)

iii. Applicant currently lives or works in San Francisco (1 point)
If there are insufficient Applicants in Category #2 resulting from the outreach and lottery process, units will not be held open for Category #2 Applicants; but rather, units will be made available to Applicants in Category #3 or Category #4, in the order described below.

(c) Category #3: First priority for the remaining units will be given to income-eligible Applicants currently living or working in San Francisco.

(d) Category #4: The remaining units after Categories #1, #2, and #3 will be available to income-eligible members of the general public without application of additional selection criteria.

Nothing in this Section (d) of the Selection Criteria Leasing System shall be construed as prohibiting changes to the selection criteria if, upon mutual agreement by the parties, additional funding is secured that requires such changes. The parties agree that any additional selection criteria adopted under Category #2 or #3 will be in compliance with Fair Housing Law.

(e) Procedure for Re-Leasing Units: The Marketing and Management Plan will outline in detail the process for releasing units that are vacated after initial occupancy. In general, Applicants, including those on any waitlists, will be identified according to their eligibility under all four Categories above. Any unit that becomes available for re-lease will be offered to qualifying households in the following order:

   i. First to an Applicant that is identified as qualifying under Category #1;

   ii. To the extent that the list of potential Applicants in Category #1 is exhausted and if less than 50 units are occupied by households qualifying under Category #2, the unit will then be offered to an Applicant qualifying under Category #2 in accordance with total points scored;

   iii. To the extent that the list of potential Applicants in Categories #1 and #2 (up to 50 units for Category #2) are exhausted, then the unit will be offered to Applicants qualifying in Category #3.

   iv. If the list of Applicants in Category #3 is exhausted and a unit is still available, then the unit will be offered to an Applicant qualifying under Category #4.

Notwithstanding anything to the contrary contained herein, any provision of the tenant selection criteria contained in this Section 6.2(a) (i) deemed by a court or administrative agency, applicable to the Project, to be a violation of Fair Housing Laws, or (ii) deemed by the Internal Revenue Service or the California Tax Credit Allocation Committee to be a violation of the IRS Tax Credit Rules shall immediately be deemed inapplicable.
(b) A reasonable accommodations policy that indicates how Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying, and a policy giving disabled individuals a priority in the occupancy of accessible Units.

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

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

(e) Notices to SFHA.

(f) Notices to MOHCD.

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

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

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

6.4 Marketing Records. Borrower must keep records of: (a) activities implementing the affirmative marketing plan; (b) advertisements; and (c) other community outreach efforts.
6.5 **Waiting List.** Borrower’s Tenant Selection Plan must contain, at a minimum, policies and criteria that provide for the selection of tenants from a written waiting list in the chronological order of their application (the "Waiting List"). The Tenant Selection Plan may allow an applicant to refuse an available Unit for good cause without losing standing on the Waiting List but shall limit the number of refusals without cause as approved by OCII. Borrower shall at all times maintain the Waiting List. Upon the vacancy of any Unit, Borrower shall first attempt to select the new Tenant for such Unit from the Waiting List, and shall only market the Unit to the general public after determining that no applicants from the Waiting List qualify for such Unit. The Waiting List must be kept on file at the Project at all times.

**ARTICLE 7  AFFORDABILITY AND OTHER LEASING RESTRICTIONS.**

This Section shall apply only after Loan Closing.

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

7.2 **Borrower’s Covenant.**

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

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

7.3 **Rent Restrictions.**

(a) Rent charged to each Qualified Tenant may not exceed the amounts set forth in *Exhibit A*, provided that Rents may be adjusted annually based on changes to the rents published annually by TCAC, subject to the limitations below. The Rents for the initial year of lease-up of the Project shall be the rents published for such year by TCAC.
(b) Unless prohibited under any applicable Law or the rules and regulations governing any Project funding source, each residential lease must provide for termination of the lease upon 120 days' prior written notice in the event that Borrower's annual income certification indicates that the Tenant's household income exceeds 120 percent of Median Income.

(c) Rents for all Units may be increased once annually in accordance with any increase in the rents published by TCAC for such year.

(d) With the OCII’s prior written approval and in accordance with maximum rent limitations set forth in Section 7.3(a) and all applicable restrictions, Rent increases for Units exceeding the amounts permitted under Section 7.3(b) may be permitted once annually in order to recover increases in approved Project Expenses, provided that: (i) in no event may single or aggregate increases exceed ten percent (10%) per year, unless such an increase is contemplated in a OCII-approved temporary relocation plan or is necessary due to the expiration of Section 8 or other rental subsidies; and (ii) Rents for each Unit may in no event exceed the maximum Rent permitted under Section 7.3(a). City approval for such Rent shall not be unreasonably withheld.

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

7.4 Certification.

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

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

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

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

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

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

**ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE PROJECT.**

This Article shall apply only after Loan Closing.

8.1 **Borrower's Responsibilities.**

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

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

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

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

**ARTICLE 9  GOVERNMENTAL REQUIREMENTS.**

9.1 **Borrower Compliance.** Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of Funds for the construction, rehabilitation and/or operation of the Project, including the requirements of the CRL, OPA, and those Laws set forth in **Exhibit E**. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to **Section 23.1**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.
ARTICLE 10  PROJECT MONITORING, REPORTS, BOOKS AND RECORDS

10.1  Generally.

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

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

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

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

10.3  Annual Reporting.

Commencing upon the Completion Date, Borrower must file with OCII annual report forms (the "Annual Monitoring Report") that include audited financial statements with an income and expense statement for the Project covering the applicable reporting period, a statement of balances, deposits and withdrawals from all Accounts, line item statements of Project Expenses, Project Income, Project Fees (if any), Surplus Cash and any Distributions made, evidence of required insurance, a description of marketing activities and a rent roll, no later than one hundred twenty (120) days after the end of Borrower’s fiscal year. The Annual Monitoring Report must be in substantially the form attached as Exhibit H or as later modified during the Compliance Term.
10.4 **Capital Needs Assessment.** Borrower must deliver to OCII an updated CNA every ten (10) years after the Completion Date for approval. The updated CNA must include an analysis of Borrower's actual expenditures for capital needs compared to the most recently approved CNA, Borrower's 20-Year Proforma and initial Annual Operating Budget and its then-current Annual Operating Budget.

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

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

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

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

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

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

10.7 **Delivery of Records.** At the request of OCII, made through its agents, employees, officers or attorneys, Borrower must provide OCII within a reasonable period of time of no less than sixty (60) days from request therefor with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:
(a) all tax returns filed with the United States Internal Revenue Service, the California Franchise Tax Board and/or the California State Board of Equalization on behalf of Borrower and any general partner or manager of Borrower;

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

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

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

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

ARTICLE 11 USE OF INCOME FROM OPERATIONS.

