

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 08-2021

Adopted April 6, 2021

AUTHORIZING AN EXCLUSIVE NEGOTIATIONS AGREEMENT AND AMENDED AND RESTATED PREDEVELOPMENT LOAN AGREEMENT WITH HPSY 52-54, LP, A CALIFORNIA LIMITED PARTNERSHIP, FOR 112 AFFORDABLE FAMILY RENTAL HOUSING UNITS (INCLUDING ONE MANAGER'S UNIT) AT HUNTERS POINT SHIPYARD PHASE 1 BLOCKS 52 & 54; AND ADOPTING ENVIRONMENTAL REVIEW FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREA

WHEREAS, In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq. the “CRL”), the Redevelopment Agency of the City and County of San Francisco (the “Former Agency”) undertook programs for the reconstruction and construction of blighted areas in the City and County of San Francisco (“City”), including within the Hunters Point Shipyard (“HPS”) Redevelopment Project Area; and,

WHEREAS, In accordance with the CRL, the City and County of San Francisco (“City”) acting through its Board of Supervisors approved a Redevelopment Plan for the HPS Redevelopment Project Area by Ordinance No. 285-97 adopted on July 14, 1997 (as currently amended, the “Redevelopment Plan”).

WHEREAS, On December 2, 2003, the Former Agency Commission authorized, by Resolution No. 03-179, the execution of a Disposition and Development Agreement for Hunters Point Shipyard Phase 1 with Lennar/BVHP, LLC (succeeded by HPS Development Co, LP, the “Master Developer”), which as amended by the First through Sixth Amendments thereto is referred to herein as the “Phase 1 DDA”). The Phase 1 DDA together with a number of related binding agreements attached to or referenced in the text of the DDA establish a comprehensive set of enforceable obligations that collectively govern implementation of the first phase of redevelopment under the Redevelopment Plan, referred to as “HPS Phase 1”; and,

WHEREAS, Pursuant to California Health and Safety Code §§ 34170 *et seq.* (the “Redevelopment Dissolution Law”) and San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission (“Commission”) and delegating to it state authority under the Redevelopment Dissolution Law), the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (commonly referred to as the Office of Community Investment and Infrastructure, or “OCII”) is responsible for implementing the HPS Redevelopment Plan and fulfilling the enforceable obligations under the Phase 1 DDA; and,

WHEREAS On December 14, 2012, the California State Department of Finance issued a Final and Conclusive Determination under California Health and Safety Code § 34177.5, that the Phase 1 DDA is an enforceable obligation that survived the dissolution of the Former Agency; and,

- WHEREAS, The Phase 1 DDA requires the Developer to undertake development of infrastructure in HPS Phase 1 to support 1,600 residential units and 26 acres of open space and parks, and to deliver “finished lots” (i.e., subdivided land improved with streets, sidewalks, parks, open space and utilities) to be sold to Vertical Developers for residential or commercial use, or retained by OCII for the development of affordable housing. At least 10.5 percent of the residential units constructed by vertical developers must be affordable at 80 percent of Area Median Income (“AMI”); and,
- WHEREAS, In addition to vertical developers’ affordable housing obligation, OCII intends provide financing to construct at least 218 affordable housing units within Phase 1 (“Agency Affordable Housing Units”), bringing the overall percentage of all of the affordable housing within HPS Phase 1 to a minimum of 27 percent; and,
- WHEREAS, On March 20, 2018, the Commission selected, by Resolution No. 07-2018, McCormack Baron Salazar and Bayview Hunters Point Multipurpose Senior Services (“BHPMSS”) to develop Agency Affordable Housing Units on the Blocks 52 and 54 within HPS Phase 1 (the “Project”); and,
- WHEREAS, On January 25, 2021 under Resolution No. 2-2021, the Oversight Board of the City and County of San Francisco approved an expenditure for funding including the Blocks 52/54 Project through Item No. 395 of the Recognized Obligation Payment Schedule for the period of July 1, 2021 through June 30, 2022 (“ROPS 21-22”); and,
- WHEREAS, The Citywide Affordable Housing Loan Committee (the “Loan Committee”) reviewed OCII staff’s evaluation of the request for predevelopment funding for the Project at its meeting on June 15, 2018, and recommended to the Commission that it authorize OCII to provide a predevelopment loan in an amount not to exceed \$4,000,000 subject to certain terms and conditions as set out in the Loan Committee’s action and the Predevelopment Loan Documents; and,
- WHEREAS, On August 7, 2018, by Resolution No. 33-2018, the Commission approved a loan in an initial amount of Four Million Dollars (\$4,000,000.00) to Shipyard 5254, L.P., an affiliate of McCormack Baron Salazar (the “Prior Developer”), for predevelopment funding (“Original Predevelopment Loan Agreement”) to develop and operate affordable family rental housing units on the Site and an exclusive negotiations agreement (the “Original ENA”) and an associated Option to Ground Lease; and,
- WHEREAS, On July 16, 2019, by Resolution No. 17-2019, the Commission conditionally approved Schematic Designs contemplating 111 affordable rental housing units and one manager’s unit at the Site (as further described in Schematic Designs as approved, the “Project”); and,
- WHEREAS, On or about February 17, 2020, the Original ENA between OCII and the Prior Developer expired according to its terms and in August 2020, the Prior Developer formally notified OCII that is would no longer be proceeding with the development of the Project. BHPMSS intended to remain co-developer and services provider

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

WHEREAS, On January 11, 2021, OCII staff convened an evaluation panel (the “Panel”) consisting of an OCII representative, a MOHCD representative, and a representative of the Hunters Point Shipyard Citizens Advisory Committee (“HPSCAC”). The Panel ranked The Jonathan Rose Companies (“JRC”) the most qualified to assume the role of lead developer on the Project. The selected respondent submitted an application that was responsive to the RFP. In selecting the respondents, OCII relied on, among other things, their agreement to comply with all of OCII’s policies, including but not limited to insurance and indemnification requirements found in the RFP; and,

WHEREAS, On February 8, 2021, HPSCAC voted to recommend that the Commission select JRC as the new lead developer for the Project; and,

WHEREAS, HPSY 52-54, LP, a California limited partnership, an affiliate of JRC (the “Developer”), desires to assume the Original Predevelopment Loan Agreement and enter into an Amended and Restated Predevelopment Agreement (the “Agreement”) with OCII which would allow the Developer to use remaining funding initially approved for the Project, or, Two Million Eighty-Five Thousand Seven Hundred Seventy-Two and 98/100 Dollars (\$2,085,772.98) (the "Remaining Funding Amount") to fund predevelopment costs of the Project as well as assume the debt associated with the existing Work Product produced by the Prior Developer for the Project; and,

WHEREAS, Nothing in the Agreement authorizes construction activities to take place on the Blocks 52/54 Project site. The Agreement, in substantially final form, is attached to the Commission memorandum associated with this Resolution and on file with the Commission Secretary; and,

WHEREAS, The Developer also desires to enter into and execute an Exclusive Negotiations Agreement (the “ENA”) which, if executed to completion will result in an an Option to Ground Lease for the Project site. The ENA’s key components include: a \$10,000 Performance Deposit; an initial term of twelve (12) months, until April 5, 2022 (with up to a twelve-month extension, granted at the discretion of the OCII Executive Director); and a Schedule of Performance which includes performance milestones. The ENA is anticipated to lead to a long-term ground lease; and,

WHEREAS, A copy of the ENA, and the associated Option to Ground Lease, in substantially final form, is attached to the Commission memorandum associated with this Resolution and on file with the Commission Secretary; and,

WHEREAS, For purposes of implementation and to ensure consistency with the City’s overall affordable housing goals and priorities, OCII has engaged the Mayor’s Office of Housing and Community Development (MOHCD) to provide additional services,

construction monitoring and design review, and loan disbursement review and processing. Upon completion of the Blocks 52/54 Project, OCII intends, and is obligated, to transfer the affordable housing loan obligation, asset, and ground lease to MOHCD as the designated Successor Housing Agency of the City and County of San Francisco under Board Resolution No. 11-12, as required by Redevelopment Dissolution Law; and,

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

WHEREAS, OCII staff has reviewed the Agreement and the ENA and has found them to be within the scope of the project analyzed in the Phase 1 EIR and its subsequent addenda; and,

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

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

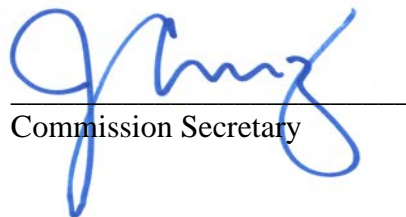
(1) implementation of the ENA and the Agreement do not require major revisions to the Phase 1 EIR and the Phase 2 EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and,

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

(3) no new information of substantial importance to the project analyzed in the Phase 1 EIR and Phase 2 EIR has become available, which would indicate that (i) implementation of the ENA and the Agreement will have significant effects not discussed in the Phase 1 EIR and Phase 2 EIR; (ii) significant environmental effects will be substantially more severe; (iii) mitigation measures or alternatives found not feasible, which would reduce one or more significant effects, have become feasible; or (iv) mitigation measures or alternatives, which are considerably different from those in the Phase 1 EIR and Phase 2 EIR, will substantially reduce one or more significant effects on the environment that would change the conclusions set forth in the Phase 1 EIR and Phase 2 EIR; and be it further

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

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of April 6, 2021.



Commission Secretary

Exhibit A: Exclusive Negotiations Agreement

Exhibit B: Amended and Restated Loan Agreement

EXCLUSIVE NEGOTIATIONS AGREEMENT

351 Friedell Street and 151 Friedell Street (Hunters Point Shipyard Phase 1 Blocks 52 and 54) Hunters Point Shipyard Redevelopment Project Area

THIS EXCLUSIVE NEGOTIATIONS AGREEMENT (hereinafter “**Agreement**”) dated as of March 16, 2021, is made 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**” or “**Successor Agency**”) and HPSY 52-54, LP, a California limited partnership] (the “**Borrower**”), whose general partner is Rose HPSY 52-54 GP, LLC, a Delaware limited partnership, an affiliate of Jonathan Rose Companies (“**JRC**”) (“**JRC**”), and Bayview Hunters Point Multipurpose Senior Services, Inc., a California nonprofit public benefit corporation (“**BHPMSS**”), and their authorized successors and assigns.

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

1. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 *et seq.* the “**CRL**”), the Redevelopment Agency of the City and County of San Francisco (the “**Former Agency**”) undertook programs for the reconstruction and construction of blighted areas in the City and County of San Francisco (“**City**”), including the Hunters Point Shipyard (“**HPS**”) Redevelopment Project.

2. Pursuant to California Health and Safety Code §§ 34170 *et seq.* (the “**Redevelopment Dissolution Law**”) and San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission (“**Commission**”) and delegating to it state authority under the Redevelopment Dissolution Law), the Successor Agency is responsible for implementing the HPS Redevelopment Project and fulfilling the enforceable obligations under the Hunters Point Shipyard Disposition and Development Agreement (the “**DDA**”) between the Former Agency and HPS Development Co, LP (the “**Master Developer**”) (Dec 2, 2003).

3. Under the DDA and its Affordable Housing Program, the Master Developer is required to deliver “finished lots” (i.e., subdivided land improved with streets, sidewalks, parks, open space and utilities) to be sold to various vertical developers or retained by OCII for the development of affordable housing. The DDA identifies the specific parcels that the Successor Agency intends to develop with affordable housing, including the two parcels of land depicted on Attachment 1 hereto (the “**Site**”). OCII intends to provide financing to construct at least 218 affordable housing units on these parcels.

4. On August 7, 2018, OCII and Shipyard 5254, L.P., an affiliate of McCormack Baron Salazar, executed an exclusive negotiations agreement and a loan agreement for predevelopment funding (“**Predevelopment Loan Agreement**”) to develop and operate affordable rental housing units for families of the Site (“**Project**”).

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

6. The exclusive negotiations agreement with Shipyard 5254, L.P. expired according to its terms on or about February 17, 2020 and Shipyard 5254, L.P. is no longer proceeding with the development of the Project. As a result, on October 22, 2020, OCII issued a Housing Development Request for Qualifications (the "**RFQ**") seeking a new lead developer for the Project.

7. At its meeting on March 16, 2021, the Commission authorized OCII to negotiate and execute this Agreement to enable the Developer to pursue remaining predevelopment activities for the construction and management of the Project. This Agreement establishes a series of milestones intended to result in the execution of an option to ground lease agreement, and thereafter a long-term ground lease agreement for the Site between OCII and the Developer ("**Ground Lease**") after public hearing and consideration by the Commission.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, OCII and the Developer agree as follows:

1. Exclusive Right

For the Exclusive Negotiations Period set forth in Section 2 below, and subject to the terms and conditions of this Agreement, OCII and the Developer, acknowledging that time is of the essence, agree to negotiate diligently and in good faith with each other to enter into the Ground Lease providing for the ground lease of the Site to the Developer, sufficient to establish "site control" meeting the requirements of potential project lenders and the California Tax Credit Allocation Committee. OCII grants to the Developer the exclusive right to negotiate the Ground Lease (the "**Exclusive Right**") during the Exclusive Negotiations Period. OCII agrees not to solicit any other proposals or negotiate with any other developer with respect to the subject of the negotiations set forth herein.

