

1 **FREE RECORDING REQUESTED PURSUANT TO**
2 **GOVERNMENT CODE SECTION 27383**

3
4 **When Recorded Please Return to:**

5
6 **SAN FRANCISCO REDEVELOPMENT AGENCY**
7 **770 Golden Gate Avenue**
8 **San Francisco, CA 94102**
9 **Attn.: Development Services**

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17 **O'FARRELL TOWERS GROUND LEASE**

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19
20 **by and between the**

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22
23 **REDEVELOPMENT AGENCY OF THE**
24 **CITY AND COUNTY OF SAN FRANCISCO**
25 **as Landlord**

26
27 **and**

28
29 **CITIZENS HOUSING CORPORATION,**
30 **a California nonprofit public benefit corporation**
31 **as Tenant**

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37 **Dated as of *August 4*, 2000**
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1 GROUND LEASE

2 This GROUND LEASE is entered into as of August 4, 2000, by and
3 between the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN
4 FRANCISCO, a public body, corporate and politic (the "Agency") as Landlord, and Citizens
5 Housing Corporation, a California nonprofit public benefit corporation (the "Developer"), as
6 Tenant under this Ground Lease.

7 RECITALS

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

12 B. The Agency is authorized pursuant to the Law to distribute monies to nonprofit
13 developers and sponsors for the specific and special purpose of increasing and maintaining the
14 housing stock in the City and County of San Francisco for very low-, low- and moderate-income
15 households.

16 C. The expiration of project-based Section 8 contracts poses a serious threat to San
17 Francisco's affordable housing stock. The Agency desires to preserve developments with Section
18 8 contracts as affordable housing by, among other things, expending tax increment housing funds.

19 D. Developer is a nonprofit corporation committed to acquiring and owning housing
20 units for low-income senior residents (the "Project") on the real property located at 477 O'Farrell
21 Street, San Francisco, California (the "Site").

1 E. The Project is currently financed with the California Housing Finance Agency
2 ("CHFA") mortgages which are subject to prepayment by the current private owner ("Seller"),
3 with the potential effect of terminating the existing low income rent restrictions placed on the
4 Project.

5 F. The Developer has entered into a purchase and sale agreement to purchase the Site,
6 including the improvements on the Site (the "Improvements"), and has agreed to assign the right
7 to purchase the Site to the Agency. Through escrow the Agency intends to acquire fee title to the
8 Site and the Developer will acquire fee title to the Improvements. Developer intends to finance
9 the acquisition of the Improvements with a new loan from CHFA funded by issuance of tax
10 exempt 501(c)(3) multifamily bonds. The Agency will use tax increment funds to pay the
11 purchase price for the Site, not including the Improvements.

12 G. The Agency wishes to lease the Site to the Developer pursuant to this Ground
13 Lease.

14 **NOW THEREFORE**, in consideration of the mutual obligations of the parties hereto, the
15 Agency hereby leases to Developer, and Developer hereby leases from the Agency, the Site, for
16 the term, and subject to the terms, covenants, agreements and conditions hereinafter set forth, to
17 each and all of which the Agency and Developer hereby mutually agree.

1 **ARTICLE 1: DEFINITIONS**

2 Terms used herein have the meanings given them when first used or as set forth in this
3 Article 1, unless the context clearly requires otherwise.

4 **1.01 Agency** means the Redevelopment Agency of the City and County of San
5 Francisco, a public body, corporate and politic, exercising its functions and powers and organized
6 and existing under the Community Redevelopment Law of the State of California and includes
7 any successor public Agency designated by or pursuant to law. The Agency is the owner of the
8 Site.

9 **1.02 Agreement Date** means the date that this Ground Lease is deemed to be entered
10 into and effective, as set forth on the cover page.

11 **1.03 Area Median Income** means the median household or family income for San
12 Francisco as determined pursuant to Section 50093 of the California Health and Safety Code.

13 **1.04 Developer** means Citizens Housing Corporation, a California nonprofit public benefit
14 corporation.

15 **1.05 Ground Lease** means this Ground Lease of the Site to the Developer from the
16 Agency, as amended from time to time.

17 **1.06 Improvements** means all physical construction, including all structures, fixtures
18 and other improvements on the Site.

19 **1.07 Lender** means the holder of any Leasehold Mortgage consented to by the Agency
20 as required by Article 25.01.

1 **1.08** Lease Year means each calendar year during the term hereof, beginning on
2 January 1 and ending on December 31, provided that the first Lease Year shall commence upon
3 the Agreement Date and shall end on the next succeeding December 31, and the last Lease Year
4 shall end upon the expiration of the term hereof.

5 **1.09** Leasehold Estate means the estate held by the Developer pursuant to and created
6 by this Ground Lease.

7 **1.10** Leasehold Mortgage means any mortgage, deed of trust, trust indenture or other
8 security instrument, including the deeds of trust securing the loans from CHFA, and any
9 assignment of the rents, issues and profits from the Site, or any portion thereof, which constitute a
10 lien on the Leasehold Estate created by this Ground Lease.

11 **1.11** Low Income Households shall have the same meaning as specified in Section
12 33334.2 of the California Health and Safety Code.

13 **1.12** Occupant means any person or entity authorized by Developer to occupy a
14 residential unit on the Site, or any portion thereof.

15 **1.13** Premises means the Site together with any Improvements thereon.

16 **1.14** Site means the real property shown on the Site Plan, Attachment 1, and described
17 in the Site Legal Description, Attachment 2.

18 **1.15** Very Low Income Households shall have the same meaning as specified in
19 Section 50105 of the California Health and Safety Code.

1 Whenever an 'Attachment' is referenced, it means an attachment to this Ground Lease
2 unless otherwise specifically identified. Whenever a section, article or paragraph is referenced, it
3 is a reference to this Ground Lease unless otherwise specifically referenced.

4 **ARTICLE 2: TERM**

5 (a) The term of this Ground Lease shall commence upon the Agreement Date and shall
6 end fifty (50) years from that date, unless extended pursuant to section (b) below.

7 (b) Provided that the Developer is not in default of the terms of its obligations to the
8 Agency either at the time of giving of an Extension Notice, as described in subparagraph c below,
9 or on the last day of the term (the "Termination Date"), the term of this Lease may be extended at
10 the option of the Developer for one forty-nine (49) year period as provided below.

11 (c) Notice of Extension Not later than one hundred and eighty (180) days prior to the
12 Termination Date, the Developer may notify the Agency in writing that it wishes to exercise its
13 option to extend the term of this Lease (an "Extension Notice"). The extended term shall be for
14 forty-nine (49) years from the Termination Date, which option the Developer may exercise only
15 once, for a total Lease term of not to exceed ninety-nine (99) years.

16 (d) Rent During Extended Term Rent for any extended term will be as set forth in
17 Article 4.

18 (e) If, following the term of this Lease, or any extensions of this Lease, the Agency
19 desires to sell its interest in the Site, the Tenant will have the right of first refusal to negotiate for
20 the purchase of the Site provided that the Tenant agrees to maintain the Site as a low income
21 housing development for fifty (50) years from the date of purchase.

1 **ARTICLE 3: FINANCING**

2 (a) Developer shall submit to the Agency in accordance with the dates specified in the
3 Schedule of Performance, Attachment 4, for approval by the Agency, evidence satisfactory to the
4 Agency that Developer has sufficient equity capital and commitments for permanent financing,
5 and/or such other evidence of capacity to proceed with the acquisition of the Improvements, in
6 accordance with this Ground Lease, as is acceptable to the Executive Director of the Agency.
7 Such satisfactory evidence of financing shall include permanent financing if required as part of
8 any construction financing.

9 (b) A default by Developer under the terms of any financing shall constitute a default
10 under this Ground Lease.

11 **ARTICLE 4: RENT**

12 **4.01 Annual Rent**

13 (a) Developer shall pay the Agency two hundred ten thousand dollars (\$210,000) per
14 year for lease of the Site, consisting of Base Rent and Residual Rent, as defined in Section 4.01.5
15 below, without offset of any kind and without necessity of demand, notice or invoice from the
16 Agency (together, "Annual Rent"). Base Rent shall be due and payable in arrears on January 31st
17 of each Lease Year; provided, however, Base Rent for the first Lease Year shall be due on April
18 15, 2001, and shall be equal to \$15,000 times the number of days in the first Lease Year, divided
19 by 365. Residual Rent shall be due in arrears on April 1st of each Lease Year, but shall be
20 payable only from and to the extent that the Project has Surplus Cash, as defined in Section 4.01.5
21 below, available in such Lease Year.

1 (b) If the Project does not have sufficient Surplus Cash to pay Residual Rent in any
2 given Lease Year, the amount not paid shall be deferred and all such deferred amounts shall
3 accrue interest at three percent (3%) simple interest per annum until paid (such amounts, together
4 with accrued and unpaid interest, "Residual Rent Accrual"). The Residual Rent Accrual shall be
5 due and payable each year from and to the extent Surplus Cash is available to make such
6 payments and, in any event, upon the earlier of sale or the Project or termination of this Ground
7 Lease.

8 (c) If the Tenant elects to extend the term of this Lease, Rent during any such
9 extended term shall be set by mutual agreement of the parties, taking into account the affordable
10 housing restrictions, project debt and the annual income expected to be generated by the Project.
11 If the parties cannot agree on Rent, either party may invoke a neutral third-party process to set
12 Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent
13 determination disputes in San Francisco taking into account the Affordable Housing Restrictions
14 or, in the event that there is no then-prevailing practice, in accordance with the rules of the
15 American Arbitration Association. Provided, however, that after the neutral third party process,
16 Tenant, in its sole discretion may rescind its extension notice if it does not wish to extend the term
17 of this Lease.

18 **4.01.5 Rent Definitions**

19 (a) "Base Rent" means, in any given Lease Year, fifteen thousand dollars (\$15,000).

20 (b) "Residual Rent" means the difference between the Annual Rent (\$210,000 during
21 the initial term) and the Base Rent in any given Lease Year.

1 (c) "Surplus Cash" means the net rental income remaining in any given Lease Year
2 after deduction of all operating expenses, debt service, reserve deposits, payment of Developer's
3 fees deferred at the time of acquisition and payment of the asset management fee.

4 **4.02 Net Lease**

5 This Ground Lease is a net lease and the Developer shall be responsible to pay all costs,
6 charges, taxes, impositions and other obligations related thereto. If the Agency pays any such
7 amounts, whether to cure a default or otherwise protect its interests hereunder, the Agency will be
8 entitled to be reimbursed by Developer the full amount of such payments as additional rent on the
9 next rent payment date.

10 **ARTICLE 5: AGENCY COVENANTS**

11 The Agency is a public body, corporate and politic, duly created and validly existing in
12 good standing under the Law, and has full right, power and authority to enter into and perform its
13 obligations under this Ground Lease. Agency covenants and warrants that the Developer and its
14 tenants shall have, hold and enjoy, during the lease term, peaceful, quiet and undisputed
15 possession of the Site leased without hindrance or molestation by or from anyone so long as the
16 Developer is not in default under this Ground Lease with the Agency.

1 **ARTICLE 6: DEVELOPER COVENANTS**

2 Developer covenants and agrees for itself, and its successors and assigns to or of the Site,
3 or any part thereof, that:

4 **6.01 Nonprofit Corporation/Authority**

5 Developer is a California nonprofit public benefit corporation and has full rights, power
6 and authority to enter into and perform its obligations under this Ground Lease.

7 **6.02 Use of Site**

8 During the term of this Ground Lease, Developer and such successors and assigns shall
9 comply with the following requirements:

10 **6.02a. Permitted Uses**

11 Devote the Site to, and only to and in accordance with, the uses specified in this
12 Ground Lease, as specified in Article 9 hereof, which are the only uses permitted by this Ground
13 Lease.

14 **6.02b. Non-Discrimination**

15 Not discriminate against or segregate any person or group of persons on account of
16 race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or domestic
17 partner status, sexual orientation or disability (including HIV or AIDS status) in the sale, lease,
18 rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the Improvements, or
19 any part thereof, nor shall Developer itself or any person claiming under or through it establish or
20 permit any such practice or practices of discrimination or segregation with reference to the
21 selection, location, number, use or occupancy, of Occupants, subtenants or vendees on the Site or

1 Improvements, or any part thereof.

2 **6.02c. Acceptance of Tenants with Section 8 Subsidy**

3 Not discriminate against tenants with certificates or vouchers under the Section 8
4 program or any successor rent subsidy program.

5 **6.02d. Non-Discriminatory Advertising**

6 All advertising (including signs) for sublease of the whole or any part of the Site
7 shall include the legend "Equal Housing Opportunity" in type or lettering of easily legible size
8 and design.

9 **6.02e. Access for Disabled Persons**

10 Comply with all applicable laws providing for access for persons with disabilities,
11 including, but not limited to, the Americans with Disabilities Act and Section 504 of the
12 Rehabilitation Act of 1973.

13 **6.02f. Equal Opportunity Marketing Plan**

14 Submit a Fair Housing Marketing Plan to be approved by the Agency. The Fair
15 Housing Marketing Plan must follow U.S. Department of Housing and Urban Development
16 Guidelines for such plans.