This Article shall apply only after Loan Closing.

11.1 Project Operating Account.

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

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

ARTICLE 12 REQUIRED RESERVES.
12.1 Replacement Reserve Account.
This Article shall apply only after Loan Closing.

(a) Commencing no later than sixty (60) days after the Completion Date, or any other date the OCII designates in writing, Borrower must establish or cause to be established a segregated interest-bearing replacement reserve depository account (the "Replacement Reserve Account"). On or before the 15th day of each month following establishment of the Replacement Reserve Account, Borrower must make monthly deposits from Project Income into the Replacement Reserve Account in the amount necessary to meet the requirements of this Section. The OCII may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems necessary, which shall not be unreasonably withheld.

(b) Monthly deposits must equal one-twelfth of the sum of $300 per unit, per year in accordance the Loan Committee approval dated June 6, 2014, or such other amount as approved by MOHCD Director and OCI Executive Director as part of the Final Financial Plan prior to the Loan Closing Date. Such additional deposits shall be made from available Surplus Cash.

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

12.2 Operating Reserve Account.

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

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

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

ARTICLE 13 DISTRIBUTIONS.

This Article shall apply only after Loan Closing.

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

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

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

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

(b) when OCII has delivered a written notice of default to Borrower for a failure to comply with this Agreement and such default has not been remedied, or when OCII determines that Borrower's management agent has failed to comply with this Agreement in accordance with Section 8.2(b) and such failure has not been remedied; or

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

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

(e) if the Loan is to be repaid from Surplus Cash, Borrower failed to make a payment when due on a Payment Date and the sum remains unpaid; or
(f) during the pendency of an uncured Event of Default (including Borrower's failure to provide its own funds at any time OCII determines the Loan is out of balance) under any OCII Document.

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

ARTICLE 14 SYNDICATION PROCEEDS.

This Article shall apply only after Loan Closing.

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

ARTICLE 15 DEVELOPER FEES.

15.1 Amount. OCII has approved the payment of fees in an amount not to exceed Two Million Five Hundred Thousand and No/100 Dollars ($2,500,000.00) to Developer for the development of the Project (“Developer Fees”), to be paid in accordance with the Developer Fee Schedule attached hereto as Exhibit N.

ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) transfers of the general partnership or manager's interest in Borrower to a nonprofit public benefit corporation approved in advance by OCII; or (b) removal of a general partner of Borrower in accordance with the terms of Borrower’s limited partnership agreement; or (c) transfers of the limited partner or non-managing member interests in Borrower in accordance with the terms of the Borrower’s partnership agreement; or (d) leases, subleases or occupancy agreements with occupants of residential units. Any other transfer, assignment, encumbrance or lease without OCII's prior written consent will be voidable and, at OCII's election, constitute an Event of Default under this Agreement. OCII's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of OCII's rights under this Agreement.
ARTICLE 17  INSURANCE AND BONDS.

17.1  Borrower’s Insurance. Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in Exhibit F commencing with Loan Closing and ending upon expiration of the Compliance Term.

ARTICLE 18  GOVERNMENTAL APPROVALS.

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

ARTICLE 19  DEFAULT.

19.1  Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the OCII Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any OCII Document will constitute an "Event of Default," including the following:

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

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

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

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

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

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

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

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

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

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

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or
(l) Any material adverse change occurs in the financial condition or operations of Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project; or

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

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

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

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

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

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

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

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

(d) OCII may terminate this Agreement.

(e) OCII, either directly or through an agent or court-appointed receiver, may take possession of the Project and enter into contracts and take any other action OCII deems appropriate to complete or construct all or any part of the improvements, subject to modifications and changes in the Project OCII deems appropriate.
OCII may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Borrower's noncompliance with this Agreement.

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

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

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

ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

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

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

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

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

(d) Borrower is not in default under any agreement to which it is a party, including any lease of real property.
(e) None of Borrower, Borrower's principals or Borrower's general contractor has been suspended or debarred by the Department of Industrial Relations or any Governmental Agency, nor has Borrower, any of its principals or its general contractor been suspended, disciplined or prohibited from contracting with any Governmental Agency.

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

ARTICLE 21  NOTICES

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

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

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

To Borrower:  
The Related Companies of California  
18201 Von Karman Avenue, Suite 900  
Irvine, CA  92612  
Attn: William A. Witte

The Related Companies of California  
333 Pine Street, Suite 300  
San Francisco, CA  94104  
Attn: Lydia Tan

Chinatown CDC  
1515 Vallejo Street, 4th Floor  
San Francisco, CA  94109  
Attn: Director of Housing Development

With a copy to:  
Bocarsly Emden Cowan Esmail & Arndt  
633 W. 5th Street, 70th Floor
Los Angeles CA  90071
Attn: Lance Bocarsly

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

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

21.3 Notice and Cure Rights of Investor Limited Partner. If an Event of Default occurs, OCII shall give Investor Limited Partner the same written notice given to the Borrower a required herein. Investor Limited Partner shall have the right, but not the obligation, to cure defaults within the time periods provided to Borrower herein. With respect to any right of cure provided herein, performance of a cure by Investor Limited Partner shall have the same effect as would like performance by Borrower. Unless OCII is otherwise notified, notices to Investor Limited Partner shall be sent to the address provided by the Investor Limited Partner to OCII in writing at Loan Closing.

ARTICLE 22 HAZARDOUS SUBSTANCES.

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

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

ARTICLE 23 INDEMNITY.

23.1 Borrower's Obligations. Borrower must Indemnify OCII, the City, and their respective officers, agents and employees (individually or collectively, an "Indemnitee") against any and all Losses arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the OCII Documents (including those covenants set forth in Article 22 above); (b) any failure of any representation by Borrower to be correct in all respects when made; (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise, but only to the extent such event (x) occurs on or after Loan Closing and (y) arises directly or indirectly from Borrower’s (or its agents) activities on the Site; (d) any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements performed by Borrower or its agents; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the OCII Documents, the Loan, Borrower’s (or its agents) activities on the Site, Borrower’s construction of the Project, or any transaction contemplated by, or the relationship between Borrower and OCII or Borrower and the City; (f) the occurrence, before the expiration of the term of this Agreement, of any Environmental Activity arising directly or directly from Borrower’s (or its agents) activities on the Site or any failure of Borrower or any other person to comply with all applicable Environmental Laws relating to Borrower’s (or its agents) activities on the Project or the Site; (g) the occurrence, after the termination of this Agreement, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring before the termination of this Agreement relating to Borrower’s (or its agents) activities on the Project or the Site; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under Sections 9.1, 18.1 and 22.1; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, provided that no Indemnitee will be entitled to indemnification under this Section for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnities, upon written notice, Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at Borrower's sole expense. Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the
Loan and/or termination of this Agreement. Any indemnification obligation of the Borrower and/or its partners under the OCII Documents shall not extend to repayment of principal or interest in the Loan. The sole recourse of OCII under the OCII Documents for repayment of the Loan shall be the exercise by OCII of its rights against the Project.