The Developer and OCII acknowledge and agree that under this Agreement, OCII is not committing itself or agreeing to: (a) enter into the Ground Lease or undertake any exchange or transfer of real property, any disposition of any real property interests to the Developer, (b) approve any land use entitlements, or (c) undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Commission, OCII or any agency, commission or department of the City. This Agreement does not constitute the disposition of property or the transfer of OCII's or the City's exercise of control over the Site. However, this Agreement allows the OCII Executive Director to enter into an Option to Ground Lease, in the form attached hereto as Attachment 4, for the Project Site in her sole discretion should certain conditions be met, as described below in Section 6.

2. Term.

(a) Initial Term. The term of the Agreement shall be from March 16, 2021 until March 15, 2022 ("**Initial Term**"), unless extended or earlier terminated pursuant to the

provisions herein (the Initial Term, as modified by any extension or early termination, is the “**Exclusive Negotiations Period**”).

(b) Extension of Exclusive Negotiations Period. OCII may extend, in its sole discretion, the Exclusive Negotiations Period for any period up to a total of an additional 12 months beyond the initial term to permit the completion of the negotiations or milestones under the Schedule of Performance (defined below). In addition, in the event the Developer applies for CDLAC and/or TCAC financing in accordance with the contractual deadlines provided in the Predevelopment Loan Agreement but is not awarded financing by CDLAC and/or TCAC, OCII shall automatically extend the deadline established in the Schedule of Performance for entering into a Ground Lease to allow Developer to reapply for up to two consecutive additional cycles of CDLAC/TCAC financing immediately following the cycle initially applied for.

(c) If not otherwise terminated in accordance with its terms, this Agreement shall terminate upon OCII’s execution of any Ground Lease approved by the Commission.

3. Negotiation Deposits; OCII/City Costs.

3.1 Negotiation Deposits.

(a) Developer has paid to OCII the cash sum of One Thousand Dollars (\$1,000) as an earnest money deposit (the “**Deposit**”). The Developer will pay to OCII an additional sum of Nine Thousand Dollars (\$9,000) in cash (the “**Additional Deposit**”) at the time it executes this Agreement. The Additional Deposit shall be combined with the Deposit to form the performance deposit (“**Performance Deposit**”). Except as provided in Sections 3.1(b) and 3.1(c), the Performance Deposit shall be held by OCII until completion of construction of the Project.

(b) Subject to Section 3.1(b) below, if the parties fail to reach agreement on the Ground Lease despite the Developer’s good faith negotiations or if the Ground Lease is not approved by the Commission, executed and delivered as contemplated hereby for any reason outside of the Developer’s control, and, in either instance, the Developer is not in default under this Agreement or the Predevelopment Loan Agreement, then upon termination of this Agreement, OCII shall within 30 days return the Performance Deposit (together with interest actually accrued thereon) to the Developer.

(c) OCII shall retain the Performance Deposit, together with any and all accrued interest, if any of the following events occurs: (i) the Developer is in default under the terms of the Agreement or Predevelopment Loan Agreement, and has not cured such default within the period allowed and OCII, in its sole discretion, has not expressly waived such default in writing, and the Agreement is terminated; or (ii) the parties fail to reach agreement because in OCII’s reasonable judgment the Developer is not making a good faith effort to negotiate and fulfill its obligations under this Agreement, or if the Ground Lease is not approved, executed and delivered as contemplated hereby for a reason reasonably determined by OCII to be within the Developer’s control.

4. [intentionally omitted]

5. Obligations of the Developer.

5.1 Schedule of Performance; Scope of Development.

The Developer agrees that it shall diligently and in good faith negotiate with OCII the Ground Lease and related actions under this Agreement based on the development opportunity described in the RFQ, the Schedule of Performance attached as Attachment 2 hereto, and the Schematic Designs. The Developer shall diligently pursue completion of milestones under the Schedule of Performance and additional benchmarks, if any, under this Agreement in a timely fashion. The Schedule of Performance may be modified at the request of the Developer, subject to the approval of OCII in its sole discretion, so long as the modification does not exceed the Exclusive Negotiations Period, as may be extended under Section 4 above.

5.2 Other Obligations of Developer.

(a) The Developer shall be required under this Agreement to comply with applicable law and policies, including the requirements of all applicable City and OCII ordinances, resolutions, regulations or other regulatory approvals with respect to the planning, design, and approvals necessary for developing the Site. These requirements include, without limitation, OCII's Small Business Enterprise Program (including, but not limited to, the selection of consultants during the pre-development period), Labor Standards and Prevailing Wages Provisions, Minimum Compensation Policy, and Health Care Accountability Policy.

(b) In addition, the Developer shall comply with the terms of the DDA, the Hunters Point Shipyard Redevelopment Plan, Phase 1 Design for Development, and the Design Review and Document Approval Procedures and any amendments thereto. At the request of OCII and/or the City and at the Developer's sole expense, which funds may come from the Predevelopment Loan Agreement, the Developer shall prepare (or cause expert consultants approved by OCII to prepare) and submit all reports, studies or other information reasonably necessary to obtain regulatory approvals, excluding privileged attorney-client communications, or confidential or proprietary information.

(c) The Developer shall commit sufficient financial and personnel resources required to undertake and complete the development of the Project at the Site as a priority project and to fulfill the Developer's obligations under this Agreement in an expeditious fashion.

(d) In making any entry onto the Site, neither the Developer nor any of its agents, contractors or representatives shall interfere with or obstruct the permitted, lawful use of the Site by its tenants or occupants, if any, or the conduct of their business operations thereon, except as otherwise provided in the Predevelopment Loan Agreement.

5.3 Indemnity.

5.3.1 To the fullest extent permitted by law, and except as otherwise provided in the Predevelopment Loan Agreement, the Developer shall hold harmless, defend at its own expense, and indemnify OCII and the Commission, the City, and their respective commissioners, officers, agents and employees (individually or collectively, an "**Indemnified Party**") against any and all losses, of every kind, nature and description directly or indirectly arising out of, or connected with Developer's obligations under this Agreement, except to the extent caused by the willful misconduct or the gross negligence of the Indemnified Party. For purposes of this Section, losses will include, but not be limited to: (a) any default by the Developer in the

observance or performance of any of the Developer's obligations under the Agreement (including, without limitation, those obligations set forth in Section 5.2 above), (b) any failure of any representation by the Developer to be correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Developer's activities pursuant to this Agreement, whether caused by the negligence or any other act or omission of the Developer and its officers, agents and employees, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnified Party that relates to or arises out of the Developer's performance under the Agreement or the development of the Site by the Developer, or any transaction contemplated by, or the relationship between the Developer and OCII under the Agreement, (e) any failure of the Developer or its agents or contractors to comply with all applicable environmental requirements relating to the development of the Site, or (f) 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, which directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (e) above, with the exception of any environmental contamination or violations of any applicable environmental requirements occurring prior to the date of this Agreement, provided that no Indemnified Party shall be entitled to indemnification under this Section for matters caused solely by such Indemnified Party's gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnified Party by reason of a claim arising out of any loss for which the Developer has indemnified the Indemnified Party, and upon written notice from such Indemnified Party, the Developer shall at its sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnified Party. The Indemnified Party shall 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 Indemnified Party in connection with the matters covered by this Agreement.

5.3.2 The Developer shall further indemnify the Indemnified Party against any losses resulting from release, spill or escape of Hazardous Materials (as defined below) on or about the Site caused by the Developer or its agents, contractors or representatives from and after the date of this Agreement; except for losses resulting from the gross negligence or willful misconduct of any of the Indemnified Parties. For purposes hereof, "Hazardous Material" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Section 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Site, or are naturally occurring substances on, in or about the Site; and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. OCII and Developer acknowledge and agree that prior to the Agreement Date, Developer has not caused or permitted any Environmental Activity on the Project or the Site.

5.3.3 The indemnity shall include, without limitation, the Developer's obligation to pay reasonable Attorney's Fees and Costs (as defined in Section 11.7) and fees of consultants and experts, laboratory costs, and related costs, as well as the Indemnified Party's costs of investigating any loss. The provisions of this Section 5.3 shall survive the termination of this Agreement.

5.4 Insurance.

Subject to approval by OCII of the insurers and policy forms, Developer must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in Attachment 5 throughout the term of this Agreement at no expense to OCII.

5.5 Force Majeure.

The occurrence of any of the following events shall excuse performance of such obligations of Developer as are rendered impossible to perform while such event continues: acts of god; strikes; lockouts; labor disputes; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions (including changes in law), regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotions; fire or other casualty; nonperformance by OCII which prevents the performance of Developer; and other causes beyond the control of the Developer. The occurrence of such events shall excuse performance only in the event that the Developer has provided written notice to OCII within thirty (30) days after the occurrence or commencement of the event of force majeure and such excuse shall terminate thirty (30) days after the termination of the event giving rise to the delay. However, under no circumstances shall this force majeure provision apply to Developer's indemnification and defense obligations under Section 5.3 and/or Developer's insurance obligations under Section 5.4 above. For avoidance of doubt, environmental conditions of neighboring properties (including Phase 2 of the Hunters Point Shipyard Redevelopment Project), or litigation related to those conditions, existing as of the date of this Agreement shall not be considered conditions of Force Majeure for the purposes of this section.

5.6 Assumption of Predevelopment Loan Agreement

The Developer shall, together with this Agreement, execute as assignment, assumption and release agreement substantially in the form attached hereto as Attachment 3, assuming ownership of the Work Product (as defined therein) and the rights and obligations of Borrower under the Predevelopment Loan Agreement.

6. Obligations of OCII.

Subject to the provisions of Section 8, OCII agrees as follows:

- (a) Subject to environmental review under the California Environmental Quality Act and the National Environmental Protection Act, as applicable, the public review process and all required governmental approvals, as further provided in this Agreement, OCII shall use good faith efforts to diligently negotiate, prepare and submit for approval the Ground Lease.

- (b) OCII shall make available all studies and other documents in its possession as necessary to perform the Developer's due diligence investigations of the Site, provided that OCII makes no representations or warranties whatsoever regarding the completeness or accuracy of such information and the Developer must perform its own independent analysis.
- (c) OCII shall reasonably cooperate with the Developer in obtaining access to the Site from the Master Developer for the purpose of performing tests, surveys and inspections, and obtaining data necessary or appropriate to negotiate the Ground Lease provided, however, the Developer shall give prior written notice to OCII of any such entry. OCII shall provide the Developer with the same rights of access to the Site that OCII may have from time to time during the Exclusive Negotiations Period, subject to all applicable laws and regulations.
- (d) OCII shall reasonably cooperate with the Developer in the provision of information necessary for and assistance in the filing, processing and obtaining of land use entitlements and regulatory approvals, and, to the extent required by law, join with the Developer as a co-applicant in the filing for such approvals, but neither OCII nor the City shall be required to satisfy any conditions for any approval, except as may be specifically agreed to by OCII, or the City, as applicable.
- (e) OCII shall, in its reasonable discretion, enter into an Option to Ground Lease with Developer as provided in this Agreement, and generally in the form attached hereto as Attachment 4, if Developer is in conformance with the obligations described in Article 5 and if such Option is necessary to secure Project financing.

7. Non-Assignment.

7.1 Definitions.

For purposes of this Section and where such initially capitalized terms are elsewhere used in this Agreement, the following term shall have the meaning given below:

“Significant Change” means any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in the Developer with the exception of (a) transfers of a general partnership interest between or among wholly-owned affiliates of JRC and (b) transfers of a general partnership interest to a wholly-owned affiliate of BHPMSS.

7.2 Non-Assignment.

OCII and the Developer acknowledge and agree that OCII is entering into this Agreement and granting the Exclusive Right to the Developer on the basis of the particular experience, financial capacity, skills and capabilities of the Developer and its members. The Exclusive Right is personal to the Developer, is not assignable and the Agreement shall not be assigned or transferred except by the prior written consent of OCII, which may be given, withheld or conditioned in OCII's sole and absolute discretion.