17 **6.02g. Lead Based Paint**

18 Comply with the regulations issued by the Secretary of Housing and Urban
19 Development set forth in 37 F.R. 22732-3 and all applicable rules and orders issued thereunder
20 which prohibit the use of lead-based paint in residential structures undergoing federally assisted
21 construction or rehabilitation and require the elimination of lead-based paint hazards.

1 **6.02h. Renewal of Section 8 Contracts**

2 Apply for, accept and renew the Section 8 contract with the U.S. Department of
3 Housing and Urban Development and any other administrator or provider of such contracts for so
4 long as such renewals are offered, in each case at the maximum number of units and rents
5 permitted by the terms of such contracts and offers.

6 **6.03 [INTENTIONALLY OMITTED]**

7 **ARTICLE 7: ANNUAL INCOME COMPUTATION AND CERTIFICATION**

8 Forty-five days after the Agreement Date, and on January 15th of each year thereafter,
9 Developer will furnish to the Agency a list of all of the names of the persons who are Occupants
10 of the Improvements on the Site, the specific unit which each person occupies, the household
11 income of the Occupants of each unit, the household size and the rent being charged to the
12 Occupants of each unit. If any state or federal agency requires an income certification for
13 Occupants of the Site containing the above-referenced information, the Agency agrees to accept
14 such certification in lieu of Attachment 9 as meeting the requirements of this Ground Lease. In
15 addition to such initial and annual list and certification, Developer agrees to provide the same
16 information and certification to the Agency regarding each Occupant of the Improvements not
17 later than ten (10) business days after such Occupant commences occupancy.

18 **ARTICLE 8: CONDITION OF SITE - "AS IS"**

19 Neither the Agency, nor any employee, agent or representative of the Agency has made
20 any representation, warranty or covenant, expressed or implied, with respect to the Site, its
21 physical condition, the condition of any improvements, any environmental laws or regulations, or

1 any other matter, affecting the use, value, occupancy or enjoyment of the Site other than as set
2 forth explicitly in this Ground Lease, and the Developer understands and agrees that the Agency is
3 making no such representation, warranty or covenant, expressed or implied; it being expressly
4 understood that the Site is being leased in an "AS IS" condition with respect to all matters.

5 **ARTICLE 9: IMPROVEMENTS AND PERMITTED USES**

6 **9.01 Scope of Development and Schedule of Performance**

7 Developer agrees to undertake and complete all physical construction on the Site, if any,
8 as approved by the Agency, in accordance with the Schedule of Performance, Attachment 4.

9 **9.02 Permitted Uses and Occupancy Restrictions**

10 | (a) The permitted uses of the Project are limited to 101 dwelling units, including 1
11 manager's unit and 100 residential units, a community room, a laundry room, a commercial
12 space/unit and related parking. Following the execution date of this Agreement, at least 100 of
13 the 101 units in the Project shall be occupied or held vacant and available for rental by households
14 of Low Income. One of the 101 units in the Project shall be occupied by the on-site property
15 manager.

16 (b) All dwelling units (with the exception of the on-site property manager unit) shall
17 be occupied and rented through the HUD Project-Based Section 8 Rental Assistance Program, or
18 its successor program, for as long as the Project receives Project-Based Section 8 assistance, in
19 accordance with HUD requirements. Developer shall accept Project-Based Section 8 assistance
20 from HUD for as long as it is offered by HUD.

1 (c) Upon vacancy of any of the dwelling units (with the exception of the on-site
2 property manager unit), that vacant unit shall be rented to a tenant who qualifies under the HUD
3 Project-Based Section 8 Rental Assistance Program. In the event HUD no longer provides
4 Section 8 assistance, rent for that dwelling unit, including utility allowance, shall not exceed 30%
5 of 60% of AMI, or 30% of the tenant's actual income, whichever is greater, as determined by the
6 California Tax Credit Allocation Committee for the unit size in question.

7 **9.03 [INTENTIONALLY OMITTED]**

8 **ARTICLE 10: [INTENTIONALLY OMITTED]**

9 **ARTICLE 11: [INTENTIONALLY OMITTED]**

10 **ARTICLE 12: CHANGES TO THE IMPROVEMENTS**

11 **12.01 Post Acquisition Changes**

12 The requirements of any zoning or land use controls shall control changes to the
13 Improvements after the acquisition has been completed. However, because of the location of the
14 Site, the nature of the Improvements, the Permitted Uses and their relationship to surrounding
15 developments, the Agency has a particular interest in the Site and in the nature and extent of the
16 permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the
17 following particular controls on the Site and on the Improvements: during the term of this
18 Ground Lease, neither Developer, nor any voluntary or involuntary successor or assign, shall
19 make or permit any change in the Improvements, as change is hereinafter defined, unless the
20 express prior written consent for any change shall have been requested in writing from the
21 Agency and obtained, and, if obtained, upon such terms and conditions as the Agency may

1 require. The Agency agrees not to withhold or delay its response to such a request unreasonably.

2 **12.02 Definition of Change**

3 'Change' as used in this Article means any alteration, modification, addition and/or
4 substitution of or to the Site, the Improvements, the density of development and/or the extent and
5 nature of the Site open space, which differs materially from that which existed on the effective
6 date of this Ground Lease or has been expressly approved by the Agency pursuant to this Ground
7 Lease, and shall include without limitation the exterior design, exterior materials and/or exterior
8 color. For purposes of the foregoing, exterior shall mean and include the roof of the
9 Improvements.

10 **12.03 Enforcement**

11 The Agency shall have any and all remedies in law or equity (including without limitation
12 restraining orders, injunctions and/or specific performance), judicial or administrative, to enforce
13 the provisions of this Article 12, including without limitation any threatened breach thereof or any
14 actual breach or violation thereof.

15 **ARTICLE 13: TITLE TO IMPROVEMENTS**

16 Fee title to any Improvements, including those Improvements conveyed to Developer by
17 that certain Improvement Grant Deed of even date herewith, vested in Developer shall remain
18 vested in Developer during the term of this Ground Lease, subject to Article 14.01 below. Subject
19 to the rights of any Lenders and as further consideration for the Agency entering into this Ground
20 Lease, at the expiration or earlier termination of this Ground Lease, fee title to all the
21 Improvements shall vest in the Agency without further action of any party, without any obligation

1 by the Agency to pay any compensation therefor to Developer and without the necessity of a deed
2 from Developer to the Agency.

3 **ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE**

4 **14.01 Assignment, Sublease or Other Conveyance by Developer**

5 Developer may not sell, assign, convey, sublease, or transfer in any other mode or form all
6 or any part of its interest in this Ground Lease or in the Improvements or any portion thereof,
7 other than to Lenders, or allow any person or entity to occupy or use all or any part of the Site
8 other than leases to tenants in the ordinary course of business, nor may it contract or agree to do
9 any of the same, without the prior written approval of the Agency, which approval shall not be
10 unreasonably withheld or delayed; provided, however, that the Developer may sell, assign,
11 convey, sublease or transfer its interests to a nonprofit public benefit corporation under common
12 control with Developer, without the consent of the Agency.

13 **14.02 Assignment, Sublease or Other Conveyance by Agency**

14 The Agency acknowledges that any sale, assignment, transfer or conveyance of all or any
15 part of the Agency's interest in the Site, the Improvements, or this Ground Lease, are subject to
16 this Ground Lease. The Agency will require that any purchaser, assignee or transferee will
17 expressly assume all of the obligations of the Agency under this Ground Lease by a written
18 instrument recordable in the Official Records of the City. This Ground Lease shall not be affected
19 by any such sale, and Developer shall attorn to any such purchaser or assignee. In the event that
20 the Agency intends to sell all or any part of the Site, other than as provided in Section 2(b), the
21 Agency shall notify Developer of the proposed terms of such sale not later than ninety (90) days

1 before the anticipated close of escrow. Developer shall have sixty (60) days from the giving of
2 such notice to exercise a right of first refusal to purchase the Site on the same terms and
3 conditions of such proposed sale.

4 **ARTICLE 15: TAXES**

5 Developer agrees to pay, or cause to be paid, when due to the proper authority, any and all
6 valid taxes, assessments and similar charges on the Site which become effective after the
7 execution of this Ground Lease, including all taxes levied or assessed on the possession, use or
8 occupancy, as distinguished from the ownership, of the Site. Developer shall not permit any such
9 taxes, charges or other assessments to become a defaulted lien on the Site or the Improvements
10 thereon; provided, however, that in the event any such tax, assessment or similar charge is payable
11 in installments, Developer may make, or cause to be made, payment in installments; and,
12 provided further, that Developer may contest the legal validity or the amount of any tax,
13 assessment or similar charge, through such proceedings as Developer considers necessary or
14 appropriate, and Developer may defer the payment thereof so long as the validity or amount
15 thereof shall be contested by Developer in good faith and without expense to the Agency. In the
16 event of any such contest, Developer shall protect, defend and indemnify the Agency against all
17 loss, cost, expense or damage resulting therefrom, and should Developer be unsuccessful in any
18 such contest, Developer shall forthwith pay, discharge, or cause to be paid or discharged, such tax,
19 assessment or other similar charge. The Agency shall furnish such information as Developer shall
20 reasonably request in connection with any such contest provided that such information is
21 otherwise available to the public.

1 **ARTICLE 16: UTILITIES**

2 Developer shall procure water and sewer service from the City and electricity, telephone,
3 natural gas and any other utility service from the City or utility companies providing such
4 services, and shall pay all connection and use charges imposed in connection with such services.
5 As between the Agency and Developer, Developer shall be responsible for the installation and
6 maintenance of all facilities required in connection with such utility services to the extent not
7 installed or maintained by the City or the utility providing such service.

8 **ARTICLE 17: MAINTENANCE**

9 Developer, at all times during the term hereof, shall maintain or cause to be maintained the
10 Premises in good condition and repair to the reasonable satisfaction of the Agency, taking into
11 account the age of the building, including the exterior, interior, substructure and foundation of the
12 Improvements and all fixtures, equipment and landscaping from time to time located on the Site
13 or any part thereof. The Agency shall not be obligated to make any repairs, replacements or
14 renewals of any kind, nature or description whatsoever to the Site or any buildings or
15 improvements now or hereafter located thereon.

16 **ARTICLE 18: LIENS**

17 Developer shall use its best efforts to keep the Site free from any liens arising out of any
18 work performed or materials furnished by itself or its subtenants. In the event that Developer
19 shall not cause the same to be released of record within twenty (20) days following written notice
20 from the Agency of the imposition of any such lien, the Agency shall have, in addition to all other
21 remedies provided herein and by law, the right but not the obligation to cause the same to be

1 released by such means as it shall deem proper, including payment of the claim giving rise to such
2 lien. All sums paid by the Agency for such purpose, and all reasonable expenses incurred by it in
3 connection therewith, shall be payable to the Agency by Developer on demand; provided,
4 however, Developer shall have the right, upon posting of an adequate bond or other security, to
5 contest any such lien, and the Agency shall not seek to satisfy or discharge any such lien unless
6 Developer has failed so to do within ten (10) days after the final determination of the validity
7 thereof. In the event of any such contest, Developer shall protect, defend, and indemnify the
8 Agency against all loss, cost, expense or damage resulting therefrom.

9 **ARTICLE 19: GENERAL REMEDIES**

10 **19.01 Application of Remedies**

11 The provisions of this Article 19 shall govern the parties' remedies for breach of this Lease.

12 **19.02 [INTENTIONALLY OMITTED]**

13 **19.03 Breach by Agency**

14 If Developer believes a material breach of this Ground Lease has occurred, Developer
15 shall first notify the Agency in writing of the purported breach, giving the Agency sixty (60) days
16 from receipt of such notice to cure such breach. In the event Agency does not then cure or, if the
17 breach is not reasonably susceptible to cure within that sixty (60) day period, begin to cure within
18 sixty (60) days and thereafter diligently prosecute such cure to completion, then Developer shall
19 be afforded all of its rights at law or in equity by taking any or all of the following remedies: (I)
20 terminating in writing this entire Ground Lease; (ii) prosecuting an action for damages;

1 (iii) seeking specific performance of this Ground Lease; or (iv) any other remedy available at law
2 or equity.

3 **19.04 Breach by Developer**

4 **19.04a. Default by Developer**

5 The following events each constitute a basis for the Agency to take action against
6 Developer:

7 (1) Developer fails to comply with the Permitted Uses and Occupancy
8 Restrictions set forth in Article 9.02;

9 (2) Developer voluntarily or involuntarily assigns, transfers or attempts to
10 transfer or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements,
11 except as permitted by this Ground Lease;

12 (3) Developer, or its successor in interest, shall fail to pay real estate taxes or
13 assessments on the Premises or any part thereof when due, or shall place thereon any
14 encumbrance or lien unauthorized by this Ground Lease, or shall suffer any levy or attachment to
15 be made, or any material supplier's or mechanic's lien or any other unauthorized encumbrance or
16 lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien
17 removed or discharged; provided, however, that Developer shall have the right to contest any tax
18 or assessment pursuant to Article 15 and, upon the posting of an adequate bond or other security,
19 to contest any such lien or encumbrance. In the event of any such contest, Developer shall
20 protect, indemnify and hold Agency harmless against all losses and damages, including
21 reasonable attorneys' fees and costs resulting therefrom;

1 (4) Developer shall be adjudicated bankrupt or insolvent or shall make a
2 transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have
3 brought against Developer any action or proceeding of any kind under any provision of the
4 Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in
5 the event such proceedings are involuntary, Developer is not dismissed from the same within sixty
6 (60) days thereafter; or, a receiver is appointed for a substantial part of the assets of Developer
7 and such receiver is not discharged within sixty (60) days;

8 (5) Developer breaches any provision of any financing provided by the
9 Agency, or by any other source for the acquisition or rehabilitation of the Site or the
10 Improvements, and fails to cure the breach following any required written notice and within any
11 applicable cure periods;

12 (6) Developer breaches any other material provision of this Ground Lease; or

13 (7) Developer fails to pay Rent when due.