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

ARTICLE 24 GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

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

24.10 **Joint and Several Liability.** If Borrower consists of more than one person or entity, each is jointly and severally liable to OCII for the faithful performance of this Agreement.

24.11 **Successors.** Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns. This provision does not relieve Borrower of its obligation under the OCII Documents to obtain OCII's prior written consent to any assignment or other transfer of Borrower's interests in the Loan, the Site or the ownership interests in Borrower, in accordance with Article 16.

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

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

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

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

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

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

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

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

24.20 Borrower’s Board of Directors. Borrower or its managing general partner (or managing member of its general partner) shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in its bylaws and other governing documents, and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Said board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Borrower of its obligations under this Agreement.
24.21 Ownership of Results. Any interest of Borrower or any sub-borrower, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or Publications prepared by or on behalf of Borrower or any sub-borrower in connection with this Agreement, the implementation of the Project, the services to be performed under this Agreement, or acquired through the use of any Loan proceeds ("Work Product"), is hereby pledged to OCII as security for Borrower's obligations under this Agreement and the Note, pursuant to that certain Assignment of Work Product attached hereto as Exhibit O, and upon an Event of Default, subject to all applicable notice and cure periods, shall become the property of and be promptly transmitted by Borrower to OCII. Notwithstanding the foregoing, Borrower may retain and use copies for reference and as documentation of its experience and capabilities.

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

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

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

24.25 Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:
EXHIBITS
A  Schedules of Income and Rent Restrictions
B-1 Table of Sources and Uses of Funds
B-2 Annual Operating Budget
B-3 20-Year Cash Flow Proforms
C  Form of Tenant Income Certification
D  Intentionally Omitted
E  Contract Compliance Policies
F  Insurance Requirements
G  Lobbying/Debarment Certification Form
H  Form of Annual Monitoring Report
I  Tenant Selection Plan Policy
J  Form of Deed of Trust
K  Form of Declaration of Restrictions
L  Schedule of Performance
M  OCII Monthly Project Update Form
N  Developer Fee Schedule
O  Assignment of Work Product
P  Consent to Assignment of Work Product
Q  Legal Description
IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Francisco, California as of the date first written above.

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

By: ____________________________
    Tiffany Bohee
    Executive Director

BORROWER:
MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P, a California limited partnership

By: Related/Mission Bay Block 7 Development Co., LLC, a California limited liability company, its administrative general partner

By: _______ _______________________
    Lydia Tan, Authorized Agent

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: ____________________________
    Heidi J. Gewertz
    Deputy City Attorney

By: ____________________________________
    Chinatown Community Development Center, Inc., a California nonprofit corporation, is sole member/manager

By: ____________________________
    Norman Fong, its Executive Director
### EXHIBIT A
Schedules of Income and Rent Restrictions

<table>
<thead>
<tr>
<th>Unit Type</th>
<th>Proposed Number of Units</th>
<th>Proposed Avg. Sq. Feet</th>
<th>Max. Rent</th>
<th>Max. % TCAC AMI</th>
</tr>
</thead>
<tbody>
<tr>
<td>1BR</td>
<td>14</td>
<td>570</td>
<td>$975</td>
<td>50%</td>
</tr>
<tr>
<td>1BR</td>
<td>56</td>
<td>570</td>
<td>$1,185</td>
<td>60%</td>
</tr>
<tr>
<td>1BR manager's</td>
<td>2</td>
<td>570</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>2BR</td>
<td>26</td>
<td>800</td>
<td>$1,167</td>
<td>50%</td>
</tr>
<tr>
<td>2BR</td>
<td>102</td>
<td>800</td>
<td>$1,416</td>
<td>60%</td>
</tr>
<tr>
<td><strong>Total Units</strong></td>
<td><strong>200</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*The foregoing schedule represents the rent restrictions in place at the time of execution of this Agreement. The maximum rent levels shall be updated upon commencement of leasing of the Project, and the updated numbers shall be the applicable maximum rents for the first year of leasing of the Project.
The Final Financial Plan, including the Table of Sources and Uses of Funds is pending and subject to approval by OCII Executive Director and MOHCD Director, prior to the Loan Closing Date.

### Table of Sources and Uses of Funds

<table>
<thead>
<tr>
<th>Sources</th>
<th>Amount</th>
<th>Per Unit</th>
<th>Terms/Notes/Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>OCII Predev Sources</td>
<td>$2,000,000</td>
<td>$10,000</td>
<td>committed</td>
</tr>
<tr>
<td>OCII Additional Predev</td>
<td>$1,600,000</td>
<td>$8,000</td>
<td>LC previously approved - need OCII Comm appvl</td>
</tr>
<tr>
<td>OCII Sources</td>
<td>$13,375,000</td>
<td>$66,875</td>
<td>this request</td>
</tr>
<tr>
<td>Existing City Land*</td>
<td>$0</td>
<td>$0</td>
<td>land is an affordable housing parcel per the OPA</td>
</tr>
<tr>
<td><strong>Total City Sources</strong></td>
<td>$16,975,000</td>
<td>$84,875</td>
<td></td>
</tr>
<tr>
<td>Non-City Sources</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equity Contributions</td>
<td>$31,298,861</td>
<td>$156,494</td>
<td>4% pricing</td>
</tr>
<tr>
<td>1st Mortgage</td>
<td>$24,036,000</td>
<td>$120,180</td>
<td>secured by tax credit rents</td>
</tr>
<tr>
<td>Sponsor Equity</td>
<td>$500,000</td>
<td>$2,500</td>
<td></td>
</tr>
<tr>
<td>Deferred Interest</td>
<td>$1,061,000</td>
<td>$5,305</td>
<td></td>
</tr>
<tr>
<td>Performance Deposit</td>
<td>$100,000</td>
<td>$500</td>
<td></td>
</tr>
<tr>
<td>Deferred Dev Fee</td>
<td>$1,000,000</td>
<td>$5,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total Non-City Sources</strong></td>
<td>$57,995,861</td>
<td>$289,979</td>
<td></td>
</tr>
<tr>
<td><strong>Total Perm Sources</strong></td>
<td>$74,970,861</td>
<td>$374,854</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Uses</th>
<th>Amount</th>
<th>Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition</td>
<td>$35,000</td>
<td>$175</td>
</tr>
<tr>
<td>Construction</td>
<td>$51,571,210</td>
<td>$257,856</td>
</tr>
<tr>
<td>Hard Cost Contingency</td>
<td>$6,905,551</td>
<td>$34,528</td>
</tr>
<tr>
<td>Arch &amp; Engineering</td>
<td>$2,860,000</td>
<td>$14,300</td>
</tr>
<tr>
<td>Permits &amp; Fees</td>
<td>$1,900,055</td>
<td>$9,500</td>
</tr>
<tr>
<td>Financing/Bond Fees</td>
<td>$4,376,000</td>
<td>$21,880</td>
</tr>
<tr>
<td>Legal Fees</td>
<td>$350,000</td>
<td>$1,750</td>
</tr>
<tr>
<td>Other Soft Costs</td>
<td>$3,047,345</td>
<td>$15,237</td>
</tr>
<tr>
<td>Soft Cost Contingency</td>
<td>$350,000</td>
<td>$1,750</td>
</tr>
<tr>
<td>Reserves</td>
<td>$1,075,700</td>
<td>$5,379</td>
</tr>
<tr>
<td>Developer Fee</td>
<td>$2,500,000</td>
<td>$12,500.00</td>
</tr>
<tr>
<td><strong>Total Uses</strong></td>
<td>$74,970,861</td>
<td>$374,854</td>
</tr>
</tbody>
</table>
## Annual Operating Budget