8. Default and Remedies.

8.1 Events of Default by the Developer.

The occurrence of any of the following shall constitute an event of default on the part of the Developer after OCII gives notice of the default specifying in reasonable detail the basis for the determination of the default:

- (a) Failure to pay any sums due under this Agreement within thirty (30) days after written notice by OCII.
- (b) Failure to perform or abide by any material provision of this Agreement, including a performance milestone contained in the Agreement attached Schedule of Performance, as it may be extended.
- (c) Any material breach of any representation and warranty made by the Developer under Section 9 or any other provision of this Agreement.
- (d) Any assignment, attempted assignment or Significant Change in violation of Section 7.2.
- (e) Any filing of a petition to have the Developer or JRC or BHPMSS adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization liquidation or arrangement under any bankruptcy or insolvency law, or any assignment for the benefit of creditors, or seeking appointment of a trustee, receiver, liquidator of the Developer or any substantial part of the Developer's assets, if such petition is not dismissed within sixty (60) days.
- (f) The debarment or prohibition of the Developer from doing business with any federal, state or local governmental agency, or any debarment or prohibition of any affiliate of the Developer from doing business with any federal, state or local governmental agency to the extent such debarment or prohibition of the affiliate could affect the redevelopment of the Site as contemplated hereby.
- (g) Failure to procure or maintain any of the insurance coverage required hereunder so that there is a lapse in required coverage and such breach is not cured within two (2) days.
- (h) The occurrence of an event of default and the continuation thereof beyond any and all applicable notice and cure periods under the terms of the Predevelopment Loan Agreement.
- (i) Failure to notify OCII of any material adverse change in the financial condition of the Developer that affects the Developer's ability to complete the Project.

8.2 Remedies of OCII.

(a) In the event of a default by the Developer, except as otherwise provided in this Agreement, the Developer shall have thirty (30) days from the receipt of written notice from OCII to cure such default, or, if such default cannot reasonably be cured within such 30-day period, the Developer shall commence action to cure such failure within such 30-day period and

diligently and continuously prosecute such action to completion, but in any event no longer than 90 days from the receipt of written notice from OCII to cure such default.

(b) If, after the time provided in Section 8.2(a) above, Developer has not cured the default, OCII may exercise any or all of the following exclusive remedies available to it under this Agreement: (i) terminating the Agreement, (ii) retaining the Performance Deposit; and/or (iii) exercising its rights under the Work Product security described below in Section 8.2(c). If OCII chooses to terminate the Agreement, OCII shall provide written notice to Developer of such termination, the Agreement shall be terminated as of the date of the notice, and neither party shall have any rights against or liability to the other, except those provisions that are specified to survive such termination shall remain in full force and effect.

(c) Plans, Specifications, Reports and Studies. If OCII terminates this Agreement

, then subject to the proprietary rights of their authors (which Developer shall require to be released upon receipt of payment) and any confidentiality agreements and privileges recognized by applicable law, the Developer shall deliver to OCII copies of any and all reports, studies, document lists and plans regarding the redevelopment of the Site in the Developer's possession or prepared by or on behalf of the Developer (the Developer's "**Work Product**"). The Developer shall deliver its Work Product within ten (10) days after written demand from OCII, which obligation shall survive the termination of this Agreement. OCII may use the Work Product for any purpose relating to the Site, provided that OCII shall release the Developer and the Developer's contractor, architect, engineer and other consultants from any losses arising out of the OCII's use of such documents except to the extent that OCII retains any of them and they agree to such continued liability. The Developer and OCII acknowledge that the Work Product also serves as security pursuant to the Predevelopment Loan Agreement and that the provisions of Sections 3.1 and 24.21 of the Predevelopment Loan Agreement shall govern the assignment of the Work Product to OCII.

8.3 Termination and Developer's Risk.

The Developer acknowledges and agrees that, except as otherwise provided under the Predevelopment Loan Agreement, it is proceeding at its own risk and expense until such time as the Ground Lease is approved and without any assurance that the Ground Lease will be approved. If Developer wishes to terminate this Agreement at any time during the Exclusive Negotiations Period (including any extension period allowed by this Agreement, whether formally extended by OCII or not), Developer must provide written notice to OCII and receive written acknowledgement from OCII of that termination.

8.4 Damages.

The parties have agreed that OCII's actual damages in the event of a failure to approve, execute and deliver the Ground Lease due to a default by the Developer would be extremely difficult or impracticable to determine. After negotiation, the parties have agreed that, considering all the circumstances existing on the date of this Agreement, the amount of the Performance Deposit together with all accrued interest thereon, as herein provided, is a reasonable estimate of the damages that OCII would incur in such event.

IF THE PARTIES DO NOT REACH AGREEMENT ON THE GROUND LEASE OR THE GROUND LEASE IS NOT APPROVED, EXECUTED AND DELIVERED AS CONTEMPLATED

HEREBY DUE, IN EITHER INSTANCE, TO ANY DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT, THEN, WITHOUT LIMITING ANY OF ITS OTHER REMEDIES HEREUNDER, AT LAW OR IN EQUITY, OCII SHALL BE ENTITLED TO RETAIN THE PERFORMANCE DEPOSIT, TOGETHER WITH ALL ACCRUED INTEREST THEREON, AS HEREIN PROVIDED, AS LIQUIDATED DAMAGES. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: OCII _____ Developer _____

9. Representations and Warranties of the Developer.

9.1 Representations and Warranties.

The Developer represents, warrants and covenants as follows:

(a) Valid Existence; Good Standing. Developer is a California limited partnership duly organized and validly existing under the laws of the State of California. The Developer has all requisite power and authority to own its property and conduct its business as presently conducted. The Developer has made all filings and is in good standing in the jurisdiction of the State of California.

(b) Authority. The Developer has all requisite power and authority to execute and deliver this Agreement and the agreements contemplated by this Agreement and to carry out and perform all of the terms and covenants of this Agreement.

(c) No Limitation on Ability to Perform. Neither the Developer's partnership agreement nor any other agreement or law in any way prohibit, limit or otherwise affect the right or power of the Developer to enter into and perform all of the terms and covenants of this Agreement. The Developer is not a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument, which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person or entity is required for the due execution, delivery and performance by the Developer of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting the Developer before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Agreement, the ability of the Developer to perform the transactions contemplated by this Agreement or the business, operations, assets or condition of the Developer.

(d) Valid Execution. The execution and delivery of this Agreement and the agreements contemplated hereby by the Developer have been duly and validly authorized by all necessary actions. This Agreement will be a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms. The Developer will provide to OCII a written resolution of the Developer authorizing the execution of this Agreement and the agreements contemplated by this Agreement.

(e) Defaults. The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or constitute a

default under (A) any agreement, document or instrument to which the Developer may be bound or affected, (B) any law, statute, ordinance, regulation, or (C) the partnership agreement of the Developer.

(f) Meeting Financial Obligations; Material Adverse Change. The Developer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and the Developer is not in default or claimed default under any agreement for borrowed money. The Developer shall immediately notify OCII of any material adverse change in the financial condition of the Developer that affect the Developer's ability to complete the Project and such material adverse change shall constitute a default under this Agreement, subject to the cure and remedy provisions of Section 8.

(g) Conflicts of Interest. The Developer is familiar with conflict of interest requirements and contribution limits, including (i) Section 87100 *et seq.* of the California Government Code, which provides that no member, official or employee of OCII, may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly and (ii) OCII's Personnel Policy, which prohibits former OCII employees and consultants from working on behalf of another party on a matter in which they have participated personally and substantially unless OCII consents to such scope of work; and (iii) section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with OCII 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. Developer 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. Developer further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Additionally, Developer acknowledges that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126. As to the provisions referred to in clauses (i) and (iii), the Developer does not know of any facts that constitute a violation of such provisions. As to the policy in clause (ii), the Developer has disclosed to OCII in writing any and all personnel or consultants covered by such policy as of the date of this Agreement, and concurrently herewith the Commission has elected to waive or not to waive the conflict as to such specific personnel or consultants.

(h) Skill and Capacity. The Developer has the skill, resources and financial capacity to acquire, manage and fully redevelop the Site consistent with the development opportunity described in the RFQ.

(i) Consultants. As of the date of this Agreement, the Developer has retained or intends to retain or assuming existing agreements with the following consultants in connection

with the proposed redevelopment of the Site: Mithun | Solomon (planning and architecture) and The John Stewart Company (Property Management). The Developer shall promptly notify OCII of the termination of any consultant previously approved by OCII, and the Developer shall, to the extent required to fulfill its obligations under this Agreement, replace such consultant with a new consultant reasonably approved by OCII. In addition, the Developer shall promptly notify OCII of the addition of any new consultant associated with the Project. Nothing herein shall limit the provisions of subsection (g) above regarding conflicts of interest.

(j) Not Prohibited from Doing Business. The Developer (nor any affiliates of any of the foregoing) have been debarred or otherwise prohibited from doing business with any local, state or federal governmental agency.

(k) Business Licenses. The Developer has obtained all licenses required to conduct its business in the City and is not in default of any fees or taxes due to the City.

(l) No Claims. The Developer does not have any claim, and shall not make any claim, against OCII and the City, or either of them, or against the Site, or any present or future interest of OCII or the City therein, directly or indirectly, by reason of: any aspect of the RFQ or the developer selection process; any statements, representations, acts or omissions made by OCII's and/or City's respective officers, commissioners, employees or agents with regard to any aspect of the negotiations under this Agreement; and OCII's exercise of discretion, decision and judgment in conformance with this Agreement.

9.2 Continued Accuracy.

If at any time during the Exclusive Negotiations Period any event or circumstance occurs that would render materially inaccurate or misleading any of the foregoing representations or warranties, the Developer shall immediately notify OCII thereof. It will be an event of default without the requirement of OCII notice specified in Section 8.1, above, if the Developer does not cure such inaccuracy within ten (10) days from the date on which the Developer was obligated to notify OCII and OCII shall have the rights and remedies provided in this Agreement, at equity and in law.

9.3 Survival.

The representations and warranties in this Section 9 shall survive any termination of this Agreement.

10. Notices.

A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

- (i) In the case of a notice or communication 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

OCII General Counsel:
Office of Community Investment and Infrastructure
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: James B. Morales
james.morales@sfgov.org

- (ii) And in the case of a notice or communication sent to the Developer:

Jonathan Rose Companies
551 5th Ave.
New York, NY 1167
Attn: Yusef Freeman

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

With a copy to: Klein Hornig
101 Arch Street, Suite 1101
Boston, MA 02110
Attn: Daniel Rosen

For the convenience of the parties, copies of notice may also be given by email.

Every notice given to a party hereto, pursuant to the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

- (a) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if approval is being requested, shall be clearly marked “Request for Approval under the Hunters Point Shipyard Redevelopment Project Area, 351 Friedell Street and 151 Friedell Street, Exclusive Negotiations Agreement;” and
- (d) if a notice of disapproval or an objection, which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or email address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

11. General Provisions.

11.1 Amendments.

This Agreement may be amended or modified only by a written instrument executed by OCII and the Developer.

11.2 Severability.

If any provision of this Agreement, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement. Without limiting the foregoing, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this Agreement, the parties shall promptly modify, amend or suspend this Agreement, or any portion of this Agreement, to the extent necessary to comply with such provisions in a manner which preserves to the greatest extent possible the benefits to each of the parties to this Agreement and to the Developer before such conflict with federal or state law. However, if such amendment, modification or suspension would deprive OCII or the Developer of the substantial benefits derived from this Agreement or make performance unreasonably difficult or expensive, then the affected party may terminate this Agreement upon written notice to the other party. In the event of such termination, neither party shall have any further rights nor obligations under this Agreement except as otherwise provided herein.

11.3 Non-Waiver.

No waiver made by either party with respect to the performance, or manner or time of performance, or any obligation of the other party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

11.4 Non-Liability.

No member, official, agent or employee of OCII or the City will be personally liable to the Developer, or any successor in interest (if and to the extent permitted under this Agreement), in an event of default by OCII or for any amount that may become due to the Developer or successor or on any obligations under the terms of this Agreement. No director, officer, agent or employee or affiliate of the Developer or Developer's affiliates will be personally liable to OCII in an event of default by the Developer or for any amount that may become due to OCII or on any obligations under the terms of this Agreement.

11.5 Successors and Assigns; Third Party Beneficiary.

This Agreement shall inure to the benefit of and bind the respective successors and assigns of OCII and the Developer, subject to the limitations on assignment by the Developer set forth in Section 7 above. This Agreement is for the exclusive benefit of the parties hereto and

not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

11.6 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. As part of the consideration for OCII's entering into this Agreement, the Developer agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at OCII's sole option, be litigated in courts located within the County of San Francisco, State of California, and the Developer expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon the Developer wherever the Developer may then be located, or by certified or registered mail directed to the Developer at the address set forth in this Agreement.

11.7 Attorneys' Fees and Costs.

If either party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable Attorneys' Fees and Costs (as defined below). Any such Attorneys' Fees and Costs incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be several from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of OCII counsel shall be based on the fees regularly charged by private attorneys who have the equivalent number of years of experience in the relevant subject matter and who practice in law firms in the City.

“Attorneys' Fees and Costs” means any and all attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, attachment preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

11.8 Interpretation of Agreement.

(a) Attachments. Whenever an “Attachment” is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Attachments are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term “including,” “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) References. Wherever reference is made to any provision, term or matter “in this Agreement,” “herein” or “hereof” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

(e) Recitals. In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail.

(f) No Presumption Against Drafter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purposes of the parties and this Agreement.

11.9 Entire Agreement.

This Agreement, including the Attachments, contains all the representations and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this Agreement.