14 **19.04b. Notification, Cure and Remedies**

15 Upon the happening of any of the events described in Article 19.04a above, the Agency
16 shall notify Developer in writing of its purported breach, failure or act, giving Developer sixty
17 (60) days from receipt of such notice to cure such breach, failure or act. In the event Developer
18 does not cure or, if the breach, failure or act is not reasonably susceptible to cure within that sixty
19 (60) day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure
20 to completion, then, subject to the rights of any Lender and subject to Article 19.02, the Agency
21 thereafter shall be afforded all of its rights at law or in equity, including any or all of the following

1 remedies: (1) terminating in writing this Ground Lease; (2) prosecuting an action for damages; or
2 (3) seeking specific performance of this Ground Lease.

3 **ARTICLE 20: DAMAGE AND DESTRUCTION**

4 **20.01 Insured Casualty**

5 If the Improvements or any part thereof are damaged or destroyed by any cause covered by
6 any policy of insurance required to be maintained by Developer hereunder, Developer shall
7 promptly commence and diligently complete the restoration of the Improvements as nearly as
8 possible to the condition thereof prior to such damage or destruction; provided, however, that if
9 more than fifty percent (50%) of the Improvements are destroyed or are so damaged by fire or
10 other casualty, or if the insurance proceeds do not provide at least ninety percent (90%) of the
11 funds necessary to accomplish the restoration, Developer may terminate this Ground Lease within
12 thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on
13 which Developer is notified of the amount of insurance proceeds available for restoration. In the
14 event Developer is required or elects to restore the Improvements, all proceeds of any policy of
15 insurance required to be maintained by Developer under this Ground Lease shall be used by
16 Developer for that purpose and Developer shall make up from its own funds any deficiency
17 between the amount of insurance proceeds available for the work of restoration and the actual cost
18 thereof. In the event Developer elects to terminate this Ground Lease pursuant to its right to do so
19 under this Article 20.01, or elects not to restore the Improvements, the insurance proceeds shall be
20 divided among the Agency, Developer and any Lender in accordance with the provisions of
21 Article 20.03.

1 **20.02 Uninsured Casualty**

2 If (i) a substantial portion of the Improvements are damaged or destroyed and ten percent
3 (10%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii)
4 in the reasonable opinion of Developer, the undamaged portion of the Improvements cannot be
5 completed or operated on an economically feasible basis; and (iii) there is not available to
6 Developer any feasible source of third party financing for restoration reasonably acceptable to
7 Developer; then Developer may terminate this Ground Lease upon ninety (90) days written notice
8 to the Agency. If it appears that the provisions of this Article 20.02 may apply to a particular
9 event of damage or destruction, Developer shall notify the Agency promptly and not consent to
10 any settlement or adjustment of an insurance award without the Agency's written approval, which
11 approval shall not be unreasonably withheld or delayed. In the event that Developer terminates
12 this Ground Lease pursuant to this Article 20.02, all insurance proceeds and damages payable by
13 reason of the casualty shall be divided among Agency, Developer and Lender in accordance with
14 the provisions of Article 20.03. If Developer does not have the right, or elects not to exercise the
15 right, to terminate this Ground Lease as a result of an uninsured casualty, Developer shall
16 promptly commence and diligently complete the restoration of the Improvements as nearly as
17 possible to their condition prior to such damage or destruction in accordance with the provisions
18 of Article 20.01.

19 **20.03 Distribution of the Insurance Proceeds**

20 In the event of an election by Developer to terminate and surrender as provided in either
21 Article 20.01 or 20.02, the priority and manner for distribution of the proceeds of any insurance

1 policy required to be maintained by Developer hereunder shall be as follows:

2 (a) First, to pay for the cost of removal of all debris from the Site or adjacent
3 and underlying property, and for the cost of any work or service required by any statute, law,
4 ordinance, rule, regulation or order of any federal, state or local government, or any agency or
5 official thereof, for the protection of persons or property from any risk, or for the abatement of
6 any nuisance, created by or arising from the casualty or the damage or destruction caused thereby;

7 (b) Second, to compensate Agency for any diminution in the value (as of the
8 date of the damage or destruction) of the Site as a raw development site caused by or arising from
9 the damage or destruction;

10 (c) The remainder to Developer.

11 (d) The provisions of this Article 20.03 shall be subject to the rights of any
12 Lender.

13 **20.04 Clean Up of Housing Site**

14 In the event the Developer terminates this Ground Lease pursuant to the provisions of
15 Article 20.01 or 20.02 and the proceeds of any insurance policy are insufficient to pay the clean-
16 up and other costs described in Article 20.03 subsection (a), Developer shall have the obligation
17 to pay the portion of such costs not covered by the insurance proceeds.

18 **ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; INDEMNIFICATION**

19 Agency shall not in any event whatsoever be liable for any injury or damage to any person
20 happening on or about the Site, for any injury or damage to the Premises, or to any property of
21 Developer, or to any property of any other person, entity or association on or about the Site.

1 Developer shall defend, hold harmless and indemnify the Agency, the City and their respective
2 commissioners, officers, agents, and employees, of and from all claims, loss, damage, injury,
3 actions, causes of action and liability of every kind, nature and description directly or indirectly
4 arising from its tenancy, its use of the Site, including adjoining sidewalks and streets, and any of
5 its operations activities thereon or connected thereto; provided, however, that this Article 21 shall
6 not be deemed or construed to and shall not indemnify and save harmless the Agency, the City or
7 any of their commissioners, officers, agents or employees from any claim, loss, damage, liability
8 or expense, of any nature whatsoever, arising from or in any way related to or connected with any
9 willful misconduct or gross negligence by the person or entity seeking such indemnity.

10 **ARTICLE 22: INSURANCE AND FIDELITY BOND**

11 **22.01 Insurance**

12 The Developer shall maintain insurance meeting the requirements of this Article.

13 **22.01a. Insurance Requirements for Developer**

14 During the term of this Ground Lease, Developer shall procure and maintain insurance
15 against claims for injuries to persons or damage to property which may arise from or in
16 connection with the performance of any work hereunder by the Developer, its agents,
17 representatives, employees or subcontractors and the Developer's use and occupancy of the Site
18 and the Improvements.

19 **22.01b. Minimum Scope of Insurance**

20 Coverage shall be at least as broad as:

- 21 (1) Insurance Services Office Commercial General Liability coverage

1 ("occurrence" form CG 00010196).

2 (2) Insurance Services Office form number CA 00011293 covering
3 Automobile Liability, code 1 "any auto."

4 (3) Workers' Compensation insurance as required by the Labor Code of the
5 State of California and Employer's Liability insurance.

6 (4) Whenever an architect or engineer is employed, Professional Liability
7 Insurance covering all negligent acts, errors and omissions in Developer's Architectural and
8 Engineering Professional Design Services. As an alternative to Developer providing said
9 Professional liability insurance, Developer shall require that all architectural and engineering
10 professional consultants for the project have liability insurance covering negligent acts, errors and
11 omissions. Developer shall provide the Agency with copies of consultants' insurance certificates
12 showing such coverage.

13 (5) Property Liability Insurance against all risks of direct physical loss to the
14 Project.

15 **22.01c. Minimum Limits of Insurance**

16 Coverage shall maintain limits no less than:

17 (1) General Liability: \$1,000,000 combined single limit per occurrence for
18 bodily injury, personal injury and property damage. If Commercial General Liability Insurance or
19 other form with a general aggregate limit shall apply separately to this project/location, the
20 general aggregate limit shall be twice the required occurrence limit.

1 (2) Automobile Liability: \$1,000,000 combined single limit per accident for
2 bodily injury and property damage.

3 (3) Workers' Compensation and Employers Liability: Workers' Compensation
4 limits as required by the Labor Code of the State of California and Employers Liability limits of
5 \$1,000,000 per accident.

6 (4) Professional Liability: \$1,000,000 per occurrence during the course of new
7 construction or remodeling in excess of \$100,000.

8 (5) Property Insurance:

9 (a) Prior to commencement of construction on the Site, the Developer
10 shall deliver to the Agency performance and payment bonds for such construction which bonds
11 shall name the Agency as co-obligee.

12 (b) During the course of construction, Full Completed Value of the
13 Project.

14 (c) Following completion of construction, Full replacement value of the
15 Project with no coinsurance penalty provision.

16 (6) Review of Minimum Limits: At no less than every five years during the
17 Term, Agency may reasonably adjust the Minimum Limits of coverage required in this Article
18 22.01c.

19 **22.01d. Deductibles and Self-Insured Retentions**

20 Any deductibles or self-insured retentions must be declared to and approved by Agency.
21 At the option of Agency, either: the insurer shall reduce or eliminate such deductibles or self-

1 insured retentions as respects the Agency, its officers, employees and volunteers; or the Developer
2 shall procure a bond guaranteeing payment of losses and related investigation, claim
3 administration and defense expenses.

4 **22.01e. Other Insurance Provisions**

5 The policies are to contain, or be endorsed to contain, the following provisions:

6 (1) General Liability and Automobile Liability Coverage:

7 (a) The Agency, the City and County of San Francisco and their respective
8 officers, agents, employees and Commissioners, are to be covered as additional insured as
9 respects: liability arising out of activities performed by or on behalf of the Developer; products
10 and completed operations of the Developer, premises owned, occupied or used by the Developer;
11 or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain
12 no special limitations on the scope of protection afforded to the Agency, the City and County of
13 San Francisco and their respective officers, agents, employees or Commissioners.

14 (b) The Developer's insurance coverage shall be primary insurance as respects
15 the Agency, the City and County of San Francisco and their respective officers, agents, employees
16 and Commissioners. Any insurance or self-insurance maintained by the Agency, the City and
17 County of San Francisco and their respective officers, agents, employees or Commissioners shall
18 be excess of the Developer's insurance and shall not contribute with it.

19 (c) Any failure to comply with reporting provisions of the policies shall not
20 affect coverage provided to the Agency, the City and County of San Francisco and their
21 respective officers, agents, employees or Commissioners.

1 (d) The Developer's insurance shall apply separately to each insured against
2 whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3 (2) Workers' Compensation and Employers Liability Coverage: The insurer shall
4 agree to waive all rights of subrogation against the Agency, the City and County of San Francisco
5 and their respective officers, agents, employees and Commissioners for losses arising from work
6 performed by the Developer for the Agency.

7 (3) All Coverage: Each insurance policy required by this clause shall be endorsed to
8 state that coverage shall not be suspended, voided, canceled by either party, or reduced in
9 coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return
10 receipt requested, has been given to Agency.

11 **22.01f. Acceptability of Insurers**

12 Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

13 **22.01g. Verification of Coverage**

14 Developer shall furnish Agency with certificates of insurance and with original
15 endorsements effecting coverage required by this clause at the commencement of this Lease and
16 annually thereafter. The certificates and endorsements for each insurance policy are to be signed
17 by a person authorized by that insurer to bind coverage on its behalf. Agency reserves the right to
18 require complete, certified copies of all required insurance policies, at any time.

19 **22.01h. Subcontractors**

20 Developer shall include all subcontractors as additional insured under its policies or shall
21 furnish separate certificates and endorsements for each subcontractor. All coverage for

1 subcontractors shall be subject to all of the requirements stated herein.

2 **22.02 [INTENTIONALLY OMITTED]**

3 **ARTICLE 23: COMPLIANCE WITH LEGAL REQUIREMENTS**

4 Developer shall at its cost and expense, promptly comply with all laws, statutes,
5 ordinances and governmental rules, regulations or requirements now in force or which may
6 hereafter be in force, with the requirements of any board of fire underwriters or other similar body
7 now or hereafter constituted, with any direction or occupancy certificate issued pursuant to any
8 law by any public officer or officers, insofar as any thereof relate to or affect the condition, use or
9 occupancy of the Site. In the event Developer contests any of the foregoing, Developer shall not
10 be obligated to comply therewith to the extent that the application of the contested law, statute,
11 ordinance, rule, regulation or requirement is stayed by the operation of law or administrative or
12 judicial order and Developer indemnifies the Agency against all loss, cost, expense or damage
13 resulting from noncompliance.

14 **ARTICLE 24: ENTRY**

15 The Agency and its authorized agents shall have the right at all reasonable times during
16 normal business hours and after forty-eight (48) hours written notice to Developer (except in the
17 event of an emergency when no written notice is required), to go on the Site for the purpose of
18 inspecting the same or for the purpose of posting notices of nonresponsibility, or for police or fire
19 protection.