<table>
<thead>
<tr>
<th>Income</th>
<th>Residential</th>
<th>Commercial</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenant Rents</td>
<td>$3,057,912</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial Space</td>
<td></td>
<td>$332,607</td>
<td></td>
</tr>
<tr>
<td>Laundry and Vending</td>
<td>$14,400</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacancy Loss Residential</td>
<td>$153,616</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacancy Loss Commercial</td>
<td></td>
<td>(33,261)</td>
<td></td>
</tr>
<tr>
<td><strong>Effective Gross Income</strong></td>
<td><strong>$2,918,696</strong></td>
<td><strong>$299,346</strong></td>
<td>commercial income will help subsidize the housing component</td>
</tr>
<tr>
<td>Operating Expenses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Management</td>
<td>$193,083</td>
<td></td>
<td>6% of EGI</td>
</tr>
<tr>
<td>Salaries/Benefits</td>
<td>$240,099</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administration</td>
<td>$83,461</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utilities</td>
<td>$290,342</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxes</td>
<td>$166,656</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td>$77,856</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance &amp; Repair</td>
<td>$223,335</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resident Services Coordinator</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Operating Expenses</strong></td>
<td><strong>$1,274,832</strong></td>
<td>$6,374</td>
<td></td>
</tr>
<tr>
<td><strong>Net Operating Income</strong></td>
<td><strong>$1,643,864</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debt Service</td>
<td>$1,411,776</td>
<td>$240,767</td>
<td></td>
</tr>
<tr>
<td>Replacement Reserves</td>
<td>$60,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Cash Flow</strong></td>
<td><strong>$172,088</strong></td>
<td><strong>$58,579</strong></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT B-3
20-Year Cash Flow Proforma

The Final Financial Plan, including the Annual Operating Budget is pending and subject to approval by OCII Executive Director and MOHCD Director, prior to the Loan Closing Date.
EXHIBIT C
Tenant Income Certification Form
EXHIBIT D
INTENTIONALLY OMITTED
EXHIBIT E
Contract Compliance Policies


   (i) **Small Business Enterprise (SBE) Policy** (adopted by Resolution No. 82-2009, July 27, 2009) attached as Exhibit E-1;

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

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

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

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


3. Conflict of Interest.

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

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

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

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

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


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

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

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

8. **Public Disclosure.**

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

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

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

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

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

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

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

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

<table>
<thead>
<tr>
<th>Participation</th>
<th>Goal Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>50%</td>
</tr>
<tr>
<td>Professional Services</td>
<td>50%</td>
</tr>
<tr>
<td>Suppliers</td>
<td>50%</td>
</tr>
</tbody>
</table>

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.

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

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

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

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

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

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

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

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

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

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

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm’s three most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations). Once a business reaches the 3-year average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).
Survey Area means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas currently include the Bayview Hunters Point Redevelopment Survey Area C.

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

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

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

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

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

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

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

E. **Provide Timely and Complete Information.** The Agency-Assisted Contractor or Contractor shall provide SBEs with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Agency-Assisted Contractor or Contractor to give SBEs any information not provided to other contractors. This paragraph does require the Agency Assisted Contractor and Contractor to answer carefully and completely all reasonable questions asked by SBEs and to undertake every good faith effort to ensure that SBEs understand the nature and the scope of the work.
F. **Good Faith Negotiations.** Negotiate with SBEs in good faith and demonstrate that SBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.

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

H. **Other Assistance.** Assist SBEs in their efforts to obtain bonds, lines of credit and insurance. The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.

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

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

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

L. **Replacement of SBE.** If during the term of this SBE Agreement, it becomes necessary to replace an SBE due to the failure or inability of the SBE to perform the required services or timely delivery the required supplies, then First Consideration should be given to another certified SBE, if available, as a replacement.

X. **ADDITIONAL PROVISIONS**

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

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

XI. **PROcedures**

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

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

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

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

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

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

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

4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.
5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.

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

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

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

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

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

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

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

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

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

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

XII. ARBITRATION OF DISPUTES.

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

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

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

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

E. Selection of Arbitrator. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.
F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

___________________________________  ___________________________________
Agency  Agency-Assisted Contractor

XIII. **AGREEMENT EXECUTION**

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

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

___________________________________  ________________________________
Signature  Date

___________________________________  ________________________________
Print Your Name  Title

___________________________________  ________________________________
Company Name and Phone Number
EXHIBIT E-2

CONSTRUCTION WORK FORCE AGREEMENT

I. PURPOSE. The purpose of the Agency and the Developer/Affordable Developer entering into this Construction Work Force Agreement is to ensure participation of San Francisco residents and equal employment opportunities for minority group persons and women in the construction work force involved in constructing any of the phases upon the Site covered by the DDA.

II. WORK FORCE GOALS.

A. The goal set forth below is expressed as a percentage of each Contractor's total hours of employment and training by trade on the Site. The goal represents the level of San Francisco resident participation each Contractor should reasonably be able to achieve in each construction trade in which it has employees on the Site. The Owner agrees, and will require each Contractor (regardless of tier), to use its good faith efforts to employ San Francisco residents to perform construction work upon the Site at a level at least consistent with said goals.

B. Goal: 50 percent participation of San Francisco residents in the total hours worked in the trade.

C. Amendments to the goals shall be prospective and go into effect 20 days after the Agency mails written notice of the amendments to the Developer/Affordable Developer. New goals shall not be applied retroactively.