11.10 Time for Performance.

(a) Expiration. All performance dates, including cure dates, expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekends and Holidays. A performance date, which falls on a Saturday, Sunday, or City holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Agreement, including, without limitation, each milestone set forth in the attached Schedule of Performance.

11.11 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

11.12 Approvals and Consents.

Unless this Agreement otherwise expressly provides, all actions, approvals, consents or determinations to be made by or on behalf of (i) OCII under this Agreement shall be made by the OCII's Executive Director or her designee and (ii) the Developer under this Agreement shall be made by the President or the Managing Director, California of JRC or the Executive Director of BHPMSS (the "**Developer Representative**") or such other employee or agent of the Developer as the Developer may designate or as may be authorized to act as the Developer Representative for a particular matter. Unless otherwise herein provided, whenever approval, consent or satisfaction is required of a party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. The reasons for disapproval shall be stated in reasonable detail in writing. Approval by the Developer or OCII to or of any act or request by the other shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

11.13 Real Estate Commissions.

The Developer and OCII each represents to the other that it engaged no broker, agent or finder in connection with this Agreement or the transactions contemplated hereby. In the event any broker, agent or finder makes a claim, the party through whom such claim is made agrees to indemnify the other party from any Losses arising out of such claim.

11.14 Survival.

Following expiration of the Exclusive Negotiations Period, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survives the expiration or termination of this Agreement. Upon termination of this Agreement (other than a termination due to a default by OCII), the Developer shall furnish copies of all Work Product to OCII as provided in Section 8.2(c).

11.15 Nondiscrimination and Small Business Enterprise Policy.

(a) There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of this Agreement. The Developer 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). Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations to clients or the general public.

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

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

(d) If the Developer intends to utilize subcontractors in the provision of services under this Agreement, it must consult with OCII's Contract Compliance Division and comply with OCII's Bayview Hunters Point Employment and Contracting Policy ("BVHP-ECP") and Small Business Enterprise ("SBE") Programs Small Business Enterprise Policy.

(e) The Developer agrees not to discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, and shall comply fully with all provisions of the OCII's Nondiscrimination in Contracts Policy, adopted by Resolution No. 175-97, as such Policy may be amended from time to time.

(f) The Developer shall provide all services to the public under this Contract in facilities that are accessible to persons with disabilities as required by state and federal law.

(g) (g) Borrower will continue to utilize the services of the architect, general contractor, and other SBE consultants hired by Shipyard 5254, L.P. and shall inform and cooperate with OCII to effectuate a change in the team's makeup should a change be necessary. Borrower will obtain cost estimates from the selected contractor, and will work with their architectural team to ensure that the site's development costs are managed to OCII's approval. Furthermore, Borrower shall cooperate with OCII and continue to require the general contractor to exercise good faith efforts to select subcontractors who either are SBEs or, if they are not SBEs, are willing to create joint ventures or similar partnership opportunities with SBEs.

11.16 Compliance With Minimum Compensation Policy And Health Care Accountability Policy.

The Developer agrees, as of the date of this Agreement and during the term of this Agreement, to comply with the provisions of OCII's Minimum Compensation Policy and Health Care Accountability Policy (the "**Policies**"), adopted by 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 and County of San Francisco's Department of Public Health, or to participate in a health benefits program developed by the City and County of San Francisco's Director of Health.

11.17 Relationship of the Parties.

The subject of this Agreement is a private development with neither party acting as the agent of the other party in any respect. None of the provisions in this Agreement shall be deemed to render OCII a partner in the Developer's business, or joint venturer or member in any joint enterprise with the Developer.

11.18 Cooperation.

In connection with this Agreement, the Developer and OCII shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, the Developer and OCII shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement.

(signatures begin on following page)

IN WITNESS WHEREOF, OCII and the Developer have duly executed and delivered this Agreement 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: _____
Sally Oerth
Interim Executive Director

APPROVED AS TO FORM:

James B. Morales
Agency General Counsel

By: _____
Aaron J. Foxworthy
Deputy General Counsel

DEVELOPER:

HPSY 52-54, LP, a California limited partnership

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

By: JRC FC Holdings, LLC, a Delaware limited liability company, its sole member

By: _____

Authorized by OCII Resolution No. ____-2021, adopted April 6, 2021.

EXCLUSIVE NEGOTIATIONS AGREEMENT

LIST OF ATTACHMENTS

ATTACHMENT 1	Site Description
ATTACHMENT 2	Schedule of Performance
ATTACHMENT 3	Form of Predevelopment Loan Assignment, Assumption and Release Agreement
ATTACHMENT 4	Form of Option to Ground Lease
ATTACHMENT 5	Insurance Provisions

ATTACHMENT 1

Site Description

The Site is composed to two separate parcels of land within Phase 1 of the Hunters Point Shipyard Redevelopment Project Area, depicted in the attached drawings.

ATTACHMENT 2

Agreement Schedule of Performance

No.	Task	Deadline	Completed
1.	Obtain OCII approval of an updated cost estimate based on the Design Development Documents. Work with OCII, general contractor to determine if additional value engineering is necessary.	6/1/2021	
2.	Submit an updated financing plan acceptable to OCII.	7/1/2021	
3.	Execution of Option to Enter into Ground Lease for CDLAC Application	2/4/2022	
4.	Execution of Ground Lease Agreement.	5/1/2022	

ATTACHMENT 3

Form of Predevelopment Loan Assignment, Assumption and Release Agreement

**ASSIGNMENT AND ASSUMPTION OF
PREDEVELOPMENT LOAN DOCUMENTS AND WORK PRODUCT**

THIS ASSIGNMENT AND ASSUMPTION OF PREDEVELOPMENT LOAN DOCUMENTS AND WORK PRODUCT (this “Assignment and Assumption”), is made as of this ___ day of _____, 2021, by and among SHIPYARD 5254, L.P., a California limited partnership having an address at 720 Olive Street, Suite 2500, St. Louis, MO 63101 (the “Assignor”), [NEW DEVELOPMENT ENTITY], a [STATE] [ENTITY] having an address at [ADDRESS] (the “Assignee”), and the OFFICE OF COMMUNITY INVESTMENTS AND INFRASTRUCTURE, AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic having an address at One S. Van Ness Avenue, 5th Floor, San Francisco, CA 94013 (“OCII”).

WITNESSETH

WHEREAS, as of August 8, 2018, Assignor and OCII entered into to that certain Loan Agreement (the “Predevelopment Loan Agreement”) with respect to a loan from OCII to Assignor in the original principal amount of \$4,000,000 (the “Predevelopment Loan”)for purposes of funding certain predevelopment activities related to the development of Hunters Point Blocks 52 and 54 (the “Project”); and

WHEREAS, as of August 8, 2018, Assignor executed that certain Promissory Note in the amount of \$4,000,000 (the “Note”) in favor of OCII with respect to the Predevelopment Loan; and

WHEREAS, as of August 8, 2018, the Assignor and OCII entered into that certain Assignment of Work Product (the “Assignment” and, collectively with the Predevelopment Loan Agreement, the Note, the Assignment, and any and all other documents evidencing or securing the Predevelopment Loan, the “Predevelopment Loan Documents”) assigning to OCII a collateral interest in all of Assignor’s right, title and interest in the architect’s agreement entered into by the Assignor with respect to the Project, the plans and specifications produced with respect to the Project (and any and all amendments, modifications, supplements and general conditions thereto), and certain other items described in more detail in Exhibit A attached hereto and incorporated herein (collectively, the “Work Product”); and

WHEREAS, Assignor and OCII entered into that certain Exclusive Negotiations Agreement dated as of August 8, 2018 (the “Exclusive Negotiations Agreement”) with respect to the negotiation of an option to lease and a ground lease at the site of the Project, which Exclusive Negotiations Agreement has terminated; and

WHEREAS, in light of the termination of the Exclusive Negotiations Agreement, the Assignor wishes to assign to Assignee all of Assignor’s rights, duties and obligations under the Predevelopment Loan Documents and all of Assignor’s rights, title and interest in and to the Work Product; the Assignee wishes to assume from the Assignor all of the Assignor’s rights, duties and obligations under the Predevelopment Loan Documents and all of Assignor’s rights, title and interest in and to the Work Product;; and OCII wishes to consent and agree to the assignment and

assumption of the Predevelopment Loan Documents and the Work Product from Assignor to Assignee pursuant to the provisions of this Assignment and Assumption.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements herein contained, the Assignor, the Assignee, and OCII hereby agree as follows:

1. The foregoing recitals set forth above are made part of this Assignment and Assumption.
2. OCII hereby consents to the assignment of the Predevelopment Loan Documents and the Work Product to Assignee, the assumption by the Assignee of the obligations thereunder.
3. Assignor does hereby irrevocably assign and transfer to Assignee all of Assignor's rights, title and interests to the Predevelopment Loan Documents and the Work Product.
4. Assignee hereby accepts the foregoing assignment of Assignor's rights, title and interests to the Predevelopment Loan Documents and the Work Product, and Assignee hereby assumes all obligations of the Assignor under the Predevelopment Loan Documents and with respect to the Work Product. In no event shall Assignee be held responsible or become liable for any defaults, violations or breaches of the Predevelopment Loan Documents which may have arisen or occurred on or before the date hereof.
5. Assignor, Assignee and OCII acknowledge and agree that as of the date hereof, Assignor shall have no further obligations or liability to either Assignee or OCII with respect to the Project.
6. This instrument may be executed in one or more counterparts, each of which shall constitute an original but which when taken together shall be deemed one instrument.
7. This Assignment and Assumption, and all rights and remedies of the parties, shall be determined as to their validity, construction, effect and enforcement, and in all other respects of the same or different nature, by the internal laws of the State of California.
8. This Assignment and Assumption embodies the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior agreements and memoranda.
9. The Predevelopment Loan Documents, each as amended hereby, are hereby ratified and confirmed by the Assignee and OCII, and all of the terms, provisions and conditions of the Predevelopment Loan Documents shall remain in full force and effect and shall continue to be binding upon and inure to the benefit of the parties hereto.

10. This Assignment and Assumption shall not be amended or modified in any way except by a writing executed by each of the Assignor, the Assignee and OCII.

11. Each capitalized term used, but not defined, herein shall have the same meaning assigned to such term in the Predevelopment Loan Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have set their hands and as of the day and year above written.

ASSIGNOR:

SHIPYARD 5254, L.P., a California limited partnership

By: MBS IGP, Inc., a Missouri corporation, its general partner

By: _____

Name: _____

Title: _____

[Signature Requires Acknowledgment.]

[Additional Signature Pages Follow.]

[SIGNATURE PAGE FOR ASSIGNMENT & ASSUMPTION OF PREDEVELOPMENT
LOAN DOCUMENTS AND WORK PRODUCT

ASSIGNEE:

[ENTITY]

By: _____
Name: _____
Title: _____

[Signature Requires Acknowledgment.]

[Additional Signature Page Follows.]

[SIGNATURE PAGE FOR ASSIGNMENT AND ASSUMPTION OF PREDEVELOPMENT
LOAN DOCUMENTS AND WORK PRODUCT

OCII:

**OFFICE OF COMMUNITY INVESTMENTS
AND INFRASTRUCTURE, AS SUCCESSOR
AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY AND COUNTY OF
SAN FRANCISCO**, a public body
corporate and politic

By: _____

Name: Sally Oerth

Title: Interim Executive Director

[Signature Requires Acknowledgment.]

ATTACHMENT 4

OPTION TO GROUND LEASE AGREEMENT

OPTION TO GROUND LEASE AGREEMENT

This Option to Ground Lease Agreement (the "**Agreement**") is entered into as of this ____ day of _____, 20____ ("**Effective Date**"), by and between 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 **Shipyard 5254, L.P.**, a California limited partnership, ("**Optionee**") and its permitted assignees hereunder, with reference to the following facts:

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 *et seq.* the "**CRL**"), the Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") undertook programs for the reconstruction and construction of blighted areas in the City and County of San Francisco ("City"), including the Hunters Point Shipyard ("**HPS**") Redevelopment Project.

B. Pursuant to California Health and Safety Code §§ 34170 *et seq.* (the "**Redevelopment Dissolution Law**") and San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission ("**Commission**") and delegating to it state authority under the Redevelopment Dissolution Law), the Successor Agency is responsible for implementing the HPS Redevelopment Project and fulfilling the enforceable obligations under the Hunters Point Shipyard Disposition and Development Agreement (the "**DDA**") between the Former Agency and HPS Development Co, L.P. (the "**Master Developer**") (Dec 2, 2003).

C. Under the DDA and its Affordable Housing Program, the Master Developer is required to deliver "finished lots" (i.e., subdivided land improved with streets, sidewalks, parks, open space and utilities) to be sold to various vertical developers or retained by OCII for the development of affordable housing. The DDA identifies the specific parcels that the Successor Agency intends to develop with affordable housing. OCII intends to provide financing to construct at least 218 affordable housing units on these parcels (the "**Agency Housing Parcels**").