1 **ARTICLE 25: MORTGAGE FINANCING**

2 **25.01 No Encumbrances Except for Development Purposes**

3 Notwithstanding any other provision of this Ground Lease and subject to the prior written
4 consent of the Agency, which consent shall not be unreasonably withheld or delayed, Leasehold
5 Mortgages are permitted to be placed upon the Leasehold Estate only for the purpose of securing
6 loans of funds to be used for financing the acquisition, design, rehabilitation or future renovation
7 or reconstruction of the Improvements and any other expenditures reasonably necessary and
8 appropriate to acquire, own, develop, rehabilitate, renovate, construct or reconstruct the
9 Improvements under this Ground Lease and the operation of the Improvements, and costs and
10 expenses incurred or to be incurred by Developer in furtherance of the purposes of this Ground
11 Lease. The mortgage loans being made by CHFA and the outstanding loans from CHFA, the City
12 and County of San Francisco, and the San Francisco Senior Center are approved Leasehold
13 Mortgages for all purposes under this Ground Lease.

14 **25.02 Holder Not Obligated to Construct**

15 The holder of any mortgage, deed of trust or other security interest authorized by Article
16 25.01 ("Holder" or "Lender"), including the successors or assigns of such Holder, is not obligated
17 to complete any rehabilitation of the Improvements or to guarantee such completion; nor shall any
18 covenant or any other provision of this Ground Lease be construed so to obligate such Holder.
19 However, in the event the Holder does undertake to complete or guarantee the completion of the
20 rehabilitation of the Improvements, nothing in this Ground Lease shall be deemed or construed to
21 permit or authorize any such Holder or its successors or assigns to devote the Site or any portion

1 thereof to any uses, or to construct or rehabilitate any Improvements thereon, other than those
2 uses or Improvements authorized under Article 9.02. To the extent any Holder or its successors in
3 interest wish to change such uses or construct different improvements, that Holder or its
4 successors in interest must obtain the written consent of the Agency.

5 **25.03 Failure of Holder to Complete Improvements**

6 In any case where six months after assumption of obligations pursuant to Article 25.02
7 above, a Lender, having first exercised its option to construct, has not proceeded diligently with
8 rehabilitation, the Agency shall be afforded the rights against such Holder it would otherwise have
9 against Developer under this Ground Lease for events or failures occurring after such assumption.

10 **25.04 Default by Developer and Agency's Rights**

11 **25.04a. Right of Agency to Cure**

12 In the event of a default or breach by Developer in or of its obligations under any
13 Leasehold Mortgage, and Developer's failure to timely commence or diligently prosecute cure of
14 such default or breach, the Agency may, at its option, cure such breach or default. In such event,
15 the Agency shall be entitled to reimbursement from Developer of all costs and expenses
16 reasonably incurred by the Agency in curing the default or breach. The Agency shall also be
17 entitled to a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and
18 disbursements. Any such lien shall be subject to the lien of any then existing Leasehold Mortgage
19 authorized by this Ground Lease, including any lien contemplated because of advances yet to be
20 made.

1 **25.04b. Notice of Default to Agency**

2 The Lender shall give the Agency prompt written notice of any such default or
3 breach, and every Leasehold Mortgage other than the deeds of trust securing: (i) a loan in the
4 original principal amount of \$473,629.90, payable to the San Francisco Senior Center; (ii) a loan
5 in the original principal amount of \$473,629.90, payable to the City and County of San Francisco;
6 and (iii) a loan in the original principal amount of \$500,000, payable to Three Embarcadero West
7 (the "Existing Loans"), shall so provide and shall also contain the Agency's right to cure as above
8 set forth.

9 **25.05 Subordination of Ground Lease**

10 This Ground Lease is subordinate to the CHFA Regulatory Agreement between CHFA
11 and the Developer.

12 **ARTICLE 26: PROTECTION OF LENDER**

13 **26.01 Notification to Agency**

14 Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the
15 existence of any of the rights set forth in this Article 26, each and every Lender shall give written
16 notice to the Agency of the Lender's address and of the existence and nature of its Leasehold
17 Mortgage. CHFA is deemed to have given such notice as is required to obtain the rights and
18 protections of a Lender under this Ground Lease.

19 **26.02 Lender's Rights to Prevent Termination**

20 Lender shall have the right, but not the obligation, at any time prior to termination of this
21 Ground Lease and without payment of any penalty other than the interest on unpaid rent, to pay
22 all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make

1 all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make
2 any repairs and improvements, to do any other act or thing required of Developer hereunder, and
3 to do any act or thing which may be necessary and proper to be done in the performance and
4 observance of the agreements, covenants and conditions hereof to prevent a termination of this
5 Ground Lease as the same would have been if made, done and performed by Developer instead of
6 by Lender.

7 **26.03 Lender's Rights When Developer Defaults**

8 Should any event of default under this Ground Lease occur, and not be cured within the
9 applicable cure period, the Agency shall not terminate this Ground Lease nor exercise any other
10 remedy hereunder unless it first gives notice of such event of default to Lender and

11 (i) If such event of default is a failure to pay a monetary obligation of Developer,
12 Lender shall have failed to cure such default within sixty (60) days from the date of notice from
13 the Agency to Lender; or

14 (ii) If such event of default is not a failure to pay a monetary obligation of Developer,
15 Lender shall have failed, within sixty (60) days of receipt of said written notice, either (a) to
16 remedy such default; or (b) to obtain title to Developer's interest in the Site in lieu of foreclosure;
17 or (c) to commence foreclosure or other appropriate proceedings in the nature thereof and
18 thereafter diligently prosecute such proceedings to completion, in which case such event of
19 default shall be remedied or deemed remedied in accordance with Article 26.04 below.

20 All rights of the Agency to terminate this Ground Lease as the result of the occurrence of any such
21 event of default shall be subject to, and conditioned upon, the Agency having first given Lender

1 notice of such event of default and Lender having failed to remedy such default or acquire
2 Developer's Leasehold Estate created hereby or commence foreclosure or other appropriate
3 proceedings in the nature thereof as set forth in and within the time specified by this Article 26.03.

4 **26.04 Default Which Cannot be Remedied by Lender**

5 Any event of default under this Ground Lease which in the nature thereof cannot be
6 remedied by Lender shall be deemed to be remedied if (i) within thirty (30) days after receiving
7 notice from the Agency setting forth the nature of such event of default, or prior thereto, Lender
8 shall have acquired Developer's leasehold estate created hereby or shall have commenced
9 foreclosure or other appropriate proceedings in the nature thereof, (ii) Lender shall diligently
10 prosecute any such proceedings to completion, (iii) Lender shall have fully cured any event of
11 default arising from failure to pay or perform any monetary obligation in accordance with the
12 terms of this Ground Lease, and (iv) after gaining possession of the Site Lender shall diligently
13 proceed to perform, all other obligations of Developer as and when the same are due in
14 accordance with the terms of this Ground Lease.

15 **26.05 Court Action Preventing Lender's Action**

16 If Lender is prohibited by any process or injunction issued by any court or by reason of
17 any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving
18 Developer from commencing or prosecuting foreclosure or other appropriate proceedings in the
19 nature thereof, the times specified in Articles 26.03 and 26.04 above for commencing or
20 prosecuting such foreclosure or other proceedings shall be extended for the period of such
21 prohibition; provided that Lender shall have fully cured any default in the payment of any

1 monetary obligations of Developer under this Ground Lease and shall continue to pay currently
2 such monetary obligations as and when the same fall due.

3 **26.06 Lender's Rights to Record, Foreclose and Assign**

4 The Agency hereby agrees with respect to any Leasehold Mortgage, that

5 (i) the Lender may cause same to be recorded and enforced and upon
6 foreclosure sell and assign the Leasehold Estate created hereby to an assignee from whom it may
7 accept a purchase price; subject, however, to Lender's first securing written approval from
8 Agency, which approval shall not be unreasonably withheld. Lender, furthermore, may acquire
9 title to the Leasehold Estate in any lawful way, and if the Lender shall become the assignee, may
10 sell and assign said Leasehold Estate subject to Agency approval, which shall not be unreasonably
11 withheld, and to the Agency's rights under Article 25. Should the Agency fail or refuse to
12 approve a Lender's sale or assignment of said Leasehold Estate for any reason other than the
13 unsatisfactory financial condition of the purchaser or assignee, the Agency shall pay such
14 purchaser an amount computed in accordance with Article 25.04, whereupon the Agency shall be
15 entitled to conveyance of the Leasehold Estate; and

16 (ii) that should the Lender acquire the Leasehold Estate hereunder by
17 foreclosure or other appropriate proceedings in the nature of foreclosure or as the result of any
18 other action or remedy provided for by any Leasehold Mortgage, or should Lender sell or assign
19 the same to an Agency approved purchaser or assignee, Lender or its purchaser or assignee shall
20 take said Leasehold Estate subject to all of the provisions of this Ground Lease, and shall, so long
21 as and only so long as it shall be the owner of such estate, except as provided elsewhere in this

1 Ground Lease, assume all of the obligations of Developer under this Ground Lease; the Lender or
2 its purchaser or assignee may operate and maintain the 101 dwelling units without any limitations
3 on the rents charged or the income of the occupants thereof.

4 (iii) the Agency shall mail or deliver to any Lender which has an outstanding
5 Leasehold Mortgage a duplicate copy of all notices which the Agency may from time to time give
6 to Developer pursuant to this Ground Lease.

7 (iv) any limited partners of Developer shall have the same rights as any Lender
8 under Articles 26.02, 26.03, and 26.06 (iii), and any reference to a Lender in said section shall be
9 deemed to include such limited partners; provided, however, that the rights of such limited
10 partners shall be subordinate to the rights of any Lender.

11 **26.07 Ground Lease Rent After Lender Foreclosure or Assignment**

12 From and after the time that the Lender or any assignee of Lender, including any purchaser
13 at a foreclosure sale ("Subsequent Owner"), acquires title to the Leasehold Estate, Annual Rent
14 shall be set as follows:

15 (a) If the Lender continues to operate the Project subject to the use and
16 occupancy restrictions of Article 9.02, then Annual Rent otherwise due shall be deferred until
17 such time as the Project is no longer operated by the Lender subject to such restrictions. All
18 deferred Annual Rent shall accrue, with simple interest at three percent (3%) per annum until
19 paid, and shall be due and payable upon sale or assignment of the Project by Lender or within
20 sixty (60) days after Lender ceases to operate the Project in accordance with such restrictions.

1 (b) If the Lender exercises its rights under Article 26.06(ii) to operate the
2 Project without being subject to Article 9.02, Annual Rent shall be set at the then fair market
3 value rental taking into account any affordability restrictions agreed to by the Subsequent Owner;
4 provided, however, that the Agency shall be entitled to reduce Annual Rent by any dollar amount
5 (but not below zero) in its sole discretion and, in such case, the Subsequent Owner will be
6 required to reduce rent charged to tenants on a dollar for dollar basis, with respect to such units
7 occupied by Low Income households as the Agency and the Subsequent Owner shall agree.

8 **ARTICLE 27: CONDEMNATION**

9 **27.01 Parties' Rights and Obligations to be Governed by Agreement**

10 If, during the term of this Ground Lease, there is any condemnation of all or any part of
11 the Site or any interest in the Leasehold Estate is taken by condemnation, the rights and
12 obligations of the parties shall be determined pursuant to this Article 27, subject to the rights of
13 any Lender.

14 **27.02 Total Taking**

15 If the Site is totally taken by condemnation, this Ground Lease shall terminate on the date
16 the condemnor has the right to possession of the Site.

17 **27.03 Partial Taking**

18 If any portion of the Site is taken by condemnation, this Ground Lease shall remain in
19 effect, except that Developer may elect to terminate this Ground Lease if, in Developer's
20 reasonable judgment, the remaining portion of the Improvements are rendered unsuitable for
21 Developer's continued use of the Site. If Developer elects to terminate this Ground Lease,

1 Developer must exercise its right to terminate pursuant to this paragraph by giving notice to the
2 Agency within thirty (30) days after the Agency notifies Developer of the nature and the extent of
3 the taking. If Developer elects to terminate this Ground Lease as provided in this Article 27.03,
4 Developer also shall notify the Agency of the date of termination, which date shall not be earlier
5 than thirty (30) days nor later than six (6) months after Developer has notified the Agency of its
6 election to terminate; except that this Ground Lease shall terminate on the date the condemnor has
7 the right to possession of the Site if such date falls on a date before the date of termination as
8 designated by Developer. If Developer does not terminate this Ground Lease within such thirty
9 (30) day notice period, this Ground Lease shall continue in full force and effect.

10 **27.04 Effect on Rent**

11 If any portion of the Improvements is taken by condemnation or threat of condemnation
12 and this Ground Lease remains in full force and effect, then on the date of taking the rent shall be
13 reduced by an amount that is in the same ratio to the rent as the value of the area of the portion of
14 the Improvements taken bears to the total value of the Improvements immediately before the date
15 of the taking.

16 **27.05 Restoration of Improvements**

17 If there is a partial taking of the Improvements and this Ground Lease remains in full force
18 and effect pursuant to Article 27.03, Developer may use the proceeds of the taking to accomplish
19 all necessary restoration to the Improvements.