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

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

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

G. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS").
III. **INCORPORATION.** Whenever the Owner, the general contractor, any prime contractor, or any subcontractor at any tier subcontracts a portion of the work on the Site involving any construction trade, it shall set forth verbatim and make binding on each subcontractor which has a contract in excess of $10,000 the provisions of this Construction Work Force Agreement, including the applicable goals for San Francisco resident participation in each trade.

IV. **EQUAL OPPORTUNITY REQUIREMENTS.**

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

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at the Site. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment.

2. Provide written notification to CityBuild when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

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

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

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

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

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

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

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

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

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

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

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

14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the genders.

15. Conduct a review, at least annually, of all supervisors’ adherence to and performance under the Contractor's EEO policies and equal opportunity obligations.

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

V. **ADDITIONAL PROVISIONS.**

A. The failure by a union with which the Contractor has a collective bargaining agreement, to refer San Francisco residents shall not excuse the Contractor's obligations under this Construction Work Force Agreement.

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

C. No employee to whom the equal opportunity provisions of this Construction Work Force Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to Attachment 9 of the DDA or this Schedule.

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

VI. **DOCUMENTATION AND RECORDS.**

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

B. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a payroll report for the week preceding the previous week on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors and for certifying its accuracy.

C. No monthly progress payments will be processed until Contractor has submitted weekly certified payrolls to the Agency for the applicable time period. Certified payrolls shall be prepared pursuant to this SBE Policy for the period involved for all employees, including those of subcontractors of all tiers, for all labor incorporated into the work.

D. Contractor shall submit certified payrolls to the Agency electronically via the Project Reporting System ("PRS") selected by the Agency, an Internet-based system accessible on the World Wide Web through a web browser. The Contractor and each Subcontractor and Supplier must register with PRS and be assigned a log-on identification and password to access the PRS.

E. Use of the PRS may require Contractor, Subcontractors and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.
F. For each Agency-Assisted project, the Agency will provide basic training in the use of the PRS at a scheduled training session. Contractor and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.

G. Contractor shall comply with the requirements of this Article VI at no additional cost to the Agency or the Owner.

H. The Agency will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of weekly certified payrolls.

I. In addition to the above, Contractor shall comply with the requirements of California Labor Code Section 1776, or as amended from time to time, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its Subcontractors of all tiers.

J. The Contractor shall make the payroll records available to for inspection at all reasonable hours at the job site office of Contractor.

K. Contractor is solely responsible for compliance with Labor Code Section 1776 or this SBE Policy. The Agency shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

**ARBITRATION OF DISPUTES.**

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

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

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

D. **Agency Request to AAA.** Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.
E. **Selection of Arbitrator.** One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

______________________________  __________________________
Agency                                 Owner

VI. PRECONSTRUCTION MEETING.

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

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

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

VII. TERM. The obligations of the Owner and the Contractors with respect to their construction work forces, as set forth in Attachment 9 of this DDA and this Construction Work Force Agreement, shall remain in effect until completion of all work to be performed by the Owner in connection with the construction of any of the phases.

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

______________________________  __________________________
Signature                                 Date

______________________________  __________________________
Print Your Name                              Title

____________________________________   ______________________________________
Company Name and Phone Number
EXHIBIT E-3
PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

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 Office of Community Investment and Infrastructure (OCII) “Successor Agency” of which this Exhibit H and 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 this Exhibit H:

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

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

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

11.4 **Prevailing Wage.**

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

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

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

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

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

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

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

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

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

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

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

2. It is either:

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

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

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

4. The deduction shall serve the convenience and interest of the employee.
(e) Any authorized purchase of United States Savings Bonds for the employee.

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

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

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

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

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

11.8 Payrolls and Basic Records.

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

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

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

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

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

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

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

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

11.13 **Violation and Remedies.**

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

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

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

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

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

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

11.14 **Arbitration of Disputes.**

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

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

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

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

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

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

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

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

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

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

NOTICE TO EMPLOYEES

EQUAL OPPORTUNITY NON-DISCRIMINATION

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

PREVAILING WAGE

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

OVERTIME

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

APPRENTICES

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

PROPER PAY

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

What the Policy does. The San Francisco Redevelopment Agency adopted the San Francisco Health Care Accountability Policy (the “HCAP”), which became effective on September 25, 2001; the Successor Agency to the Redevelopment Agency (“Agency”) continues to enforce the HCAP. 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 $4.00 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 $160 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, Successor to the San Francisco Redevelopment Agency, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

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

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

_______________________________  ______________________________
Signature Date

_______________________________
Print Name

_______________________________  ______________________________
Company Name Phone
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 Successor Agency to the Redevelopment Agency (“Agency”) continues to enforce the MCP. 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 $12.43. For Nonprofit MCP the wage rate is $11.03; 12 days’ paid vacation per year (or cash equivalent); 10 days off without pay per year.

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

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

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

• if a contractor does not provide the MCP minimum benefits, the Agency can award a contract to that contractor only if the contract is exempt under the MCP, or if the contract has received a waiver from the Agency.

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

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

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

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

Declaration

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

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

_______________________________  ____________________________
Signature                               Date

______________________________
Print Name

______________________________  ____________________________
Company Name                               Phone
EXHIBIT F
Insurance Requirements

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

1. **Borrower, Contractors.**

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

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

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

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

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

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

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

    (f) Pollution Liability and/or Asbestos Pollution Liability: Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less
than $1,000,000 per claim or occurrence and $2,000,000 aggregate per policy period of one year, this coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Tenant’s contractor to maintain these minimum limits for no less that three (3) years beyond completion of the Project.

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

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

   (b) property insurance, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, for one hundred percent (100%) of the replacement value of all furnishings, fixtures, equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Ten Thousand Dollars ($10,000) each loss, including the City as a named insured;

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

   (d) during construction and/or rehabilitation, performance and payment bonds of contractors, each in the amount of one hundred percent (100%) of contract amounts, naming the City and Borrower as dual obligees, or other completion security approved by the City in its sole discretion The City has approved issuance of a Completion Guaranty by an affiliate of Borrower to Borrower’s institutional lender as completion security.

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

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

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

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

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

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

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


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

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

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

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

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

(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Borrower demonstrates to the City’s satisfaction that the increased coverage is commercially unreasonable and unavailable to Borrower.
(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

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

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

(j) Borrower must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.
EXHIBIT G
Lobbying/Debarment Certification Form

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.

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

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

MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P, a California limited partnership:

BY: _________________________________

NAME: _______________________________

TITLE: _______________________________

DATE: _______________________________
EXHIBIT H
Form of Annual Monitoring Report
EXHIBIT I
Tenant Selection Plan

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

Application Process

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

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

**Reasonable Accommodation and Modification Policy**

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

**Reasonable Modification:** Applicant may request a reasonable modification if he or she has a disability and as a result of the disability needs:
- a physical change to the room or housing unit that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site;
- a physical change in some other part of the housing site that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site.