D. OCII is the fee owner of the Agency Housing Parcels.

E. The Optionee is a limited partnership comprised of its general partners, _____, and _____, an affiliate of Bayview Hunters Point Multipurpose Senior Services, Inc. ("**BHPMSS**"), a California nonprofit public benefit corporation. The Optionee desires to develop the Property with approximately 112 multifamily units available to very low-income families, including certain ancillary uses ("**Project**") on that certain real property more particularly described in Exhibit A hereto ("**Property**").

F. The Optionee intends to develop the Project with 4% Low Income Housing Tax Credits, tax-exempt bonds, local funds, and other sources, as necessary.

G. In order to apply for Project financing, Optionee desires to obtain from OCII, and OCII desires to grant to Optionee, upon the specific terms and conditions set forth in this Agreement, the exclusive right and option to ground lease the Property.

Now, therefore, in consideration of recitals hereof and the mutual promises contained in this agreement, the parties agree as follows:

AGREEMENT

SECTION 1. Grant of Option. OCII grants to Optionee the option to ground lease the Property for the consideration and under the terms and conditions set forth in this Agreement (the "**Option**").

SECTION 2. Term of Option: Exercise.

a. Term and Extension of Term. The term of the Option shall be for a period commencing on the Effective Date and ending on 11:59 P.M. on March 15, 2022, unless earlier terminated in accordance with the provisions of this Agreement (the "**Initial Term**"). So long as the Optionee is not then in default under this Agreement or any other agreements with OCII, Optionee may request up to two extensions of the Initial Term, of up to six months each, by giving written notice, accompanied by payment of One Dollar (\$1.00) (the "**Extension Payment**"), to OCII, at any time prior to the expiration of the Initial Term. The extension is subject to the approval of the OCII Executive Director. Any such approved extension shall commence on 12:01 A.M. on the day immediately following the expiration of the Initial Term and shall end no later than 11:59 P.M. on March 15, 2022 for the first extension and no later than 11:59 P.M. on March 15, 2023 for the second extension. The Initial Term, plus any extension, is referred to herein as the "**Term**". During the Term, Optionee and OCII staff agree to negotiate in good faith to complete all of the terms and conditions of a ground lease of the Property from OCII to Optionee consistent with this Agreement (upon completion of such negotiations, the "**Ground Lease**"). The final terms of the Ground Lease must be agreed to by Optionee and OCII, and approved by the Commission, before Optionee's exercise of the Option.

b. Exercise of Option. At any time following approval of the Ground Lease by the Commission and before the expiration of the Term, so long as the Optionee is not then in default under this agreement or any other agreements with OCII, Optionee may exercise the Option by giving written notice to OCII (the "**Option Notice**").

c. Expiration. The Agreement shall automatically expire, and be of no further force or effect, upon the effective date of the Ground Lease. If the expiration date of the Term falls on a Saturday, Sunday or legal holiday in the State of California, then the expiration date shall be extended to 11:59 P.M. on the immediately following business day. Upon termination of the Option and a written request by OCII, Optionee shall sign and deliver a quitclaim deed or such other document as may be reasonably required by OCII to evidence the termination of the Option.

SECTION 3. Option Consideration. The Option is granted in consideration of Optionee's obligation to negotiate in good faith for the Ground Lease and for the advancement of the Project. The Option consideration is related to the Option only and in no way relates to Ground Lease payments that will be owed to OCII. In addition, concurrently with the execution of this Agreement, Optionee shall pay and deliver to OCII \$100 as separate and independent consideration ("**Independent Consideration**") for OCII's execution of this Agreement. The Independent Consideration is non-refundable to Optionee in the event this Agreement terminates prior to Optionee's execution of the Option.

SECTION 4. Ground Lease of the Project Property. OCII staff shall prepare the initial form of ground lease substantially in the form used by OCII for projects in which OCII is the fee owner of a particular property that will be developed for affordable housing. The Ground Lease shall be in accordance with the following:

a. Term of Ground Lease. The Ground Lease shall become effective immediately following the full execution by the parties and shall end between fifty-five and seventy-five (75) years from the date of construction completion of the Project (as determined by the parties during negotiation of the ground lease term), provided that the tenant shall have an option to extend the term for an additional period that, in aggregate, does not exceed a total of ninety nine (99) years, for no additional consideration (but rent shall continue during any extended term as set forth below).

b. Taxes and Assessments. The tenant shall be responsible for the payment of any and all property taxes and assessments levied against the leasehold estate and the Property during the entire term of the Ground Lease subject to any abatement available therefrom.

c. Project Use. The Property shall be used during the term of the Ground Lease only for affordable housing, specifically the construction, operation, maintenance and repair or reconstruction of a multifamily residential development with approximately 112 units available to extremely low income and low-income households as well as certain ancillary uses. The maximum rent and income levels shall be set at no greater than 60% of area median income, defined as the area median income as determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area. If required by the Project's tax credit investor based on the Project's residual analysis test, and if approved by the OCII Executive Director in his or her reasonable discretion, the Ground Lease may permit increases in the maximum rent and income levels after the 55th year of the Ground Lease term, but such increases shall be limited only to the extent necessary to satisfy the tax credit investor's residual analysis test.

d. Rent. The tenant shall pay the landlord annual rent in the amount of ten percent (10%) of the land value of the Property (as determined by a MAI appraiser selected by, and at the sole cost of, the tenant, and set in the Ground Lease), consisting of \$15,000 in base rent and the remainder in residual rent. The residual rent shall be payable only to the extent proceeds are available from the Project. The annual rent shall be adjusted on the fifteenth (15th) anniversary of the expiration of the first full calendar year of the lease term, and

every fifteen (15) years thereafter, and shall be equal to ten percent (10%) of then appraised value of the land as determined by a MAI appraiser selected by, and at the sole cost of, the tenant. Any such adjustment shall be made to the residual rent and not the base rent. If required by the Project's tax credit investor based on the Project's residual analysis test, and if approved by the MOHCD Director in his or her reasonable discretion, residual rent shall only be payable after full repayment of any residual-receipts loan provided by OCII.

e. Construction and Operation of the Project. The tenant shall be responsible, at its sole cost, for construction, operation, and maintenance of the Project during the Ground Lease term.

f. Title to the Property. The Ground Lease shall provide that OCII will own fee title to the land comprising the Property, and the Optionee will own fee title to all improvements constructed or otherwise located on the land, during the Ground Lease term.

g. Disposition of Improvements at End of Lease. At the end of the Ground Lease term, fee title to all the improvements shall vest in OCII without further action of any party, without any obligation by OCII to pay any compensation therefor to the tenant and without the necessity of a deed from the tenant to OCII.

h. Mortgagee Protections. The Ground Lease shall include standard mortgagee protection provisions.

i. Defaults; Right to Cure. OCII will provide any notice of any defaults under the Ground Lease to the tenant's limited partners and lenders, and allow any such parties the right to cure a default by the tenant under the Ground Lease. Pursuant to the terms of the Ground Lease, OCII shall not be entitled to terminate the Ground Lease following any uncured default by the tenant during the fifteen (15) year tax credit compliance period for the Project, except if such default is failure to pay rent.

j. Encumbrances. The Ground Lease will permit the tenant to encumber its leasehold interest in the Property to secure any loans deemed necessary by the tenant, as approved by OCII. Any funds from a loan secured by the Property must be used in or on the Property.

SECTION 5. Closing.

a. Expenses. All expenses, fees or costs (except attorneys' fees and costs) incurred in connection with the Ground Lease of the Property, including but not limited to city and county documentary transfer tax, conveyance taxes, recording charges (if any), and costs of title insurance shall be borne by the Optionee. Each party shall bear its own attorneys' fees and costs incurred in connection with negotiation and execution of this Agreement and the Ground Lease.

b. Proration of Taxes. Real property taxes on the Property shall be prorated as of the date of closing of the Ground Lease.

c. Title Insurance. The closing of the Ground Lease shall be conditioned on the issuance to the tenant of an ALTA leasehold policy of title insurance, from a title company chosen by the tenant, insuring the tenant's leasehold interest in the Property subject only to reasonable exceptions approved by the tenant.

SECTION 6. Notices. All notices or other communications made pursuant to this Agreement shall be in writing and shall be deemed properly delivered, given or served to the parties at the following addresses when (i) mailed by certified mail, postage prepaid, return receipt requested; (ii) sent by express delivery service, charges prepaid with a delivery receipt; or (iii) personally delivered when a delivery receipt is obtained:

OCII: Office of Community Investment and Infrastructure
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Executive Director

OCII General Counsel: Office of Community Investment and Infrastructure
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: James B. Morales

Optionee: HPSY 52-54, LP
c/o Jonathan Rose Companies.
551 5th Ave.
New York, NY 10167
Attn: Yusef Freeman

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

With a copy to:
Klein Hornig
101 Arch Street, Suite 1101
Boston, MA 02110
Attn: Daniel Rosen

All notices so delivered, mailed or sent shall be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the notice was returned as undeliverable. Either party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other party in the manner provided in this Section 6. Any notice required under this Agreement that is sent by a Party shall be sent to, or contemporaneously copied to, all of the other Parties.

SECTION 7. Assignment of Option. Without the prior written consent of OCII, Optionee may assign its rights and obligations under this Agreement to any limited liability company in which Optionee, or its corporate affiliate is the managing general partner, or a limited partnership in which Optionee or its corporate affiliate is a general partner. All other transfers by Optionee shall require the prior written consent of OCII in its sole discretion.

SECTION 8. Binding Effect. This Agreement and its terms and conditions shall bind upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

SECTION 9. Time. Time is of the essence of this Agreement.

SECTION 10. Further Documents. Upon the reasonable request of the other party, each party will execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such further instruments and documents as may be reasonably necessary in order to carry out the intent and purpose of this Agreement, including escrow instructions.

SECTION 11. Commission. Each party to this Agreement represents to the other party that it has not engaged or used the services of any person, firm or corporation that may claim a broker's commission or finder's fee upon execution of this Agreement or the Ground Lease, and each party to this Agreement agrees to hold the other party harmless from any loss, damage, expense or liability, including attorney's fees, resulting from any claim by any person, firm or corporation based upon its having acted as broker or finder on behalf of said indemnifying party.

SECTION 12. Captions. The captions of the paragraphs of this Agreement are for convenience and reference only, and the words contained in the captions shall in no way be held to explain, modify, amplify or aid in the interpretations, constructions or meaning of the provisions of this Agreement.

SECTION 13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

SECTION 14. Entire Agreement; Signatures. This Agreement contains the entire agreement between the parties respecting the matters set forth, and supersedes all prior agreements between the parties respecting the matters set forth.

SECTION 15. Attorneys' Fees. In any action between Optionee and OCII to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover costs of suit and expenses including, without limitation, reasonable attorneys' fees.

SECTION 16. Effective Date. Notwithstanding anything to the contrary contained herein, this Agreement shall not be effective until the date on which the Commission

enacts a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

IN WITNESS WHEREOF, Optionee and OCII have executed this Agreement as of the date first written above.

OCII:

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

By: _____

Sally Oerth
Interim Executive Director

OPTIONEE:

HPSY 52-54, LP, a California limited partnership

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

By: JRC FC Holdings, LLC, a Delaware limited
liability company, its sole member

By: _____

APPROVED AS TO FORM:

James B. Morales
Agency General Counsel

By: _____

Aaron J. Foxworthy
Deputy General Counsel

EXHIBIT A

Property Description

Real property in the City and County of San Francisco, State of California, described as follows:

[To be inserted]

EXHIBIT B-2

Site Plan

ATTACHMENT 5

Insurance Provisions

ATTACHMENT 5
Insurance Provisions

Subject to approval by the OCII Risk Manager of the insurers and policy forms, Developer must obtain and maintain, or caused to be maintained, insurance as set forth in this Attachment 5 throughout the Compliance Term of this Agreement, or in accordance with the timeframes stated herein, at no expense to OCII. If and when the Developer and OCII enter into a gap loan agreement or other agreements authorizing or funding the construction of the Project, OCII will adjust these insurance requirements to reflect the risks associated with construction-related activities.

A. Overview of Coverage Requirements. The following table summarizes required insurance policies and documentation. Please see Section B of this Attachment 5 for more detailed descriptions of policy requirements.

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Commercial General Liability (see Section B.1)	\$1,000,000 per occurrence/ \$2,000,000 aggregate	Developer and Developer's contractors	Additional insured (see Section G)
Automobile Liability (see Section B.2)	\$1,000,000 per occurrence	Developer and Developer's contractors	Additional insured (see Section G)
Worker's Compensation and Employer's Liability (see Section B.3)	As per statute for Workers Comp; \$1,000,000 per accident; \$1,000,000 per employee; and in aggregate for bodily injury by disease as respects Employers Liability	Developer and Developer's contractors	Waiver of subrogation
Professional Liability (see Section B.4)	\$2,000,000 per claim/ \$2,000,000 aggregate	Developer if engaged in any eligible design-related activities; and Developer's design and professional contractors	None
Crime/Dishonesty (see Section B.5)	\$1,000,000 per loss	Developer	Loss payee endorsement

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

- 1) Commercial General Liability coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by OCII, with additional insured endorsement (see Section G). Before the start of demolition/construction if the Site is unoccupied, Developer and Developer's Contractors will maintain coverage of not less than One Million Dollars

(\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit. Umbrella or Excess Liability Policy may be used to meet the terms of this section. Developer should note that the General Liability coverage described herein is applicable only during the predevelopment phase and that OCII will require increased coverage for the Developer and construction contractors during the construction period.