1 **27.06 Award and Distribution**

2 Any compensation awarded, paid or received on a total or partial condemnation of the Site
3 or threat of condemnation of the Site shall belong to and be distributed in the following order:

4 (a) First, to pay the balance due on any outstanding Leasehold Mortgages to the
5 extent provided therein;

6 (b) Second, to the Developer in an amount equal to the actual equity invested by
7 the Developer;

8 (c) Third, the balance to the Agency.

9 **27.07 Payment to Lenders**

10 In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date
11 when any compensation resulting from a condemnation or threatened condemnation is to be paid
12 to Developer, such award shall be disposed of as provided in the Lender's loan documents.

13 **ARTICLE 28: ESTOPPEL CERTIFICATE**

14 The Agency or Developer, as the case may be, shall execute, acknowledge and deliver to
15 the other and/or to Lender, promptly upon request, its certificate certifying (a) that this Ground
16 Lease is unmodified and in full force and effect (or, if there have been modifications, that this
17 Ground Lease is in full force and effect, as modified, and stating the modifications), (b) the dates,
18 if any, to which rent has been paid, (c) whether there are then existing any charges, offsets or
19 defenses against the enforcement by the Agency or Developer to be performed or observed and, if
20 so, specifying the same, and (d) whether there are then existing any defaults by Developer or the
21 Agency in the performance or observance by Developer or the Agency of an agreement, covenant

1 or condition hereof on the part of Developer or the Agency to be performed or observed and
2 whether any notice has been given to Developer or the Agency of any default which has not been
3 cured and, if so, specifying the same.

4 **ARTICLE 29: QUITCLAIM**

5 Upon expiration or sooner termination of this Ground Lease, Developer shall surrender the
6 applicable portions of the Site to the Agency and, at the Agency's request, shall execute,
7 acknowledge, and deliver to the Agency a good and sufficient quitclaim deed with respect to any
8 interest of Developer in the same portions of the Site.

9 **ARTICLE 30: EQUAL OPPORTUNITY**

10 Developer agrees to comply with all of the Equal Opportunity and related requirements
11 attached hereto as Attachment 7.

12 **ARTICLE 31: CERTIFICATE AND BUSINESS PREFERENCE PROGRAM**

13 Developer agrees to comply with the requirements of the Agency's Certificate and
14 Business Preference Program as set forth on Attachment 6.

15 **ARTICLE 32: AGENCY LABOR STANDARDS PROVISIONS**

16 Developer agrees to comply with the requirements of the Agency's Labor Standards
17 Provisions as set forth on Attachment 8.

18 **ARTICLE 33: CONFLICT OF INTEREST**

19 No commissioner, official, or employee of the Agency shall have any personal or financial
20 interest, direct or indirect, in this Ground Lease, nor shall any such commissioner, official, or
21 employee participate in any decision relating to this Ground Lease which affects his or her

1 personal interests or the interests of any corporation, partnership, or association in which he or she
2 is directly or indirectly interested.

3 **ARTICLE 34: NO PERSONAL LIABILITY**

4 No commissioner, official, or employee of the Agency shall be personally liable to
5 Developer or any successor in interest in the event of any default or breach by the Agency or for
6 any amount which may become due to Developer or its successors or on any obligations under the
7 terms of this Ground Lease.

8 **ARTICLE 35: [INTENTIONALLY OMITTED]**

9 **ARTICLE 36: WAIVER**

10 The waiver by the Agency or Developer of any term, covenant, agreement or condition
11 herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any
12 other term, covenant, agreement or condition herein contained, nor shall any custom or practice
13 which may grow up between the parties in the administration of the terms hereof be construed to
14 waive or to lessen the right of the Agency or Developer to insist upon the performance by the
15 other in strict accordance with the said terms. The subsequent acceptance of rent or any other sum
16 of money hereunder by the Agency shall not be deemed to be a waiver of any preceding breach by
17 Developer of any term, covenant, agreement or condition of this Ground Lease, other than the
18 failure of Developer to pay the particular rent or other sum so accepted, regardless of the Agency's
19 knowledge of such preceding breach at the time of acceptance of such rent or other sum.

1 **ARTICLE 37: DEVELOPER RECORDS**

2 Upon reasonable notice during normal business hours, and as often as the Agency may
3 deem necessary, there shall be made available to the Agency and its authorized representatives for
4 examination all records, reports, data and information made or kept by Developer regarding its
5 activities or operations on the Site. Nothing contained herein shall entitle the Agency to inspect
6 personal histories of residents or lists of donors or supporters. To the extent that it is permitted by
7 law to do so, the Agency will respect the confidentiality requirements of Developer in regard to
8 the lists furnished by Developer pursuant to Article 7 hereof, of the names of occupants of the
9 residential portion of the Site.

10 **ARTICLE 38: NOTICES AND CONSENTS**

11 All notices, demands, consents or approvals which may be or are required to be given by
12 either party to the other hereunder shall be in writing and shall be deemed to have been fully given
13 when delivered in person to such representatives of Developer and the Agency as shall from time
14 to time be designated by the parties for the receipt of notices, or when deposited in the United
15 States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and
16 addressed

17 if to Developer at: Citizens Housing Corporation
18 26 O'Farrell Street, Suite 506
19 San Francisco, CA 94108
20 Attn.: Executive Director
21
22 if to the Agency at: San Francisco Redevelopment Agency
23 770 Golden Gate Avenue
24 San Francisco, California 94102
25 Attn.: Executive Director
26

1 or to such other address with respect to either party as that party may from time to time designate
2 by notice to the other given pursuant to the provisions of this Article 38. Any notice given
3 pursuant to this Article 38 shall be effective on the date of delivery or the date delivery is refused
4 as shown on the delivery receipt.

5 **ARTICLE 39: COMPLETE AGREEMENT**

6 There are no oral agreements between Developer and the Agency affecting this Ground
7 Lease, and this Ground Lease supersedes and cancels any and all previous negotiations,
8 arrangements, agreements and understandings between Developer and the Agency with respect to
9 the Lease of the Site.

10 **ARTICLE 40: HEADINGS**

11 Any titles of the several parts and sections of this Ground Lease are inserted for
12 convenience of reference only and shall be disregarded in construing or interpreting any of its
13 provisions. "Paragraph" and "section" may be used interchangeably.

14 **ARTICLE 41: SUCCESSORS AND ASSIGNS**

15 This Ground Lease shall be binding upon and inure to the benefit of the successors and
16 assigns of the Agency and Developer and where the term "Developer" or "Agency" is used in this
17 Ground Lease, it shall mean and include their respective successors and assigns; provided,
18 however, that the Agency shall have no obligation under this Ground Lease to, nor shall any
19 benefit of this Ground Lease accrue to, any unapproved successor or assign of Developer where
20 Agency approval of a successor or assign is required by this Ground Lease.

1 **ARTICLE 42: TIME**

2 Time is of the essence in the enforcement of the terms and conditions of this Ground
3 Lease.

4 **ARTICLE 43: PARTIAL INVALIDITY**

5 If any provisions of this Ground Lease shall be determined to be illegal or unenforceable,
6 such determination shall not affect any other provision of this Ground Lease and all such other
7 provisions shall remain in full force and effect.

8 **ARTICLE 44: APPLICABLE LAW**

9 This Ground Lease shall be governed by and construed pursuant to the laws of the State of
10 California.

11 **ARTICLE 45: ATTORNEYS' FEES**

12 If either of the parties hereto commences a lawsuit to enforce any of the terms of this
13 Ground Lease, the prevailing party will have the right to recover its reasonable attorneys' fees and
14 costs of suit, including fees and costs on appeal, from the other party.

15 **ARTICLE 46: EXECUTION IN COUNTERPARTS**

16 This Ground Lease and any memorandum hereof may be executed in counterparts, each of
17 which shall be considered an original, and all of which shall constitute one and the same
18 instrument.

19 **ARTICLE 47: RECORDATION OF MEMORANDUM OF GROUND LEASE**

20 This Ground Lease shall not be recorded, but a memorandum of this Ground Lease shall
21 be recorded. The parties shall execute the memorandum in form and substance as required by a

1 title insurance company insuring Developer's leasehold estate or the interest of any Leasehold
2 Mortgagee, and sufficient to give constructive notice of the Ground Lease to subsequent
3 purchasers and mortgagees.

4 **ARTICLE 48: ATTACHMENTS**

5 The following are attached to this Ground Lease and by this reference made a part hereof:

- 6 1. Site Plan
- 7 2. Legal Description of Site
- 8 3. (not used)
- 9 4. Schedule of Performance
- 10 5. (not used)
- 11 6. Operational Rules for Certificate Holder's Priority
- 12 7. Equal Opportunity Program
- 13 8. Prevailing Wage Provisions
- 14 9. Income Computation and Certification
- 15 10. Additional Developer Covenants
- 16 11. Mayor's Office of Housing Policy on Developer Fees for Non-Tax Credit
17 Projects
- 18 12. Mayor's Office of Housing Policy on Use of Residual Receipts
- 19
- 20

1 IN WITNESS WHEREOF, the Developer and the Agency have executed this Ground Lease as of
2 the day and year first above written.

3
4 **DEVELOPER AS TENANT:**

5
6 **CITIZENS HOUSING CORPORATION,**
7 **a California nonprofit public benefit corporation**

8
9
10
11 By: 

12
13 Its Executive Director

14
15
16 **AGENCY AS LANDLORD:**


17
18 **REDEVELOPMENT AGENCY OF THE CITY**
19 **AND COUNTY OF SAN FRANCISCO,**
20 a public body, corporate and politic

21
22
23 By: 

24 Tiza G. Peterson
25 Its Deputy Executive Director, Finance
26 and Administration

27
28
29
30 **APPROVED AS TO FORM:**

31
32
33 By: 

34  Bertha A. Ontiveros
35 Agency General Counsel

36
37
38 Authorized by Agency Resolution No. 61 -2000, adopted APRIL 25, 2000, and
39 Board of Supervisors Resolution, File No. 449-00 , adopted MAY 15 , 2000.

ATTACHMENT 1

Site Plan

324

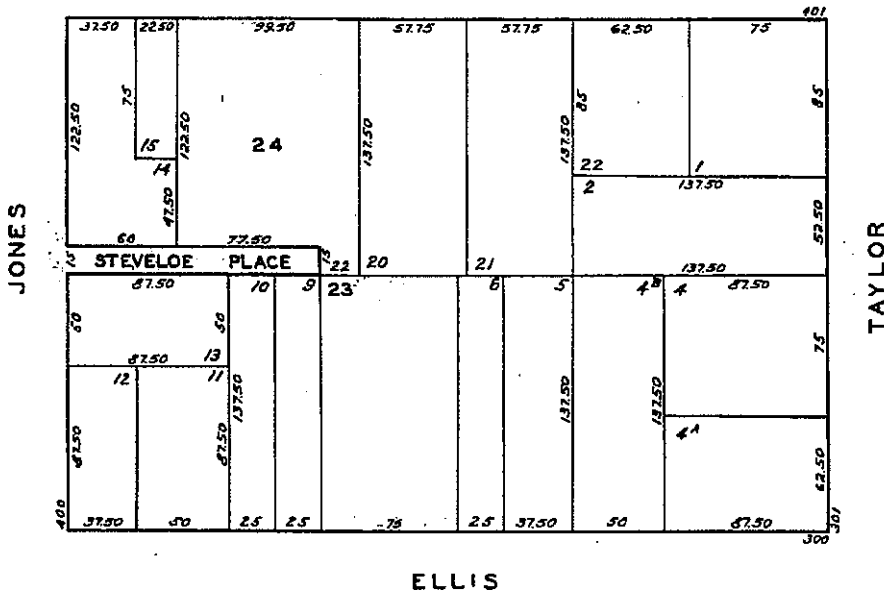
50 VARA BLK. 225

REVISED 1971
" " '64

LOTS MERGED
LOT 3 INTO LOT 2
1/11/71



O' FARRELL



NOTICE This is neither a plat nor a survey.
It is furnished merely as a convenience to
aid you in locating the land indicated hereon
with reference to streets and other land. No
liability is assumed by reason of any reliance
hereon.

ASSESSED 111,375
BLK. TOTAL 111,375 SQ. FT.

OLD REPUBLIC TITLE COMPANY

ATTACHMENT 2

Legal Description of Site

OLD REPUBLIC TITLE COMPANY

ORDER NO. 389869

UPDATE

The land referred to in this Report is situated in the County of ~~San Francisco~~ City and County of San Francisco State of California, and is described as follows:

BEGINNING at a point on the southerly line of O'Farrell Street, distant thereon 60 feet easterly from the easterly line of Jones Street; running thence easterly along said line of O'Farrell Street 99 feet and 6 inches; thence at a right angle southerly 137.50 feet; thence at a right angle westerly 22 feet to the easterly line of Steveloe Place; thence at a right angle northerly along said line of Steveloe Place 15 feet to the northerly line of Steveloe Place; thence at a right angle westerly along said line of Steveloe Place 77.50 feet; thence at a right angle northerly 122.50 feet to the point of beginning.

BEING part of 50 Vara Block No. 225.