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

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

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

**Notice of Denial and Appeal Process**

• The housing provider shall:
  - promptly send a written and electronic notice (to the addresses provided) to each applicant denied admission with a written and/or electronic copy to the referring agency and the funding agency. The notice should:
    - list all the reasons for the rejection, including the particular conviction or convictions that led to the decision in cases where past criminal offenses were a reason for rejection;

Exhibit H
• explain how the applicant can request an in person appeal to contest the decision;
• state that an applicant with a disability is entitled to request a reasonable accommodation to participate in the appeal;
• inform the applicant that he or she is entitled to bring an advocate or attorney to the in person appeal;
• provide referral information for local legal services and housing rights organizations;
• describe the evidence that the applicant can present at the appeal;
  o give applicants denied admission a date within which to file the appeal, which shall be at least ten (10) business days from the date of the notice;
  o unless an extension is agreed to by the applicant and the housing provider, hold the appeal within ten (10) business days of the request for the appeal;
  o confine the subject of the appeal to the reason for denial listed in the notice;
  o give the applicant a chance to present documents and/or witnesses showing that he or she will be a suitable tenant;
  o have an impartial supervisor or manager from the housing provider, but who is not the person who made the initial decision or a subordinate of the person who made the initial decision, conduct the appeal;
  o within 5 business days of the in person appeal, provide the applicant with a written decision that states the reason for the decision and the evidence relied upon. A copy of the written decision must be sent (electronically or otherwise) to the referring agency and the funding agency.

If the rejection is based on a criminal background check obtained from a tenant screening agency, the Fair Credit Reporting Act and the Investigative Consumer Reporting Agencies Act impose additional notice requirements. ²

EXHIBIT J
FORM DEED OF TRUST

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

WHEN RECORDED RETURN TO:
The Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco, One South Van Ness Avenue,
5th Floor, San Francisco, California 94103
Attn: Gwen Sebay

(Assessor’s Block 8711, Lot 226)

LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
(Block 7W, Mission Bay South)

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY
AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of ____________,
by MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P., a California limited partnership
("Trustor"); whose address is 333 Pine Street, Suite 300, San Francisco, CA 94104, to
_______________("Trustee"), whose address is _________________, for the benefit
of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY
AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community
Investment and Infrastructure, a public body, organized and existing under the laws of the
State of California ("Beneficiary"). This Deed of Trust is executed pursuant to a Loan
Agreement by and between Trustor and Beneficiary dated as of August 5, 2014, as it may be
amended from time to time (the "Agreement"), the provisions of which are incorporated
herein by reference. Definitions and rules of interpretation set forth in the Agreement apply
to this Deed of Trust.

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

(a) that real property situated in the City and County of San Francisco,
State of California, described in Exhibit A attached hereto and incorporated herein by
reference (the "Land"), on which Trustor intends to construct an affordable housing project
with 200 residential units and approximately 10,000 square feet of retail space thereon and
together with the Residential Space, the “Project”; and
(b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements"); and

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

(d) all of Trustor's interest in and under that certain Ground Lease dated as of __________________________, by and between ____________________________, as lessor, and Trustor, as lessee, including any options of any nature whatsoever, and any future interest of Trustor in fee title to the Land; and

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

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

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

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

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

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

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

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

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

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

(b) payment of the indebtedness evidenced by the Agreement and the Note in the original principal amount of Sixteen Million Nine Hundred Seventy Five Thousand and No/100 Dollars ($16,975,000), according to the terms of the Agreement and the Note; and

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

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

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

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

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

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

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

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

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

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

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

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

(u) **Further Agreements.** Trustor further acknowledges and agrees as follows:

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

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

(c) Upon: (i) written request of Beneficiary stating that all obligations secured hereby have been paid or performed; (ii) Beneficiary's surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose; and (iii) payment of its fees, if any, Trustee shall reconvey the Property then held hereunder without covenant or warranty.
(d) As additional security, Trustor hereby irrevocably, absolutely and unconditionally assigns to Beneficiary all Rents, whether now due, past due or to become due, subject to Beneficiary's grant to Trustor of a license to collect and retain Rents as they become due and payable so long as Trustor has not defaulted in performance of the Secured Obligations.

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

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

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

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

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

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

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

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

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

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

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

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

MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P,  
a California limited partnership

By: Related/Mission Bay Block 7 Development Co., LLC,  
a California limited liability company, its administrative general partner

By:  ___________________________  
Lydia Tan, Authorized Agent

By: CCDC-MBB7-LLC,  
a California limited liability company, its managing general partner

By: Chinatown Community Development Center, Inc.,  
a California nonprofit corporation, is sole member/manager

By:  ___________________________  
Norman Fong, its Executive Director

[ALL SIGNATURES MUST BE NOTARIZED.]
EXHIBIT A
Legal Description of the Land

APN 226 (FORMER APN 31 AND PORTION OF FORMER APN 32)

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

Being Assessor's Block 8711 Lot 31 and a portion of Assessor's Block 8711 Lot 32 as said lots are shown on that certain map entitled “Final Map Tract No. 3936 - for Residential and Commercial Condominium Purposes, Mission Bay (2-7 and 13)” recorded on February 22, 2006 in Book BB of Maps at Pages 54 through 58 in the Office of the Recorder of the City and County of San Francisco, State of California and being more particularly described as follows:

BEGINNING at the northwesterly corner of said Lot 31; thence, proceeding clockwise the following courses and distances: North 86°49'04" East, 294.00 feet along the northerly line of said Lot 31 and Lot 32 to a line being parallel with and distant easterly 294.00 feet, measured at right angles, from the westerly line of said Lot 31; thence, South 03°10'56" East, 275.03 feet along said parallel line to the southerly line of said Lot 32 and Lot 31; thence, South 86°49'04" West, 294.00 feet along said southerly line to said westerly line of said Lot 31; thence, North 03°10'56" West, 275.03 feet along said westerly line to the POINT OF BEGINNING.

Being a portion of Assessor's Block 8711.
Containing 80,859 square feet (1.86 acres) more or less.