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

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

- 5) Crime Policy or Fidelity Bond covering Developer and Developer's officers and employees against dishonesty with respect to the Funding Amount. One Million Dollars (\$1,000,000) each loss, with any deductible not to exceed Ten Thousand Dollars (\$10,000). Developer must provide an endorsement naming OCII as an additional obligee or loss payee.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of those required for policies stated herein must be declared to and approved by OCII. At the option of OCII,

either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Developer shall provide a financial guarantee satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- D. Umbrella or Excess Liability Policies. An Umbrella and/or Excess Liability policy(ies) may be used to reach the Commercial General Liability, Workers' Compensation, and/or Automobile Liability coverage limits required herein. The Umbrella/Excess Liability/OCIP policy(ies) must appropriately schedule any such underlying policy(ies).
- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise approved by OCII's Risk Manager.
- F. General Requirements.
- 1) If the Developer maintains additional coverages and/or higher limits than the minimums shown in this Attachment 5, OCII requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Developer.
 - 2) The policies required herein, with the exception of Professional Liability and Workers Compensation, shall be primary insurance and non-contributory as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Developer's insurance and shall not contribute with it.
 - 3) Each insurance policy required herein must be endorsed (if endorsement is available) to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by mail has been given to OCII. Should the insurance carrier not be able to provide such notice, then the responsibility to provide the notice to OCII shall be borne by the policyholder.
 - 4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
 - 5) Approval of Developer's insurance by OCII will not relieve or decrease the liability of Developer under this Agreement.
 - 6) OCII and its officers, agents and employees will not be liable for any required premium under any policy maintained by Developer.
 - 7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after the Compliance Term for general liability insurance.
- G. Verification of Coverage. Developer must furnish OCII with certificates of insurance and original endorsements evidencing coverage required by this clause. The certificates and applicable endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by OCII

before work commences. OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time. Developer shall require and verify that its contractors and consultants maintain the required policies as stated herein. Developer must furnish OCII with copies of certificates and endorsements upon request. All certificates shall include the following:

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

H. Review. OCII reserves the right to modify the insurance coverage under this Section, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances consistent with OCII’s Risk Management Policy. The insurance coverage required under this Section shall be evaluated by OCII for adequacy from time to time. OCII may require Developer to increase the insurance limits and/or forms of coverage in its reasonable discretion provided that such limits and/or coverage is generally available at commercially reasonable rates.

**AMENDED AND RESTATED
LOAN AGREEMENT**

By and Between

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

a public body organized and existing under the laws of the State of California

and

HPSY 52-54, LP, a California Limited Partnership

for

351 Friedell Street and 151 Friedell Street
(Hunters Point Shipyard Phase 1 Blocks 52 and 54)
\$3,650,000

Originally dated as of August 7, 2018
Amended and Restated as of **April 6, 2021**

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LOAN AGREEMENT
351 Friedell Street and 151 Friedell Street
(Hunters Point Shipyard Phase 1 Blocks 52 and 54)
Hunters Point Shipyard Redevelopment Project Area

THIS AMENDED AND RESTATED LOAN AGREEMENT ("Agreement") is amended and restated as of April 6, 2021 by and between 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, hereafter referred to as the Office of Community Investment and Infrastructure ("**OCII**"), and HPSY 52-54, LP, a California limited partnership (the "**Borrower**"), whose general partner is Rose HPSY 52-54 GP, LLC, a Delaware limited partnership, an affiliate of Jonathan Rose Companies ("**JRC**"), and Bayview Hunters Point Multipurpose Senior Services, Inc. ("**BHPMSS**"), a California nonprofit public benefit corporation, and their authorized successors and assigns.

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 *et seq.* the "**CRL**"), the Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") undertook programs for the reconstruction and construction of blighted areas in the City and County of San Francisco ("**City**"), including the Hunters Point Shipyard ("**HPS**") Redevelopment Project.

B. Pursuant to California Health and Safety Code §§ 34170 *et seq.* (the "**Redevelopment Dissolution Law**") and San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission ("**Commission**") and delegating to it state authority under the Redevelopment Dissolution Law), the Successor Agency is responsible for implementing the HPS Redevelopment Project and fulfilling the enforceable obligations under the Hunters Point Shipyard Disposition and Development Agreement (the "**DDA**") between the Former Agency and HPS Development Co, LP (the "**Master Developer**") (Dec 2, 2003).

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

D. On June 15, 2018, the Citywide Affordable Housing Loan Committee (the "**Loan Committee**") reviewed OCII staff's evaluation of the request for funding and recommended that OCII provide Borrower with a predevelopment loan of funds subject to certain terms and conditions that are included in this Agreement.

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

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

G. On or about February 17, 2020, the exclusive negotiations agreement between OCII and the Prior Borrower expired according to its terms and the Prior Borrower is no longer proceeding with the development of the Project. As of the date of this Agreement, OCII disbursed One Million Nine Hundred and Fourteen Thousand Two Hundred Twenty Seven and 02/100 Dollars (\$1,914,227.02) under the Original Loan Agreement, of which Prior Borrower used One Million Five Hundred Sixty-Four Thousand Two Hundred Twenty-Seven and 02/100 (\$1,564,227.02) to create the Work Product (as that term is defined in the Original Loan Agreement) existing as of the date of this Agreement (referred to herein as the "**Existing Work Product**"), and paid to itself or its affiliate the remaining Three Hundred and Fifty Thousand Dollars (\$350,000) as a partial Developer Fee.

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

I. On March 16, 2021, by Resolution No. XX-2021, the Commission (1) approved the selection of Borrower as the replacement lead developer for the Project, (2) authorized OCII to, by execution of this Agreement, provide a loan to Borrower ("**Loan**") in the amount of Three Million Six Hundred Fifty Thousand Dollars (\$3,650,000) (the "**Funding Amount**"), reflecting the sum of (1) the cost of the Existing Work Product (One Million Nine Hundred and Fourteen Thousand Two Hundred Twenty Seven and 02/100 Dollars (\$1,914,227.02, the "**Original Funding Amount**") and (2) the remaining predevelopment loan funding initially approved for the Project (Two Million Eighty Five Thousand Seven Hundred Seventy Two and 98/100 Dollars (\$2,085,772.98.00 the "**Remaining Funding Amount**")) to fund predevelopment costs of the Project, and (3) authorized OCII to enter into a new exclusive negotiations agreement with Borrower for the Project ("**ENA**").

J. In accordance with an Assignment, Assumption and Release Agreement among OCII, Prior Borrower and Borrower of even date herewith (the "**Assignment Agreement**"), Prior Borrower has assigned to Borrower all rights of ownership of the Existing Work Product,

Borrower has assumed all rights and obligations of "Borrower" as that term is defined in the Original Loan Agreement, and OCII and Borrower have released Shipyard 5254, L.P. of any further obligations under the Original Loan Agreement.

K. Accordingly, Borrower and OCII now wish to enter into this Amended and Restated Loan Agreement to establish the terms and conditions upon which the Loan is to be made.

L. Under Redevelopment Dissolution Law, OCII must transfer completed affordable housing assets to MOHCD, as the Housing Successor designated under Board of Supervisors Resolution No. 11-12 (January 26, 2012) and Section 34176 of the California Health and Safety Code. If and when Borrower completes the Project and upon permanent financial conversion, OCII intends to transfer the affordable housing loan obligation, asset, and ground lease to MOHCD.

M. Borrower shall use the Remaining Funding Amount to pay for Predevelopment Activities associated with development of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree that the Original Loan Agreement is amended, restated and replaced in its entirety by this Agreement, and the parties further 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.

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

"**Agreement Date**" means the date written in the first paragraph hereof.

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

"**Borrower**" means HPSY 52-54, LP, 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, 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.

"**Commission**" has the meaning set forth in Recital B.

"**Construction/Permanent Loan**" has the meaning set forth in Section 3.2.

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

"**Developer**" means Rose Community Development Company, LLC, or another affiliated entity designated as Developer by JRC.

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

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

"**ENA**" has the meaning set forth in Recital F.

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

"**Environmental Laws**" means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" law)

(42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. §§ 6901 *et seq.*); the National Environmental Policy Act of 1969 ("NEPA") (24 CFR §§ 92 and 24 CFR §§ 58); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the "California Superfund" law) (Cal. Health & Safety Code §§ 25300 *et seq.*); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (Cal. Health & Safety Code §§ 25249.2 *et seq.*); and Sections 25117 and 25140 of the California Health & Safety Code.

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

"Existing Work Product" has the meaning set forth in Recital G.

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

"Funding Amount" has the meaning set forth in Recital I.

"Funds" has the meaning set forth in Section 2.2.

"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.

"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.

"Indemnity" shall have the meaning set forth in Article 23.

"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 given in Recital F hereof.

"Loan Closing" means the date on which all conditions to closing of the loan under Section 4.3 have been met and Borrower.

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

"Loss" or "Losses" includes any loss, liability, claims, damages, costs, expenses or charges, including reasonable attorneys' fees and costs, arising from all acts or omissions of Borrower or its officers, agents, or employees in rendering services under this Agreement.

"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, but not high housing cost area.

"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, commonly known as the Office of Community Investment and Infrastructure.

"OCII Documents" means this Agreement, the Note, 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.

"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.

"Original Funding Amount" is defined in Recital I.

"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.

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

"Public Benefit Purposes" means activities or programs that primarily benefit low-income persons, are implemented by one or more nonprofit 501(c)3 public benefit organizations, or have been identified by OCII, a City agency or a community planning process as a priority need in the neighborhood in which the Project is located.

"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.

"Remaining Funding Amount" is defined in Recital I.

"Schedule of Performance" means the schedule attached hereto as Exhibit L that sets forth Project tasks and milestones and the contractual deadlines 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.

"Table" or **"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 Remaining Funding Amount, which table may not be adjusted without OCII's prior written approval.

"Tenant" means any residential household in the Project.

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

"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.

ARTICLE 2 FUNDING. [revise in accordance with recital]

2.1 Funding Amount. The Funding Amount to be lent under this Agreement is the sum of (a) the Original Funding Amount (being the cost of the Existing Work Product assigned to Borrower (One Million Nine Hundred and Fourteen Thousand Two Hundred Twenty Seven and 02/100 Dollars) and (b) the Remaining Funding Amount (Two Million Eighty Five Thousand Seven Hundred Seventy Two and 98/100 Dollars (\$2,085,772.98.00)). In addition to consenting to Borrower's ownership (subject to this Agreement) of the Existing Work Product, OCII agrees to lend to Borrower the Remaining Funding Amount, a maximum principal amount of Two Million Eighty Five Thousand Seven Hundred Seventy Two and 98/100 Dollars (\$2,085,772.98.00), to Borrower to finance predevelopment costs associated with the Project and described in Exhibit B-1 ("**Predevelopment Activities**"). The Remaining 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 OCII's agreement to make the Loan is based in part on Borrower's agreement to use the all portions of the Remaining Funding Amount disbursed or to be disbursed to Borrower (the "**Funds**") solely to finance Predevelopment Activities 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 beginning March 1, 2021 that are consistent with Exhibit B-1 are reimbursable to Borrower. Such expenses are subject to all conditions of an Expenditure Request, including review and approval by OCII in accordance with the terms of this Agreement. Borrower shall use the OCII contract compliance requirements for procurement activities, as further set forth in Exhibit E 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 OCII upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures from each Account authorized under this Agreement or by OCII in writing and keep all estimates, invoices, receipts and other documents related to expenditures from each Account. In addition, Borrower must provide to OCII promptly following Borrower's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all funds (including accrued interest) in each Account have been disbursed for eligible uses.

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

ARTICLE 3 TERMS.

Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Note, which will govern in the event of any conflicting provision in this Agreement.

3.1 Maturity Date. Borrower must repay all amounts owing under the OCII Documents on the date that is the earliest to occur of: (i) the close of construction financing for the Project, or (ii) the date the Borrower and OCII execute a permanent loan agreement that incorporates the Funding Amount and all accrued interest, or (iii) three (3) years from the Agreement Date (the "**Maturity Date**"). Notwithstanding the foregoing, if Borrower's failure to close the construction financing by the Maturity Date is not caused by Borrower's acts or omissions, whether direct or indirect, and if Borrower has acted in good faith and no event has occurred and is continuing that constitutes or with the passage of time would constitute, an Event of Default under any of the OCII Documents, then in such an event, Borrower shall deliver to OCII all of the Work Product, the Note shall be deemed satisfied in full and Borrower shall be deemed to be released from all obligation or liability with respect to this Agreement and the Loan.