Assessor's Lot 24; Block 324

ATTACHMENT 3

[NOT USED]

ATTACHMENT 4

Schedule of Performance

<u>MILESTONE</u>	<u>COMPLETION DATE</u>
Complete Acquisition	No later than five (5) business days from the Execution Date of this Lease

ATTACHMENT 5

[NOT USED]

ATTACHMENT 6

OPERATIONAL RULES FOR
CERTIFICATE HOLDERS' PRIORITY

The Owner hereby agrees that priority for units designated for Low Income Households will be given to persons displaced or to be displaced from their homes by Agency redevelopment activities and who have been issued a form described as the "Certificate of Preference" ("Certificate Holder"), establishing a priority right to claim units outlined in the descending order of priority in paragraph D of this Attachment "I". Final acceptance or rejection of Certificate Holders lies with the Owner. The Owner shall notify the Agency and applicant in writing of the reason for rejection. In order to implement this Attachment "I":

A. The Agency agrees to furnish the following:

1. Written and/or printed notices to Certificate Holders advising them that such units will soon be available;
2. Assistance to Certificate Holders in filing applications; and
3. Verification to the Owner that applicant has been displaced.

B. The Owner agrees to the following:

1. To supply the Agency ninety (90) days prior to accepting lease applications with the information listed below. This information shall not be changed without providing the Agency with ten (10) days written notice.
 - a. A master unit list with the following information:
 - (1) Apartment number;
 - (2) Number of bedrooms and baths;
 - (3) Square footage; and
 - (4) Initial rent to be charged.
 - b. Estimated itemized cost of utilities and services to be paid by tenant by unit size.
 - c. Detailed description of Owner's rules for tenants, which must include:
 - (1) Minimum and maximum income
 - (2) Pet policy
 - (3) Selection process: To insure no discrimination against Low Income Households and Certificate Holders all criteria and the relative weight to be given to each criterion indicated. The Agency shall approve or disapprove the selection process criteria within ten (10) working days after submission thereof to the Agency.
 - (4) Amount of security deposit and all other fees, as well as refund policy regarding same.
 - (5) Occupancy requirements must be described in full and found reasonable by the Agency
 - (6) Duration of rental agreement or lease.

3. Within ten (10) working days after execution of a lease, the Owner will supply the Agency with a signed copy of the following for all Certificate Holder tenants:

- (1) signed copy of lease;
- (2) copy of complete application; and
- (3) copies of all verification forms used to ascertain income eligibility.

D. In order to expedite occupancy of housing units nearing completion, the Owner further agrees:

1. To select as prospective tenants eligible Certificate Holders who meet the occupancy requirements of the Owner. Selection will be based on the following descending order of priorities:

- a. Families or individuals who reside on Agency property in redevelopment areas.
- b. Families or individuals who were relocated from Agency property and still have a valid Certificate of Preference.
- c. Families or individuals displaced by the Department of Health, Public Works, etc. and referred by the Agency.

2. Applicants who are Certificate Holders who have been accepted and notified by the Owner will have five (5) working days thereafter to accept or reject a unit. If the Certificate Holder fails to affirmatively respond, the application may be closed. Rejection of the unit by a Certificate holder must be shown on current status report.

3. All Certificate Holders found acceptable by the Owner shall have the opportunity to inspect a model or other available completed unit, and be assigned an appropriate unit for future occupancy. Units may be offered to non-Certificate Holders at any time as long as the current status report shows that there are sufficient units available to satisfy applications from Certificate Holders for units of appropriate size in any stage of processing. **ALL OBLIGATIONS TO SHOW MODELS OR OTHER AVAILABLE COMPLETED UNITS SHALL REMAIN IN EFFECT DURING INITIAL OCCUPANCY PERIOD.** Initial Occupancy is defined for all purposes of this Attachment "I" as the earlier of ninety (90) calendar days following the Agency's receipt of a certified copy of a Certificate (or Certificates) of Occupancy issued by the City and County of San Francisco for the respective unit (or units) to be so approved for occupancy, or the date when all units have been rented to the first occupants thereof. Upon Initial Occupancy the Agency will certify compliance with this Attachment "I" with a written notice provided ten (10) days after Initial Occupancy. Such certification in no way negates the Owner's continued obligations to provide housing to persons displaced or to be displaced by the Agency's redevelopment activities as vacancies occur amount the units designated for Low Income Households.

- E. Prior to Initial Occupancy, the Owner will deliver at least monthly, or more frequently if available to the Owner from its leasing agent, a rent-up report for all Development units listing the following:
1. Unit number rented;
 2. Tenant name;
 3. Date of move-in; and
 4. Rent rate.
- F. The Owner agrees that any contract entered into for the management of the residential portions of the Development, both before and after Initial Occupancy, shall be furnished to the Agency, shall incorporate the provisions of this Attachment "I", and shall bind the management agent to comply with its requirements.
- G. After Initial Occupancy (without regard to whether the Agency has certified compliance with the obligation of the Owner respecting the period prior to Initial Occupancy), the Owner agrees to notify the Agency as far as practicable in advance of vacancies which may occur in Low Income Housing units. The Agency and the Owner agree to follow the steps set forth in paragraph (D) above with respect to such units. In the event no appropriate Certificate Holder can be found within five (5) working days after receipt of notification by the Owner to the Agency of availability of a unit, the Agency agrees that the Owner may lease the unit to Low Income Households, as appropriate, which do not hold a Certificate of Preference.
- H. The Agency reserves the right to waive any of the foregoing conditions, provided however that any such waiver shall not be deemed to have waived any other conditions, nor the same condition subsequently.

ATTACHMENT 7

Equal Opportunity Program

ATTACHMENT NO. 4

EQUAL OPPORTUNITY PROGRAM

This Attachment No. 4 sets forth the Borrower's equal opportunity obligations and requirements pursuant to the Loan Agreement.

The Borrower agrees to the following:

- I. PURPOSES.** The Agency and the Borrower agree that the purposes of this Attachment No. 4 and its accompanying Schedules and Exhibits are to ensure:
- A. that persons and businesses, that enter into Loan Agreements with the Agency, that plan, design or construct improvements on sites initially purchased and assembled with Agency funds, or that occupy a site after its completion, provide equal opportunities to and do not discriminate against minority group persons, women, or economically disadvantaged business enterprises owned by minority group persons or women.
 - B. that the Borrower, its Prime Contractor and all subcontractors of the Borrower recruit, employ and contract with all qualified individuals and businesses which are part of the work force and business community in San Francisco and the Bay Area.
- II. DEFINITIONS.** The following definitions apply to this Attachment No. 4 and its accompanying schedules:
- A. "Agency" means the staff of the Redevelopment Agency of the City and County of San Francisco responsible for insuring that these Equal Opportunity Provisions are implemented.
 - B. "Consultant" means a person or business which is a party to a professional service contract.
 - C. "Contract" means any agreement in excess of \$10,000 between the Borrower, the general contractor, any prime contractors or any subcontractor (regardless of tier) and a person to provide or procure labor, materials, supplies or services, including a purchase order that requires installation of materials upon the Site covered by the Agreement. A "contract" does not include a loan transaction.

- D. "Contractor" means the Borrower's general contractor, all prime contractors and all subcontractors (regardless of tier) having a contract or subcontract in excess of \$10,000 and who employ persons in a trade at the Site.
- E. "Controlled", for purposes of determining whether a business is an MBE or a WBE, means that the minority group person(s), the woman or a combination of minority group persons and women, as the context requires, shall (1) possess legal authority and power to manage business assets, good will and daily operations of the business; and (2) actively and continuously exercise such authority and power in determining the policies and in directing the operations of the business.
- F. "Economically Disadvantaged" means that once a business reaches the three-year average size gross income threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible M/WBE and it will not be counted towards meeting M/WBE goals.

<u>Industry</u>	<u>Gross Income</u>
Construction	\$14,000,000
Professional or Personal Services	2,000,000
Suppliers	2,000,000

- G. "First Consideration" means to make a genuine effort to consider local M/WBEs before looking elsewhere. Non-Local M/WBEs should be used to satisfy participation goals only if Local M/WBEs are not available or qualified, or if their bids or fees are significantly higher than those of the non-local M/WBEs.
- H. "First consideration for employment" means to offer a permanent position to individuals who are qualified for that position and who live in San Francisco prior to offering the position to a qualified individual who does not live in San Francisco.
- I. "Job category" means a group of similar jobs such as food and beverage supervisors, room cleaners and related workers, etc.
- J. "Joint Venture" means two or more businesses acting as a contractor and performing or providing services on a contract, in which each joint venturer combines property, capital, skill and/or knowledge.
- K. "Local M/WBE" means an economically disadvantaged, independent and continuing minority or woman-owned business that: (a) has fixed offices located within the geographic boundaries of the City and County of San Francisco; (b) is listed in the Permits and License Tax Paid File with a San Francisco Business Street address; and (c) possesses a current Business Tax Registration Certificate. Post office box numbers or residential addresses alone shall not suffice to establish a firm's status as local. To qualify as a local firm, the firm must have been located and doing business in San Francisco for at least six months prior to

the date that the Borrower enters into exclusive negotiations with the Agency.

- L. "Minority" or "minority group person" means:
1. **American Indian or Alaskan Native, which includes Alaskan Indians, Inuits and Aleuts**, (any person having origins in the indigenous peoples of North America and who is an enrolled member of a federally-recognized tribe);
 2. **Asian** (any person of Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian-Indian or South East Asian origins);
 3. **Black** (any person having origins in any of the black racial groups of Africa); or
 4. **Latino** (any person of Spanish culture with origins in Mexico or other Spanish speaking countries in Central or South America or the Caribbean Islands).
- M. "Minority-owned Business Enterprise (MBE)" means an economically disadvantaged, independent, continuing and for-profit business, which performs a commercially useful function, and is owned and controlled by one or more minority group persons residing in the United States or its territories.
- N. "Owned", for purposes of determining if a business is an MBE or a WBE, means that the minority group persons or women as the context requires, possess an ownership interest of at least 51 percent of the business, possess incidents of ownership, such as an interest in profit and loss, equal at least to the required ownership interest percentage, and contribute capital, equipment and expertise to the business equal to at least the required ownership percentage.
- O. "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, and legal representatives.
- P. "Retail tenant" means a business at the Site, whether run by tenants, operators or concessioners, and which supplies commodities or services to customers on its premises, including, but not limited to, stores, shops, hotels and eating and drinking businesses such as restaurants and bars.
- Q. "San Francisco resident (other than a person previously employed by the Borrower)" means a person who establishes that she or he has lived in San Francisco for at least one week prior to submitting her or his initial application for employment with the Borrower.

- R. "San Francisco resident (a person employed by the Borrower or retail tenant prior to assignment to the Site)" means a person who had lived in San Francisco for at least six months prior to the date she or he applied for a transfer to a position at the Site or the date she or he was assigned to work at the Site, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that she or he lived in San Francisco prior to applying for or being considered for a position with the Borrower or retail tenant at the Site.
- S. "Trade" means all skilled construction trades, laborers and security guards.
- T. "Woman-owned Business Enterprise (WBE)" means an economically disadvantaged, independent, continuing and for-profit business, which performs a commercially useful function, and is owned and controlled by one or more women residing in the United States or its territories.
- U. "Woman/Minority-owned Business Enterprise (W/MBE)" means an economically disadvantaged, independent, continuing and for-profit business, which performs a commercially useful function, and is owned and controlled by one or more women and minority group persons residing in the United States or its territories.

III. AREAS COVERED. In addition to the matters directly addressed in this Attachment No. 4, the equal opportunity obligations and requirements established herein cover:

- A. The construction work force for the original buildings and improvements at the Site, any additions or changes thereto, and all tenant improvements performed by or at the behest of the Borrower. Training and employment obligations and requirements are set forth in Schedule A attached hereto and incorporated herein by reference.
- B. Minority and woman-owned business enterprises. These obligations and requirements are set forth in Schedule B attached hereto and incorporated herein by reference.

IV. OBLIGATION TO INCORPORATE IN OTHER CONTRACTS. Each contract between the Borrower and a consultant, a general contractor, a prime contractor or a subcontractor (regardless of tier) shall physically incorporate and make binding on the parties to the contract §§I, II, III, IX and XI of this Attachment No. 4 and Schedules A and B to this Exhibit.

V. BORROWER'S HIRING OBLIGATIONS.

- A. This §V applies to the Borrower's employees.
- B. The Borrower shall make a good faith effort to fill vacancies in each job category in its work force (whether filled by new hire or promotion) at a rate which reflects the ethnic and gender composition of the City and County of San Francisco.
- C. The Borrower shall give first consideration in employment to residents San Francisco; provided that if a conflict arises, the Borrower's obligation under paragraph B shall take precedence over its obligation to give first consideration in employment under this paragraph.
- D. During the period between the issuance of the Request for Proposals and the execution of the Agreement, the Borrower hired as follows:

<u>Job Category</u>	<u>Total</u>	<u>Amer- Ican Indian</u>	<u>Asian/ Pacific Islndr</u>	<u>La- tino Black</u>	<u>Wo- men</u>	<u>SF Res</u>
1.						
2.						
3.						
4.						