Street Address: 588 Mission Bay Boulevard North
EXHIBIT K
FORM DECLARATION OF RESTRICTIONS

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

WHEN RECORDED RETURN TO:
The Successor Agency to the Redevelopment Agency of the City and County of San Francisco, One South Van Ness Avenue, 5th Floor, San Francisco, California 94103

DECLARATION OF RESTRICTIONS
Block 7W, Mission Bay South

THIS DECLARATION OF RESTRICTIONS ("Declaration") is made as of __________, __________, by MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P., a California limited partnership ("Borrower"), in favor of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California ("OCII", including any successors or assigns)

RECITALS

A. OCII is making a loan (the "Loan") to Borrower to finance costs associated with the development of the real property described in Exhibit A attached hereto and incorporated herein by reference (the land and the leasehold interest, the "Property") as low-income housing (the "Project"). The Loan is evidenced by, among other documents, a Loan Agreement between OCII and Borrower dated as of July 15, 2014, as it may be amended from time to time (the "Agreement"). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

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

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

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

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

<table>
<thead>
<tr>
<th>Unit Size</th>
<th>No. of Units</th>
<th>Maximum Income Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 bdrm</td>
<td>14</td>
<td>50% TCAC</td>
</tr>
<tr>
<td>1 bdrm</td>
<td>56</td>
<td>60% TCAC</td>
</tr>
<tr>
<td>1 BR (mgr)</td>
<td>2</td>
<td>N/A</td>
</tr>
<tr>
<td>2 bdrm</td>
<td>26</td>
<td>50% TCAC</td>
</tr>
<tr>
<td>2 bdrm</td>
<td>102</td>
<td>60% TCAC</td>
</tr>
</tbody>
</table>

(b) The total amount for rent and utilities charged to a Qualified Tenant may not exceed:

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

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

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

3. This Declaration and the Regulatory Obligations constitute covenants running with the land, including the leasehold interest and bind successors and assigns of Borrower and any non-borrower owner and lessee of the Property. In the event that Borrower fails to comply with the Regulatory Obligations to OCII’s satisfaction, in its sole discretion, within thirty (30) days of Borrower’s receipt of written notice from OCII to so comply, OCII at its option may exercise any rights available at equity or in law, including, without limitation, institute an action for specific performance. Borrower shall
pay OCII's costs in connection with OCII's enforcement of the terms of this Declaration, including, without limitation, OCII's reasonable attorneys' fees and costs.

(document continues on following page)
Borrower has executed this Declaration as of the date first written above.

""

BORROWER:
MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P, a California limited partnership

By: Related/Mission Bay Block 7 Development Co., LLC,
a California limited liability company, its administrative general partner

By _________________________
Lydia Tan, Authorized Agent

By: CCDC-MBB7-LLC, a California limited liability company,
its managing general partner

By: Chinatown Community Development Center, Inc.,
a California nonprofit corporation, is sole member/manager

By: _________________________
Norman Fong, its Executive Director
APN 226 (FORMER APN 31 AND PORTION OF FORMER APN 32)

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

Being Assessor's Block 8711 Lot 31 and a portion of Assessor's Block 8711 Lot 32 as said lots are shown on that certain map entitled “Final Map Tract No. 3936 - for Residential and Commercial Condominium Purposes, Mission Bay (2-7 and 13)” recorded on February 22, 2006 in Book BB of Maps at Pages 54 through 58 in the Office of the Recorder of the City and County of San Francisco, State of California and being more particularly described as follows:

BEGINNING at the northwesterly corner of said Lot 31; thence, proceeding clockwise the following courses and distances: North 86°49'04" East, 294.00 feet along the northerly line of said Lot 31 and Lot 32 to a line being parallel with and distant easterly 294.00 feet, measured at right angles, from the westerly line of said Lot 31; thence, South 03°10'56” East, 275.03 feet along said parallel line to the southerly line of said Lot 32 and Lot 31; thence, South 86°49'04" West, 294.00 feet along said southerly line to said westerly line of said Lot 31; thence, North 03°10'56” West, 275.03 feet along said westerly line to the POINT OF BEGINNING.

Being a portion of Assessor's Block 8711.

Containing 80,859 square feet (1.86 acres) more or less.

Street Address: 588 Mission Bay Boulevard North
### EXHIBIT L
#### Schedule of Performance

<table>
<thead>
<tr>
<th>No.</th>
<th>PERFORMANCE MILESTONES</th>
<th>Estimated or Actual Date</th>
<th>Completion Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Predev Financing to Loan Committee</td>
<td>June 2011</td>
<td>complete</td>
</tr>
<tr>
<td>2.</td>
<td>Site Acquisition</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Development Team Selection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Architect</td>
<td>complete</td>
<td>complete</td>
</tr>
<tr>
<td>b.</td>
<td>General Contractor</td>
<td>complete</td>
<td>complete</td>
</tr>
<tr>
<td>c.</td>
<td>Owner’s Representative</td>
<td>complete</td>
<td>complete</td>
</tr>
<tr>
<td>d.</td>
<td>Property Manager</td>
<td>complete</td>
<td>complete</td>
</tr>
<tr>
<td>e.</td>
<td>Service Provider</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Design</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Submittal of combined Basic Concept Design/Schematic Design</td>
<td>Dec. 2013</td>
<td>complete</td>
</tr>
<tr>
<td>b.</td>
<td>Submittal of Schematic Design Cost Estimate</td>
<td>Dec. 2013</td>
<td>complete</td>
</tr>
<tr>
<td>c.</td>
<td>OCII staff approval of SD Cost Estimate</td>
<td>Jan. 2014</td>
<td>complete</td>
</tr>
<tr>
<td>d.</td>
<td>Submittal of Design Development &amp; Cost Estimate</td>
<td>May 2014</td>
<td>complete</td>
</tr>
<tr>
<td>e.</td>
<td>OCII staff approval of Design Development and Cost Estimate</td>
<td>June 2014</td>
<td></td>
</tr>
<tr>
<td>f.</td>
<td>Submittal and OCII approval of Pre-Bid Set &amp; Cost Estimate (75%-80% CDs)</td>
<td>March 2015</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Environmental Review</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>CEQA Environ Review Submission</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>b.</td>
<td>NEPA Environ Review Submission</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>c.</td>
<td>Conditional Schematic Design Approval</td>
<td>Jan. 2014</td>
<td>complete</td>
</tr>
<tr>
<td>6.</td>
<td>Permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Building / Site Permit Application Submitted</td>
<td>April 2014</td>
<td>complete</td>
</tr>
<tr>
<td>b.</td>
<td>Addendum #1 Submitted</td>
<td>Dec. 2014</td>
<td></td>
</tr>
<tr>
<td>c.</td>
<td>Addendum #2 Submitted</td>
<td>Dec. 2014</td>
<td></td>
</tr>
<tr>
<td>d.</td>
<td>Addendum #3 Submitted</td>
<td>Dec. 2014</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Service Plan Submission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Draft (Schematic Design approval request)</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>
9. Additional City Financing
   a. Predevelopment Financing Application #2  N/A
   b. Amended and Restated DDA approved by OCII Commission  Dec. 2013 complete
   c. Gap Financing Application  May 2014 complete

10. Other Financing
    a. Construction Financing RFP  Jan. 2015

11. Closing
    a. Construction Bank Loan Closing  April 2015
    b. Permanent Financing Closing  Sept. 2017
    c. Ground Lease  April 2015