3.2 Construction/Permanent Loan. If (i) additional financing for the Project from OCII in the form of a construction and permanent loan is subsequently approved by OCII Commission (the "**Construction/Permanent Loan**"), (ii) forms of Construction and Permanent Loan documents are executed by OCII and the Borrower, and (iii) all or any portion of the Construction/Permanent Loan is funded; then (a) this Agreement shall be terminated; (b) the Note shall be cancelled, and (c) the outstanding balance of this Loan, including all accrued interest, shall be combined with the Construction/Permanent Loan for purposes of repayment and thereafter shall bear interest and be repaid in accordance with the terms of the Construction/Permanent Loan.

3.3 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. If a construction/permanent loan for the Project from OCII is subsequently approved by the Commission, the parties acknowledge that the Borrower may request and OCII may approve a reduced interest rate in order to maintain Project feasibility.

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 Repayment of Principal and Interest. Subject to Section 3.1 above, the outstanding principal balance of the Loan will be due and payable on the Maturity Date according to the terms set forth in full in the Note.

3.6 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 of all activities associated with the Project, 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 significant changes 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 and uses shall be acceptable to the OCII in its reasonable discretion..

3.7 Additional OCII Approvals. 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 be granted any required approvals from the Commission, or 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. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

3.8 Additional Borrower Covenants. There are no borrower covenants in addition to those specified in 4.5 Disbursements.

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 Remaining 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. The disbursement schedule may be revised at the request of the Borrower, subject to the written approval of the OCII Executive Director prior to the Loan Closing if needed to ensure the repayment of the Loan complies with applicable financing requirements.

4.2 Closing. In the event Borrower does not satisfy all of the conditions to closing the Loan within a reasonable time, as determined by the OCII in its sole discretion, OCII may declare this Agreement to be null and void.

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

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

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

(c) Borrower must have delivered to OCII insurance certificates prior to closing and endorsements within 90 days post closing and before starting work, in addition to, if requested by OCII, copies of policies for all insurance required under Exhibit F of this Agreement.

4.4 Intentionally Omitted.

4.5 Disbursements. OCII's obligation to approve any expenditure of Funds after Loan Closing is subject to Borrower's satisfaction of the following conditions precedent.

(a) 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: (1) 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 Remaining Funding Amount in the aggregate may be made with the express written approval of OCII's Housing Manager; and (2) 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 Remaining Funding Amount may be made only with the express written approval of the OCII Executive Director. Reallocations of Funds from contingency line items to other line items shall not require the consent of OCII.

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

(c) With respect to any Expenditure Request that covers 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.

4.6 Schedule of Performance. From the initial disbursement of loan proceeds under this Agreement, Borrower must proceed expeditiously to achieve the milestones established in the Schedule of Performance (Exhibit L) by their respective contractual deadlines and may not suspend work on Predevelopment Activities without prior approval of OCII (except as provided in section 19.3). 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 and shall require amendment thereto. The OCII Executive Director may amend the Schedule of Performance (in his/her sole discretion) to allow the time of performance to be extended for up to six (6) months from the contractual deadline set forth in the Schedule of Performance. Any amendments to the Schedule of Performance allowing for extensions of performance beyond said six (6) month period will require approval of the Agency Commission. Notwithstanding the foregoing, in the event the Borrower applies for CDLAC and/or TCAC financing in accordance with the contractual deadlines provided in the Schedule of Performance, but is not awarded financing by CDLAC and/or TCAC, the contractual deadlines applicable to items 15 and 16 in the Schedule of Performance shall automatically be extended to allow Borrower to reapply for up to two consecutive additional cycles of CDLAC/TCAC financing immediately following the cycle initially applied for, and Borrower and OCII shall reasonably extend remaining Schedule of Performance contractual deadlines accordingly.

4.7 Additional Terms and Conditions. During the predevelopment period and as described below, Borrower shall comply with the following loan conditions based on OCII's requirements and the Loan Committee's recommendations in reviewing and approving the Project's Loan Evaluation on June 15, 2018.

- (i) Intentionally Omitted
- (ii) Borrower will provide an analysis of potential sources and strategies and provide a revised recommended financing plan within ninety (90) days of the date of this Agreement.

- (iii) Borrower will work with OCII and MOHCD to evaluate costs and propose cost containment strategies throughout the design phase of the Project.
- (iv) Borrower will refine the services plan and budget and provide an updated preliminary plan and budget consistent with the original RFP response and anticipated resident needs to OCII staff within ninety (90) days of the date of this Agreement..
- (v) [Intentionally Omitted].
- (vi) .[Intentionally Omitted]
- (vii) . [Intentionally Omitted]
- (viii) Borrower will conduct ongoing outreach to the Hunters Point Shipyard community to solicit input, address concerns, and educate community members on various aspects of the project.
- (ix) Borrower will continue to utilize the services of the architect, general contractor, and other SBE consultants hired by Shipyard 5254, L.P. and shall inform and cooperate with OCII to effectuate a change in the team’s makeup should a change be necessary. Borrower will obtain cost estimates from the selected contractor, and will work with their architectural team to ensure that the site’s development costs are managed to OCII’s approval. Furthermore, Borrower shall cooperate with OCII and continue to require the general contractor to exercise good faith efforts to select subcontractors who either are SBEs or, if they are not SBEs, are willing to create joint ventures or similar partnership opportunities with SBEs.

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 Remaining Funding Amount unless approved Expenditure Requests support disbursement of the full Remaining Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Borrower under this Agreement exceed the Remaining Funding Amount.

ARTICLE 5 INTENTIONALLY OMITTED

ARTICLE 6 INTENTIONALLY OMITTED

ARTICLE 7 INTENTIONALLY OMITTED

ARTICLE 8 INTENTIONALLY OMITTED

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 design, construction, rehabilitation and/or operation of the Project, including without limitation the requirements of the CRL, Redevelopment Dissolution Law, Redevelopment Plan, OCII Policies, 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 ensure that Borrower complies with all terms and conditions in this Agreement and all Laws. Borrower must cooperate with the monitoring by OCII and ensure full access to the Project (following Borrower's acquisition of a ground leasehold interest in 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.

10.2 Monthly Reporting. Commencing on the Agreement 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 until the Project has finalized its Form 8609.

10.3 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.

10.4 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 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.

10.5 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 any OCII Document, Borrower agrees that duly authorized representatives of OCII (which shall include 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 10.6.

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

ARTICLE 11 INTENTIONALLY OMITTED.

ARTICLE 12 INTENTIONALLY OMITTED.

ARTICLE 13 INTENTIONALLY OMITTED.

ARTICLE 14 INTENTIONALLY OMITTED.

ARTICLE 15 DEVELOPER FEES.

15.1 Amount. OCII has approved the payment of cash fees in an amount not to exceed Two Million Fifteen Thousand and No/100 Dollars (\$2,015,000.00), to be distributed to Developer for the development activities of the Project (“Developer Fees”). If approved by Loan Committee and Commission, this Developer Fee may be adjusted at the time of the execution of a permanent loan agreement for the Project to be consistent with MOHCD policy and to maximize leveraged sources for the Project. The cash amount available for the predevelopment period shall not exceed One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). All Developer Fees will be paid in accordance with the Developer Fee Schedule attached hereto as Exhibit N. The parties acknowledge that the fee and equity amounts may be updated in connection with any gap financing provided by OCII.

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; (b) transfers of a general partnership interest between or among wholly-owned affiliates of JRC; or (c) removal of a general partner of Borrower in accordance with the terms of Borrower's limited partnership agreement. Any other transfer, assignment, encumbrance or lease without OCII's prior written consent, which shall be made by the Executive Director in her sole discretion, 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 OCII's Deputy Director for Finance and Administration of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in Exhibit F throughout the term of this Agreement at no expense to OCII.

ARTICLE 18 GOVERNMENTAL APPROVALS.

18.1 Compliance. Borrower covenants that it has obtained or will obtain in a timely manner and comply with all federal, state and local governmental approvals required by Law to be obtained for the Project.

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) Borrower is in default of its obligations under the Schedule of Performance or suspends work on Predevelopment Activities without prior approval of OCII (except as permitted under Section 19.3) ; 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) Borrower is in default of its obligations with respect to the Ground Lease, once executed, or any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods; or

(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) intentionally omitted; 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, that has a material adverse impact on the Project that is not cured or addressed according to the time periods and conditions set forth in this Section 19.1(c); or

(m) intentionally omitted; or

(n) intentionally omitted; 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, including but not limited to the ENA, 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, in its sole discretion, 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 the following:

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

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

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

(h) OCII may acquire any Work Product as described in Section 24.21 of this Agreement.

19.3 Force Majeure. The occurrence of any of the following events shall excuse performance of any obligations of OCII or Borrower to the extent that the events cause enforced delays in the performance of a party's obligations under this Agreement: 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. For avoidance of doubt, environmental conditions of neighboring properties (including Phase 2 of the Hunters Point Shipyard Redevelopment Project), or litigation related to those conditions, existing as of the date of this Agreement shall not be considered conditions of Force Majeure for the purposes of this section.

ARTICLE 20 REPRESENTATIONS AND WARRANTIES

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

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

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

(c) No action, suit or proceeding is pending or, to the best of the Borrower's knowledge, 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) No Borrower, nor any of Borrower's principals or Borrower's contractors have been suspended or debarred by the Department of Industrial Relations or any Governmental Agency, nor has Borrower, any of its principals or its contractors 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.

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

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), by nationally recognized courier that obtains receipts, or by United States certified mail, postage prepaid, return receipt requested. Any notice sent by email will be accompanied by a written notice and email notices will not be effective unless accompanied by a written notice. 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

To OCII General Counsel: Office of Community Investment and Infrastructure
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Agency General Counsel
Email: james.morales@sfgov.org

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

To City Attorney's Office: Deputy City Attorney
San Francisco City Attorney's Office
City Hall, Rm. 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102-4682
Attn: Heidi J. Gewertz

To Borrower:

HPSY 52-54, LP, a California Limited Partnership
c/o Jonathan Rose Companies
551 Fifth Avenue, 23rd Floor
New York, NY 10176
Attention: Yusef Freeman
Email: yfreeman@rosecompanies.com

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

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.

ARTICLE 22 HAZARDOUS SUBSTANCES

22.1 Borrower's Representations. Intentionally omitted.

22.2 Covenant. Unless OCII otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, Borrower must: (a) comply with all applicable Environmental Laws relating to the Site and the Project, and not engage in or otherwise permit 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, promptly following the occurrence of any such event, notice of the discovery by Borrower of any event rendering any representation contained in this Section incorrect in any respect if made at the time of such discovery.

ARTICLE 23 INDEMNITY.

23.1 Borrower's Obligations. To the fullest extent permitted by law, Borrower shall hold harmless, defend at its own expense, and indemnify OCII, the City, and their respective commissioners, officers, agents and employees (individually or collectively, an "**Indemnitee**") against any and all Losses, of every kind, nature and description directly or indirectly arising out of, or connected with Borrower's obligations under this Agreement, except to the extent caused by the willful misconduct or the gross negligence of the Indemnitee or by an Environmental Activity of a person or entity not caused or permitted by Borrower. For purposes of this Article, Losses will include, but not be limited to: (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 Losses occurring on or in connection with Borrower's activities pursuant to this Agreement, whether caused by the negligence or any other act or omission of Borrower; (d) 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, the Predevelopment Activities or any transaction contemplated by, or the relationship between Borrower and OCII or Borrower and the City or any action or inaction by OCII or the City under, the OCII Documents; (e) the occurrence of any Environmental Activity caused or permitted by Borrower on the Site or any failure of the Borrower to comply with all applicable Environmental Laws relating to the Project or the Site; (f) the occurrence, after the termination of this Agreement, of any Environmental Activity resulting directly or indirectly from any Environmental Activity caused or permitted by Borrower occurring from the date of this Agreement until the termination of this Agreement; (g) 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 22.2; or (h) 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 -any Environmental Activity existing or occurring as of or prior to the date of this Agreement or for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, and upon written notice from Indemnitee, Borrower shall at its sole expense answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee. Each Indemnitee shall 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. For purposes of this Section, "Borrower" shall include Borrower, its officers, employees, agents, contractors and/or subcontractors. OCII and the Borrower acknowledge and agree that prior to the Agreement Date, Borrower has not caused or permitted any Environmental Activity on the Project or the Site.

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 Intentionally Omitted

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

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 Remaining 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 general partner or manager of Borrower 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.

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 and to the extent that the City Attorney's Office represents OCII or the City as the successor to this Agreement, the reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.

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

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

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

24.16 Binding Covenants. Following the recordation of the Memorandum of Ground Lease, the provisions of the OCII Documents constitute covenants running with the land and will be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title or interest in whatever form, including 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. Borrower must provide written notice of the replacement of: the manager, executive director, director of housing development, director of property management and/or any equivalent position of either member of the general partner or the manager of the general partner, within thirty (30) days after the effective date of such replacement.