- E. The Borrower shall submit quarterly reports to the Agency which show, for each job category of its employees, the total new hires, the ethnicity (each minority group) of the new hires, the gender of the new hires, and the residence of new hires (San Francisco/non-San Francisco).
- F. The Agency or the Borrower may take any dispute concerning the interpretation, implementation or alleged breach of this section to arbitration pursuant to §IX of this Attachment No. 4.

VI. BORROWER'S DESIGN AND OTHER PROFESSIONAL SERVICES CONSULTANTS.

- A. Participation Goals. The Agency has made a finding that discrimination has occurred against businesses owned by women and minority group persons. Accordingly, the Borrower and all Professional and Personal Services Contractors with contracts in excess of \$10,000 shall make good faith efforts to achieve the following goals, which have been designed to correct the effects of past discrimination:

MBE 20 percent
WBE 18 percent

Only firms certified as MBEs, WBEs or W/MBEs (a combination of MBEs and WBEs) in accordance with §VI of Schedule B to this Attachment No. 4 will be counted toward meeting the above participation goals.

- B. The Borrower and its Contractors shall give first consideration to local M/WBEs and comply with the good faith effort steps set forth in §IV of said Schedule B to ensure that minority-owned and woman-owned business enterprises have an equal opportunity to compete for and participate in contracts for the planning and design of the buildings and improvements and all tenant improvements thereafter performed by or at the behest of the Borrower on the Site. This obligation covers all contracts involved in the improvements and such tenant improvements, including professional service contracts, consultant contracts and subcontracts. The prime contractors are responsible for ensuring that each of their subcontractors meets these requirements.
- C. Borrower's total consultant costs are expected to amount to \$ _____.
- D. Prior to the execution of the Agreement, the Borrower has selected the following consultants:

	<u>Firm & Address</u>	<u>Ethnicity & Gender of Owners</u>	<u>Telephone</u>	<u>Work Product</u>	<u>Contract Amount</u>
1.					
2.					
3.					
4.					
5.					

- E. The following design and engineering consultants have agreed to employ Job Training Partnership Act-eligible trainees through a program under which the employer may receive tax credits:

	<u>Firm & Address</u>	<u>Contact Person</u>	<u>No. of Trainees</u>	<u>Dates for Hiring</u>
1.				
2.				
3.				
4.				

Consultant team is expected to employ the number of trainees indicated in the following schedule:

<u>Trainees</u>	<u>Consultant Fees</u>
0	\$ 0 249,999
1	250,000 399,999
2	400,000 599,999
3	600,000 999,999
4	1,000,000 1,999,999
5	2,000,000 or more

VII. BORROWER'S CONSTRUCTION CONTRACTS.

- A. Participation Goals. The Agency has made a finding that discrimination has occurred against construction firms owned by women and minority group persons. Accordingly, the Borrower and all construction Contractors with contracts in excess of \$10,000 shall make good faith efforts to achieve the following goals, which have been designed to correct the effects of past discrimination:

MBE	31 percent
WBE	10 percent

Only firms certified as MBEs, WBEs or W/MBEs (a combination of MBEs and WBEs) in accordance with §VI of Schedule B to this Attachment No. 4 will be counted toward meeting the above participation goals.

- B. The Borrower and all such Contractors shall give First Consideration to local M/WBEs and comply with the good faith effort steps set forth in §IV of said Schedule B to ensure that minority-owned and woman-owned business enterprises have an equal opportunity to compete for and participate in contracts for the construction of the buildings and improvements and all tenant improvements thereafter performed by or at the behest of the Borrower on the Site. This obligation covers all construction contracts and subcontracts involved in the improvements and such tenant improvements, including ancillary professional service contracts, consultant contracts and subcontracts. The prime contractors are responsible for ensuring that each of their subcontractors meets these requirements.
- C. Borrower's total cost of its construction contracts for improvements on the Site are expected to amount to \$ _____.
- D. Prior to the execution of the Agreement, the Borrower has selected the following construction contractors (including general contractors):

	<u>Firm & Address</u>	<u>Ethnicity & Gender of Owners</u>	<u>Telephone</u>	<u>Work Product</u>	<u>Contract Amount</u>
1.					
2.					
3.					
4.					
5.					

VIII. ARBITRATION OF DISPUTES.

- A. Agency's right of enforcement. For purposes of enforcement, the Agency is and shall be the beneficiary of the obligations, requirements and agreements established by this Exhibit I, Schedules A and B, and any equal opportunity plan created or developed pursuant to the Schedules. The Agency is the beneficiary for itself, in its own right, and also for purposes of protecting the interest of the community, and other parties, public or private, in whose favor and for whose benefit such obligations, requirements or agreements have been provided. Accordingly, the Agency shall have the right to enforce said obligations, requirements and agreements against the Borrower, the Prime Contractor, any consultant, any retail tenant, any subcontractor (regardless of tier), or any material supplier of the prime contractors or any subcontractor, as well as any party who by contract also has the responsibility for enforcement of said obligations, requirements or agreements, e.g., breaching sub-subcontractor against the subcontractor, the prime contractors and the Borrower.
- B. Initiating arbitration. Request for Arbitration. Arbitration, as provided for in this Attachment No. 4 and its accompanying Schedules, shall be the exclusive procedure for resolving any dispute concerning the interpretation, implementation or alleged breach of this Exhibit or its Schedules. The Agency, the Borrower, its consultant, prime contractor, any subcontractor (excluding all contractors or consultants who were not awarded a contract) or any retail tenant may take any such dispute to arbitration by filing a Request for Arbitration with any member of the panel of arbitrators attached hereto as Exhibit 1. Prior to filing the Request, the complaining party may determine by telephone if a particular arbitrator is available to hear the matter. Where the Agency is not the complaining party, the Request shall be served on the Agency. Where the Agency is the complaining party, the Request shall be served on the Borrower and the noncompliant party (if not the Borrower) if such service can be achieved with reasonable effort. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify the entities involved in the dispute (e.g., the specific subcontractor), and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.
- C. Effect of Service on the Borrower. Service on the Borrower of the Request for Arbitration or any notice provided for by this Attachment No. 4 or any accompanying schedule shall constitute service of the Request or notice on all consultants, prime contractors, subcontractors, and retail tenants who are identified as being in alleged noncompliance in the Request for Arbitration. The Borrower shall promptly serve the Request or notice, by hand delivery or registered or certified mail, on all such consultants, prime contractors, subcontractors or retail tenants.

- D. Parties' participation. The Borrower shall require, by contract, that each of its consultants, all prime contractors, all subcontractors, and all retail tenants participate in any arbitration proceedings in which it is identified in the Request for Arbitration, and that each shall be bound by the outcome, including the decision of the arbitrator.
- E. Arbitrator's ability to act. Except where a temporary restraining order is sought, the arbitrator with whom the Request was filed shall notify the Agency and Borrower by telephone within 48 hours if she or he is **not** available to act as arbitrator. Where a temporary restraining order is sought, such notice shall be provided within 24 hours. If the arbitrator is not available, she or he shall immediately designate one of the other members of the panel appearing on Exhibit 1 hereto to be the arbitrator.
- F. Negotiations prior to arbitration. Prior to the filing and service of a Request for Arbitration, the parties to any arbitrable dispute shall meet and confer in an attempt to resolve the dispute. After the filing and the service of a Request for Arbitration, the parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to arbitration, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction (temporary relief). Whether the facts reasonably supported the issuance of temporary relief shall be determined by the arbitrator and shall not, under any circumstances, be determined by a court.
- G. Setting of arbitration hearing. If the dispute is not settled within 10 business days, a hearing shall be held within 90 days of the date of the filing of the Request for Arbitration, unless otherwise agreed by the parties or ordered by the arbitrator upon a showing of good cause; provided, that if the complaining party seeks a temporary restraining order, the hearing on the motion for a temporary restraining order shall be heard not later than two (2) business days after the filing of the Request for Arbitration, and provided further, if a party seeks a preliminary injunction, such motion shall be heard on 15 days' notice. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the proscribed time periods by giving notice by hand delivery to the Agency and the Borrower; except, where a temporary restraining order is sought, the arbitrator may give notice of the hearing date, time and place to the Agency and the Borrower by telephone.
- H. Discovery. In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

I. Arbitration remedies and sanctions. Except as may otherwise be expressly provided in the Schedules incorporated herein, the arbitrator may impose only the remedies and sanctions set forth below and only against the noncompliant party(ies):

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the noncompliance and/or to bring the Borrower and/or its noncompliant consultants, prime contractors, subcontractors, or retail tenants into compliance.
2. Require the Borrower, consultants, prime contractors or subcontractors to refrain from entering into new contracts related to work covered by the Agreement, or from granting extensions or other modifications to existing contracts related to work covered by the Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract, with any noncompliant consultant, the prime contractors or subcontractor until such consultant, prime contractors or subcontractor provides assurances satisfactory to the Agency and the Borrower of future compliance with the applicable provisions of the Agreement.
3. Direct the Borrower, consultants, prime contractors, or subcontractors to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or lease or portion(s) thereof for failure of the consultants, prime contractors, subcontractors or retail tenant to comply with any of the equal opportunity provisions of the Agreement. Contracts or leases may be continued upon the condition that a program for future compliance is approved by the Agency.
4. Order conveyance of the Site where the Agency has refused to convey the Site pursuant to §X of this Attachment No. 4. The arbitrator may condition conveyance on the Borrower completing specific remedial actions or agreeing to take specific remedial actions after the conveyance.
5. Award back and front pay to those who were not hired or lost hours of work as a result of the failure of the Borrower, any consultant, prime contractors or any subcontractor to make the required good faith efforts to meet the employment goals established herein. No front pay award shall extend beyond the period that the noncompliant party performs work at the Site.

6. If the Borrower, a consultant, the general contractor, a prime contractor, a subcontractor or a retail tenant is found to be in willful breach of its obligations hereunder, impose financial penalties not to exceed \$50,000 or 10 percent of the base amount of the contract, whichever is less, for each such breach on the party responsible for the willful breach; provided that in determining the amount of any financial penalty to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No penalty shall be imposed pursuant to this paragraph for the first willful breach of this Attachment No. 4 or its Schedules unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Penalties may be imposed for subsequent willful breaches by the Borrower, consultant, contractor or retail tenant whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.
 7. Direct that the Borrower, consultants, general contractor, any prime contractors, any subcontractor, or retail tenant to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of the Borrower, consultant, prime contractors, any subcontractor, or retail tenant.
- J. Arbitrator's Decision. The arbitrator shall make his or her award within 20 days of the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than 24 hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to the Agency, the Borrower and the noncompliant consultant, prime contractors, subcontractor, or retail tenant, if any.
- K. Default award; no requirement to seek an order compelling arbitration. The arbitrator may enter a default award against any party (e.g., prime contractor, subcontractor) who fails to appear at the hearing; provided said party received actual notice of the hearing. In a proceeding seeking a default award against a party other than the Borrower, the Borrower shall provide proof of service on the party as required by paragraph C of this §IX. If the Borrower fails to provide proof of service, the Borrower shall pay \$2,500, as liquidated damages, to the Agency, provided that no such damages shall be assessed if the Borrower demonstrates that it made good faith efforts to serve the party. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

- L. Arbitrator lacks power to modify. Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agreement, this Attachment No. 4, the Schedules incorporated herein or any other agreement between the Agency and the Borrower, or to negotiate new agreements or provisions between the parties.
- M. Jurisdiction/entry of judgment. The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Request for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon the Agency, the Borrower, noncompliant consultants, prime contractors, subcontractors and retail tenants, if any, sent by mail to the Agency, the Borrower and the noncompliant consultant, prime contractors, subcontractor, or retail tenant, if any. The losing party shall pay the arbitrator's fees and related costs of arbitration. If a consultant, prime contractor or subcontractor is the losing party and fails to pay said fees within 30 days of the decision, the Borrower shall pay the fees. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the arbitrator finds that the Request for Arbitration was frivolous or that the arbitration action was otherwise instituted or litigated in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.
- N. Delays due to enforcement. In the event that the Borrower does not timely perform its obligations under the Agreement because of an arbitrator's order against a party other than the Borrower, the time for any performance by the Borrower shall be extended for a period commensurate with the period of said cessation of work; provided, however, that the Borrower shall take all actions reasonably necessary to minimize any delays.
- O. Exculpatory clause. The Borrower, consultants, general contractor, prime contractors, subcontractors (regardless of tier), and retail tenants of the Borrower expressly waive any and all claims against the Agency for damages, direct or indirect, including, but not limited to claims relative to the commencement, continuance and completion of construction. The Borrower, consultants, prime contractors, all subcontractors (regardless of tier), and retail tenants acknowledge and agree that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Attachment No. 4 and the equal opportunity obligations of the Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the planning, design and construction of the improvements or Site, and in determining the times for commencement and completion of the planning, design and construction or related work.