12. Construction
    a. Notice to Proceed from OCII  April 2015
    b. Temporary Certificate of Occupancy/Cert of Substantial Completion  September 2016

13. Marketing/Rent-up
    b. Marketing Plan Final approved by OCII staff  November 2015
    c. Commercial Marketing Plan Submission  April 2016
    d. Commercial Marketing Plan Final approved by OCII staff  July 2016
    e. Commence Marketing  June 2016
    f. 95% Occupancy  May 2017


15. 8609  Jan. 2018
EXHIBIT M
OCII MONTHLY PROJECT UPDATE FORM

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

I. THE PURPOSE OF THESE UPDATES IS TO TRACK PROJECT PROGRESS
   1. during pre-construction
   2. on non-construction issues during construction, and
   3. after regular monthly construction meetings have ended

Project Summary Information

<table>
<thead>
<tr>
<th>Project:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sponsor:</td>
<td></td>
</tr>
<tr>
<td># Units:</td>
<td></td>
</tr>
<tr>
<td>Target Population:</td>
<td></td>
</tr>
</tbody>
</table>

1. Monthly Update

<table>
<thead>
<tr>
<th>Month Covered:</th>
<th>Date of Report:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completed by:</td>
<td></td>
</tr>
<tr>
<td>Estimated Construction Start Date (if changed from previous update, please explain):</td>
<td></td>
</tr>
<tr>
<td>Estimated Total Development Cost (if changed from previous update, please explain):</td>
<td></td>
</tr>
<tr>
<td>Projected OCII gap commitment (excluding MOH funding committed to date):</td>
<td></td>
</tr>
<tr>
<td>Expected date when OCII gap funding needed: Month ____________ Year _______________</td>
<td></td>
</tr>
<tr>
<td>Procurement and bidding (architect, consultants and contractors)</td>
<td></td>
</tr>
</tbody>
</table>

Entitlements, permits and utilities (OCII, Planning Dept., DBI, SFFD, DPW, SFWD, MOD, PG&E and DRE)

Major issues OCII needs to be aware of, including anything that may require OCII’s involvement

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

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

<table>
<thead>
<tr>
<th>FOR OCII STAFF USE ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major issues, delays, etc.</td>
</tr>
</tbody>
</table>

| Items for discussion with Director |
## EXHIBIT N
Developer Fee Schedule

<table>
<thead>
<tr>
<th>MOH Policy</th>
<th>Calculation</th>
<th>Eligible Amount</th>
<th>Fee Requested</th>
</tr>
</thead>
</table>
| **Maximum Allowable Dev Fee**                                             | **TC Projects: Max. TCAC Fee for 9% projects (whether funded by 9% or 4% TC)**  
Non-TC Projects: 50% of max. TCAC Fee for 9% projects or 25% of Max Fee if recapitalization project | **TCAC Based Fee = $2,000,000**  
(However, if project is under basis, full $2.5 million is eligible. TCAC maximum for 4% TC projects is $2.5 million.) | $2,500,000     | $2,500,000    |

| **Project Management Fee:**                                               | $2,000,000 (Maximum Allowable Developer Fee) x 50% = $1,000,000                                                                                                                                   | $1,000,000     | $1,000,000    |
| **At-Risk and Deferrable Developer Fee:**                                |                                                                                                                                                                                                       | $1,000,000     | $1,000,000    |

### Project Management Disbursement Schedule

<table>
<thead>
<tr>
<th>% of Project Mgmt Fee</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>During Predevelopment:</strong> $33,333 at schematic design approval; $33,333 at design development approval; $66,666 at construction document approval; and $66,666 at construction loan closing.</td>
<td>20%</td>
</tr>
<tr>
<td><strong>During or at End of Construction</strong></td>
<td>65%</td>
</tr>
<tr>
<td><strong>At Project Close Out as defined by final 8609</strong></td>
<td>15%</td>
</tr>
</tbody>
</table>
FOR VALUE RECEIVED, Mission Bay Block 7 Housing Partners, L.P., a California limited partnership ("Borrower") does hereby sell, assign, pledge, transfer and set over to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, ("Agency") all of its rights, title and interest in and to that certain architect’s agreement ("Agreement") entered into by and between Borrower and David Baker + Partners, Architects and any other contracts entered into between Borrower and any licensed design profession or engineer ("Architect" or "Engineer"), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto ("Plans") prepared by the Architects and Engineers for the account of Borrower in connection with the development of 200 units of rental housing at 588 Mission Bay Boulevard North (also known as Mission Bay South Block 7W), San Francisco, California ("Project"). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amount of $16,975,000.00.

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

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

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

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

(document continues on following page)

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed on August 5, 2014.

BORROWER:
MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P,
a California limited partnership

By: Related/Mission Bay Block 7 Development Co., LLC, a California limited liability company, its administrative general partner

By: ___________________________
    Lydia Tan, Authorized Agent

By: CCDC-MBB7-LLC, a California limited liability company, its managing general partner

By: Chinatown Community Development Center, Inc., a California nonprofit corporation, is sole member/manager

By: ___________________________
    Norman Fong, its Executive Director
EXHIBIT P
Consent to Assignment

In accordance with the terms of that certain Assignment of Architects and Engineers Agreement Plans and Specifications dated on or about the date hereof, MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P. a California limited partnership (“Borrower”) assigned to the Successor Agency to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, (“Agency”) all of its rights, title and interest in and to that certain architect’s agreement (“Agreement”) entered into by and between Borrower and David Baker + Partners, Architects (“Architect/Engineer”) and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto (“Plans”) prepared by the Architect/Engineer and others for the account of Borrower in connection with the development of 200 units of rental housing at Mission Bay Boulevard North (also known as Mission Bay South Block 7W), San Francisco, California (“Project”). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amount of $16,975,000.

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

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

Dated: ________________, 2014

__________________________________________ARCHITECT:

David Baker + Partners, Architects

By: _______________________________________
Name: _________________________________
Title: _________________________________

(signatures continue on following page)
EXHIBIT Q
Legal Description of the Site

APN 226 (FORMER APN 31 AND PORTION OF FORMER APN 32)

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

Being Assessor's Block 8711 Lot 31 and a portion of Assessor's Block 8711 Lot 32 as said lots are shown on that certain map entitled “Final Map Tract No. 3936 - for Residential and Commercial Condominium Purposes, Mission Bay (2-7 and 13)” recorded on February 22, 2006 in Book BB of Maps at Pages 54 through 58 in the Office of the Recorder of the City and County of San Francisco, State of California and being more particularly described as follows:

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Being a portion of Assessor's Block 8711.
Containing 80,859 square feet (1.86 acres) more or less.
EXHIBIT R
Final Financial Plan Confirmation Letter