24.20 Borrower's Board of Directors. Borrower or its managing general partner (or managing member of its managing 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 other documents or Publications, whether in digital or paper/other hardcopy form and without regard to location, 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 (including the Existing Work Product, the "**Work Product**"), is hereby pledged to OCII as security for Borrower's obligations under this Agreement and the Note, 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. Borrower shall ensure that its architects and engineers execute an assignment of work product generally in the form attached hereto as Exhibit P, prior to or concurrent with execution of this Agreement.

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 or any sub-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, whether in digital or paper/other hardcopy form, 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 sub-borrowers or 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.

24.24 Assignment. OCII and Borrower hereby acknowledge and agree that, effective upon the completion of the Project, as determined by OCII and MOHCD, all of OCII's rights, interests and obligations under this Agreement shall be assigned to MOHCD. OCII and Borrower hereby agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Section 24.24. Upon assignment to MOHCD, all references herein to OCII shall be deemed references to MOHCD.

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

EXHIBITS

- A Site Description
- B-1 Table of Sources and Uses of Funds
- B-2 Intentionally Omitted
- B-3 Intentionally Omitted
- C Intentionally Omitted
- D Intentionally Omitted
- E Contract Compliance Policies
- F Insurance Requirements
- G Lobbying/Debarment Certification Form
- H Intentionally Omitted
- I Intentionally Omitted
- J Intentionally Omitted
- K Intentionally Omitted
- 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 Promissory Note

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

OCII:

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

By: _____
Sally Oerth
Interim Executive Director

APPROVED AS TO FORM:

James B. Morales
OCII General Counsel

By: _____
Aaron J. Foxworthy
Deputy General Counsel

BORROWER:

HPSY 52-54, LP, a California limited partnership

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

By: JRC FC Holdings, LLC, a Delaware limited liability company, its sole member

By: _____

EXHIBIT A
Site Description

Real property in the City and County of San Francisco, State of California, described in the following drawings.

EXHIBIT B-1

Table of Sources and Uses of Funds

EXHIBIT B-2
Intentionally Omitted

EXHIBIT B-3
Intentionally Omitted

EXHIBIT C
Intentionally Omitted.

EXHIBIT D
Intentionally Omitted.

EXHIBIT E

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

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

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

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

3. Conflict of Interest.

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

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

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

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

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

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

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

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

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

8. Public Disclosure.

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

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

Finally, Borrower agrees to provide to OCII the names of each member of Borrower's general partners' (or, if applicable, general partners' managing members) board of directors; Borrower's general partners' (or, if applicable, general partners'

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

EXHIBIT F

Insurance Requirements

Subject to approval by the OCII Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, insurance as set forth in this Attachment 5 throughout the Compliance Term of this Agreement, or in accordance with the timeframes stated herein, at no expense to OCII. If and when the Borrower and OCII enter into a gap loan agreement or other agreements authorizing or funding the construction of the Project, OCII will adjust these insurance requirements to reflect the risks associated with construction-related activities.

A. Overview of Coverage Requirements. The following table summarizes required insurance policies and documentation. Please see Section B of this Attachment 5 for more detailed descriptions of policy requirements.

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

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

- 1) Commercial General Liability coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by OCII, with additional insured endorsement (see Section G). Before the start of demolition/construction if the Site is unoccupied, and Developer's Contractors will maintain coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate

limit. Umbrella or Excess Liability Policy may be used to meet the terms of this section. Borrower should note that the General Liability coverage described herein is applicable only during the predevelopment phase and that OCII will require increased coverage for the Borrower and construction contractors during the construction period.

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

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

- 5) Crime Policy or Fidelity Bond covering Borrower and Borrower's officers and employees against dishonesty with respect to the Funding Amount. One Million Dollars (\$1,000,000) each loss, with any deductible not to exceed Ten Thousand Dollars (\$10,000). Borrower must provide an endorsement naming OCII as an additional obligee or loss payee.

- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of those required for policies stated herein must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Borrower shall provide a financial guarantee satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- D. Umbrella or Excess Liability Policies. An Umbrella and/or Excess Liability policy(ies) may be used to reach the Commercial General Liability, Workers' Compensation, and/or Automobile Liability coverage limits required herein. The Umbrella/Excess Liability/OCIP policy(ies) must appropriately schedule any such underlying policy(ies).
- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise approved by OCII's Risk Manager.
- F. General Requirements.
- 1) If the Borrower maintains additional coverages and/or higher limits than the minimums shown in this Attachment 5, OCII requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Developer.
 - 2) The policies required herein, with the exception of Professional Liability and Workers Compensation, shall be primary insurance and non-contributory as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Developer's insurance and shall not contribute with it.
 - 3) Each insurance policy required herein must be endorsed (if endorsement is available) to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by mail has been given to OCII. Should the insurance carrier not be able to provide such notice, then the responsibility to provide the notice to OCII shall be borne by the policyholder.
 - 4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
 - 5) Approval of Developer's insurance by OCII will not relieve or decrease the liability of Borrower under this Agreement.
 - 6) OCII and its officers, agents and employees will not be liable for any required premium under any policy maintained by Developer.
 - 7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after the Compliance Term for general liability insurance.

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

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

H. Review. OCII reserves the right to modify the insurance coverage under this Section, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances consistent with OCII’s Risk Management Policy. The insurance coverage required under this Section shall be evaluated by OCII for adequacy from time to time. OCII may require Borrower to increase the insurance limits and/or forms of coverage in its reasonable discretion provided that such limits and/or coverage is generally available at commercially reasonable rates.

EXHIBIT G
Lobbying/Debarment Certification Form

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

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

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

3. Neither the undersigned nor its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the 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.

By:

By:

By: _____

EXHIBIT H
Intentionally Omitted.

EXHIBIT I
Intentionally Omitted

EXHIBIT J
Intentionally Omitted

EXHIBIT K
Intentionally Omitted

EXHIBIT L
Schedule of Performance

	Performance Milestone	Estimated or Actual Date¹	Contractual Deadline
1	Design		
2	Submittal of Updated Design Development & Cost Estimate	<u>5/1/2021</u>	<u>6/1/2021</u>
3	Submittal of 50% CD Set & Cost Estimate	<u>7/15/2021</u>	<u>10/15/2021</u>
4	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	<u>12/15/2021</u>	<u>3/15/2022</u>
5	Permits		
6	Building / Site Permit Application Submitted	<u>10/8/2019</u> <u>Issued 4/2020</u>	
7	Addendum #1 Submitted	<u>8/15/2021</u>	<u>1/15/2022</u>
8	Addendum #2 Submitted	<u>12/15/2021</u>	<u>3/29/2022</u>
9	Request for Bids Issued	<u>12/2021</u>	<u>3/2022</u>
10	Service Plan Submission		
11	Update	<u>7/1/2023</u>	<u>12/10/2023</u>
	Additional City Financing		
	Predevelopment Financing Application #2	<u>N/A</u>	
12	Gap Financing Application	<u>7/2021</u>	<u>4/2022</u>
	Other Financing		
13	Construction Financing RFP	<u>9/2/2021</u>	<u>4/1/2022</u>
14	AHP Application	<u>3/2022</u>	<u>3/2023</u>

¹ Estimated Dates are the Borrower's and OCII's best estimate for achieving milestones established herein, which estimates are established for project management purposes, but do not supersede contractual deadlines, which establish deadlines by which Borrower is required to perform under this Agreement.

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

EXHIBIT M
OCII Monthly Project Update Form

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

FOR OCII STAFF ONLY

Major issues, delays, etc.:

Items for discussion with Director:

EXHIBIT N

Developer Fee Schedule

Developer Fee Disbursement Schedule		
Payment Milestone	% of Project Mgmt Fee	Amount
During predevelopment	15%	\$150,000
By end of construction	50%	\$500,000
Total Project Management Fee	100%	\$1,000,000
Deferred Fee		\$365,000
At Risk Fee*		\$1,365,000
Total Cash Developer Fee		<u>\$2,015,000</u>
GP Equity		
Total Developer Fee		<u>\$2,015,000</u>

* Per MOHCD's Developer Fee Policy, the total Project Management fee will be \$1,000,000 and the total at risk fee will be \$1,365,000 (including the additional cash out allowed due to the project's larger size). The At Risk Fee will be held back from distribution in order to cover any cost overruns that exceed the contingency amounts held in the Sponsor's budget, per MOHCD's Developer Fee Policy.

EXHIBIT O
ASSIGNMENT OF WORK PRODUCT

Assignment of Architects and Engineers Agreement Plans and Specifications

FOR VALUE RECEIVED, **HPSY 52-54, LP.**, a California limited partnership (“Borrower”) does hereby sell, assign, pledge, transfer and set over to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, (“Agency”) all of its rights, title and interest in and to that certain architect’s agreement (“Agreement”) entered into by Mithun | Solomon, and assumed by Borrower pursuant to that certain [_____] 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 approximately 100 units of affordable rental housing at 351 and 151 Friedell Street and known as Hunters Point Shipyard Blocks 52 and 54 (“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 \$3,650,000.00.

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

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed on _____, 2021.

BORROWER:

By: _____

EXHIBIT P
CONSENT TO ASSIGNMENT OF WORK PRODUCT
Consent to Assignment

FOR VALUE RECEIVED, **HPSY 52-54, LP** a California limited partnership, (“Borrower”) does hereby sell, assign, pledge, transfer and set over to the Successor Agency to the 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 Mithun | Solomon (“Architect”), as assumed by Borrower pursuant to that certain [_____], and any other contracts entered into between Borrower and any licensed design professional 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 Architect(s), Engineer(s) and others for the account of Borrower in connection with the development of approximately 100 units of affordable rental housing at 351 and 151 Friedell Street and known as Hunters Point Shipyard Blocks 52 and 54 (“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 amounts of \$3,650,000.00.

The undersigned has prepared the Plans, hereby consents to the above Assignment hereby waives his/her lien rights, if any, for services rendered to date 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 including all services rendered on Borrower’s behalf.

Dated: _____, 2021

ARCHITECT:

Mithun | Solomon

By: _____

Name: _____

Title: _____

(signatures continue on following page)

ENGINEER:

By: _____

Name: _____

Title: _____

EXHIBIT Q

Promissory Note

PROMISSORY NOTE

Principal Amount: \$3,650,000

San Francisco, CA

Date: _____, 2021

FOR VALUE RECEIVED, the undersigned, HPSY 52-54, LP, a California limited partnership ("Maker"), hereby promises to pay to the order of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, 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), or holder (as the case may be, "Holder"), the principal sum of Three Million Six Hundred Fifty Thousand and No/100 Dollars (\$3,650,000.00) (the "Funding Amount"), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement described in **Section 1** below, together with interest thereon, as provided in this Note.

1. Agreement. This Secured Promissory Note ("Note") is given under the terms of an amended loan agreement by and between Maker and Holder dated as of the date set forth above (the "Agreement"), which Agreement is incorporated herein by reference. Definitions and rules of interpretation set forth in the Agreement apply to this Note. In the event of any inconsistency between the Agreement and this Note, this Note will control.

2. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of three percent (3%) per annum, simple interest, from the date of disbursement of funds by Holder through the date of full payment of all amounts owing under the OCII Documents. If a Construction/Permanent Loan for the Project from OCII is subsequently approved by the Commission, the parties acknowledge that the Borrower may request and OCII may approve a reduced interest rate in order to maintain Project feasibility.

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

to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any OCII Document.

4. Repayment of Funding Amount. Maker must repay all amounts owing under the OCII Documents in accordance with and subject to Section 3.1 of the Agreement. All Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The unpaid principal balance of the Loan, together with all accrued and unpaid interest and unpaid costs and fees incurred, will be due and payable on the Maturity Date, as such term is defined in the Agreement. Any Payment Date, including the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

If this Note becomes due and payable, and provided no Event of Default under any of the OCII Documents is then continuing, the Maker may satisfy this Note in full by either (i) making payment in full; or (ii) delivering to the Holder all of the following: (x) the Work Product, as such term is defined in the Agreement, (y) an absolute and unconditional assignment to the Holder of all of Maker's right, title and interest in and to said Work Product (which assignment shall be in the substantial form of the Assignment of Work Product attached as Exhibit O to the Agreement); 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 Maker is able to obtain such consent using commercially reasonable efforts.

5. Security. Maker's obligations under this Note are secured by the pledge of Work Product given in the Assignment of Work Product and the Loan is non-recourse to such Maker, its partner and their members.

6. Terms of Payment.

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

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

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

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

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

6.6 This Note may be prepaid in whole or in part at any time, and from time to time, without penalty provided that notice is given to Holder no later than ninety (90) days prior to prepayment.

7. Default.

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

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

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

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

8. Waivers.

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

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate

to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

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

9. Miscellaneous Provisions.

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

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

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

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

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

{Signature Appears on the Following Page}

"MAKER"

HPSY 52-54, LP, a California limited partnership

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

By: JRC FC Holdings, LLC, a Delaware limited liability company, its sole member

By: _____