- P. California law applies. California law, including the California Arbitration Act, Code of Civil Procedure §§1280 through 1294.2, shall govern all arbitration proceedings.
- Q. Additional arbitration provisions in Schedules. The arbitration provisions contained in this Attachment No. 4 are subject to the specific arbitration provisions, if any, set forth in Schedules A through B.
- R. Designation of agent for service. Not later than five (5) days after the execution of the Agreement, the Borrower shall designate a person or business, residing or located in the City and County of San Francisco, as its agent for service of a Request for Arbitration and all notices provided for herein. If the Borrower has an office located in San Francisco, it may designate itself as agent for service. The designation shall be served on the Agency and shall include the address of the agent.
- S. **NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

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

Agency

Borrower

IX. CONDITION PRECEDENT.

- A. If the Agency determines that the Borrower, its consultants, general contractor or any prime contractor is in breach of this Attachment No. 4 or any of its Schedules, the Agency may require, as a condition precedent to the Agency's obligation to convey the Site, that the Borrower cure the alleged breach.
- B. If the Borrower disagrees with the Agency's determination that it is in breach, the Borrower, as its exclusive remedy, may take the dispute to arbitration pursuant to §IX of this Attachment No. 4.

X. SEVERABILITY. The provisions of this Attachment No. 4 and each Schedule incorporated herein are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Exhibit or any Schedule, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the Exhibit and/or Schedule(s), or the validity of their application to other persons or circumstances.

ATTACHMENT 4

EXHIBIT 1

PANEL OF ARBITRATORS

Morris Davis, Esq.
8795 Mountain Boulevard
Oakland, CA 94605
510/635-4509

John Kagel, Esq.
Kagel and Kagel
544 Market Street, Suite 401
San Francisco, CA 94104
415/982-1438

William Bennett Turner
Rogers Joseph O'Donnell Quinn
311 California Street
San Francisco, CA 94104
415/956-2828

ATTACHMENT NO. 4

SCHEDULE A

CONSTRUCTION WORK FORCE

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

II. WORK FORCE GOALS.

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

B. Goals

1. Goal for minority group participation in each trade: **25.6 percent** (current Office of Federal Contract Compliance Programs, hereinafter "OFCCP", goal) of the total hours worked in the trade.
2. Goal for female participation in each trade: **6.9 percent** (current OFCCP goal) of the total hours worked in the trade.
3. Goal for participation of San Francisco residents in each trade: **50 percent** of the total hours worked in the trade. Residents of San Francisco shall be given first consideration for hiring followed by other residents.

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

- D. The goals set forth in §II.B shall be amended to reflect either:
1. New goals issued by the Director of OFCCP pursuant to 41 CFR 60-4.6 as published periodically in the Federal Register in notice form; or
 2. New goals issued by the Agency. Goals issued by the Agency shall either reflect the availability of minority group persons and/or women in the relevant labor area to perform construction work generally or by trade, or, be designed to correct the effects of past discrimination in situations where the Agency concludes that the facts establish a prima facie case of discrimination against a minority group or women, or otherwise meet the current judicial standards for setting employment goals. A judicial finding of discrimination shall not be a prerequisite to the establishment of new goals by the Agency. If the Borrower believes that the new goals violate applicable legal standards, the Borrower may challenge the goals either through arbitration under Attachment No. 4 or in a de novo court action.
- E. Amendments to the goals shall be prospective and go into effect 20 days after the Agency mails written notice of the amendments to the Borrower. New goals shall not be applied retroactively.
- F. Although paragraph B establishes a single goal for minority group persons and a separate, single goal for women, each Contractor is required to provide equal employment opportunity for all ethnic groups, both male and female, and all women, both minority and non-minority. Consequently, a Contractor may be in violation of this Schedule if a particular ethnic group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goal for women generally, the Contractor may be in violation if a specific ethnic group of women is underutilized.) If the Agency determines, after affording a Contractor notice and an opportunity to be heard, that the Contractor has violated its obligations under this paragraph, the Agency may set, for that Contractor, work force participation goals by particular ethnic group, e.g., Blacks, Latinos, etc.
- G. Each Contractor is individually required to comply with its obligations under this Schedule A, and to make a good faith effort to achieve each goal in each trade in which it has employees employed at the Site. (See §IV below.) The overall good faith performance by other contractors or subcontractors toward a goal does not excuse any covered Contractor's failure to make good faith efforts to achieve the goals.
- H. The Contractor shall not use the goals or standards to discriminate against any person because of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

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

III. INCORPORATION. Whenever the Borrower, the general contractor, any prime contractor, or any subcontractor at any tier subcontracts a portion of the work on the Site involving any construction trade, it shall set forth verbatim and make binding on each subcontractor which has a contract in excess of \$10,000 the provisions of Attachment No. 4 of the Agreement and this Schedule A, including the applicable goals for minority group and female participation in each trade.

IV. EQUAL OPPORTUNITY REQUIREMENTS.

- A. Each Contractor shall take specific equal opportunities to ensure equal employment opportunity ("EEO"). The evaluation of the Contractor's compliance with this Schedule A shall be based upon its good faith efforts to achieve maximum results from its actions. Each Contractor shall document these efforts fully, and shall implement equal opportunity steps at least as extensive as the following:
 1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at the Site. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment with specific attention given to minority group persons or women working at the Site.
 2. Provide written notification to: Chinese for Affirmative Action, Ella Hill Hutch Community Center, Mission Hiring Hall, South of Market Employment Center and Young Community Developers, Inc. and any other organizations identified for the Contractor by the Agency when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

3. Maintain a current file of the names, addresses and telephone numbers of each off-the-street, minority group, female or resident applicant and each minority, female and resident referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
4. Provide immediate written notification to the Agency when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority group person, a woman or a resident sent or requested by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
5. Develop on-the-job training opportunities and/or participate in training programs which expressly include minority group persons and women, including apprenticeship, trainee and upgrading programs relevant to the Contractor's employment needs, especially those funded or approved by BAT or DAS. The Contractor shall provide notice of these programs to the sources compiled under §IV.A.2 above.
6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority group and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at the Site.
7. Review, prior to beginning work at the Site and at least annually thereafter, the Contractor's EEO policy and obligations under the Agreement and this Schedule A with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter. The Agency's contract compliance staff shall be invited to attend the meeting held prior to the beginning of work at the Site.

8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
9. Direct its recruitment efforts, both oral and written, to local minority group, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. Encourage present minority and female employees to recruit other minority group persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the Site and in other areas of a Contractor's work force.
11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
12. Conduct, at least annually, an inventory and evaluation of minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training etc., such opportunities.
13. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.
14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the genders.
15. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and obligations.

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

V. ADDITIONAL PROVISIONS.

- A. The failure by a union with which the Contractor has a collective bargaining agreement, to refer either minority group persons or women shall not excuse the Contractor's obligations under this Schedule A.
- B. A Contractor shall not enter into any subcontract with any person or firm that the Contractor knows or should have known is debarred from government contracts pursuant to Executive Order 11246.
- C. No employee to whom the equal opportunity provisions of this Schedule A are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to Attachment No. 4 of the Agreement or this Schedule.
- D. Each Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Contractor's EEO policy is being carried out.

VI. DOCUMENTATION AND RECORDS.

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

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

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

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

CODE	DESCRIPTION	CODE	DESCRIPTION
D	San Francisco-Domiciled	B	Black
R	Resident	I	American Indian
S	Latino	C	Caucasian/White
O	Asian/Pacific Islander	W	Woman

- C. Required records. For each employee, the Contractor's payroll or similar record shall contain the name, address, whether an employee lives in San Francisco, telephone numbers, construction trade, classification, union affiliation (if any), employee identification number, Social Security number, gender, race, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hourly wage rates (including rates of contributions for costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, the contractor shall not be required to maintain separate records.
- D. Additional information. The report required by §VI.B shall be accompanied by:
1. A statement of any problems encountered by the Contractor in obtaining minority, female or resident referrals from any union and
 2. A statement of the reasons why the Contractor failed to meet the ethnic and gender employment goals (if the goals were not met), the reasons why the contractor failed to meet the 50 percent San Francisco residency goal (if that goal was not met) and the reasons why the contractor was not able to perform any of the equal opportunity steps set forth in §IV.A.1 through 15 (if any of the steps were not taken).
- E. Inspection of records. The Contractor shall make the records required under this section available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job.
- F. Failure to submit reports. If a Contractor fails or refuses to provide the reports to the General Contractor as required by §VI.A, the Agency, upon notice from the General Contractor or the Borrower, shall consider but not be required to institute arbitration proceedings against the noncompliant Contractor.
- G. Submission of good faith effort documentation. If the Contractor's good faith efforts are at issue, the Contractor shall provide the Agency with the documentation of its efforts as required by §IV.A.

VII. ARBITRATION OF DISPUTES. The Agency, Borrower and any affected Contractor may take any dispute concerning the interpretation, implementation or alleged breach of this Schedule to arbitration in accordance with the arbitration provisions of Attachment No. 4 of the Agreement.

VIII. PRECONSTRUCTION MEETING.

- A. Prior to close of escrow and commencement of construction, the general contractor, any prime contractor, or any subcontractor at any tier shall attend a preconstruction meeting convened by the Agency and to which outreach organizations are invited to review the reporting requirements, the prospective work force composition and any problems that may be anticipated in meeting the work force goals.
- B. Any subcontractor at any tier, who does not attend such a meeting shall not be permitted on the job site. The Agency shall convene additional preconstruction meetings within 24 hours of the Contractor's request. The Contractor shall endeavor to include as many prospective subcontractors as possible at these meetings in order not to protract unduly the number of meetings.
- C. Failure to comply with this preconstruction meeting provision may result in the Agency ordering a suspension of work by the prime contractor and/or the subcontractor until the breach has been cured. Suspension under this provision is not subject to arbitration.

IX. TERM. The obligations of the Borrower and the Contractors with respect to their construction work forces, as set forth in Attachment No. 4 of this Agreement and this Schedule A, shall remain in effect until completion of all work to be performed by the Borrower in connection with the initial construction at the Site and all tenant improvements performed thereafter at the Site by or at the behest of the Borrower.

ATTACHMENT NO. 4

SCHEDULE B

**EQUAL OPPORTUNITY FOR
MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES**

I. PURPOSE. The purpose of the Agency and the Borrower in entering into this Schedule B is to establish a set of MBE and WBE participation goals and good faith efforts designed to ensure that monies are spent in a manner which is nondiscriminatory and which provides MBEs and WBEs with an equal opportunity to compete for and participate in contracts for the planning, design and construction of the original improvements and all tenant improvements performed thereafter by or at the behest of the developer upon the site covered by the Agreement.

II. INCORPORATION. Each contract between the Borrower, a consultant, the general contractor, a prime contractor or a subcontractor (at any tier) and any person shall physically incorporate and make binding on the parties to that contract §§ I, II, III, IX and X of Attachment No. 4 and this Schedule B.

III. MBE AND WBE PARTICIPATION GOALS.

The Agency has made a finding that discrimination has occurred against businesses owned by women and minority group persons. Accordingly, each contractor shall make good faith efforts to achieve the goals which have been designed to correct the effects of past discrimination and are set forth in Attachment No. 4.

IV. GOOD FAITH EFFORTS TO MEET GOALS WITH LOCAL MBEs AND WBEs.

A. The Borrower and all Contractors with contracts in excess of \$10,000 shall make good faith efforts to ensure that M/WBEs have an equal opportunity to compete for and participate in contracts for the planning, design and construction of the original building and improvements and all tenant improvements thereafter performed by or at the behest of the Borrower on the Site. A genuine effort will be made to consider local M/WBEs before looking outside of San Francisco. This obligation covers all contracts involved in the original improvements and such tenant improvements, including professional service contracts, consultant contracts and contracts and subcontracts for labor, materials, supplies and trucking. The general contractor and prime contractors are responsible for ensuring that each of their subcontractors meets these requirements.

- B. A Contractor's compliance with the following steps will be the basis for determining if the Contractor has made good faith efforts to meet the goals for MBEs and WBEs:
1. Not less than 30 days prior to the opening of bids or the selection of contractors, the Borrower or Contractor shall:
 - a. advertise for M/WBEs interested in competing for the contract, in general circulation media, trade association publications, including timely use of the *Bid and Contract Opportunities* newsletter published by the City and County of San Francisco Purchasing Department and media focused specifically on minority or woman-owned businesses such as the *Small Business Exchange*, of the opportunity to submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.
 - b. search through available published lists of M/WBEs in the Bay Area which provide the service being sought including such Agency directories as *Minority-owned Construction Contractors and Truckers* and *Woman-owned Construction Contractors and Truckers*, in order to identify such M/WBEs and provide written notice to them, of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.
 2. Hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors. The Agency shall be invited to attend as an observer.
 3. The Borrower or Contractor shall follow up initial solicitations of interest by contacting the M/WBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work on the Site.
 4. The Borrower and Contractor shall divide, to the greatest extent feasible, the contract work into small units to facilitate M/WBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.
 5. The Borrower and Contractor shall provide all prospective contractors and subcontractors with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Borrower or Contractor to give M/WBEs any information not provided to other contractors. This paragraph does require the Borrower and the Contractor to answer carefully and completely all reasonable questions asked, and to

- undertake every good faith effort to ensure that all prospective contractors and subcontractors understand the nature and the scope of the work.
6. The Borrower and Contractor, where feasible, shall negotiate with M/WBEs in good faith and demonstrate that M/WBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.
 7. The Borrower and Contractor shall prohibit the shopping of the bids. Where the Borrower or Contractor learns that bid shopping has occurred, it shall treat such bid shopping as a material breach of contract.
 8. The Borrower or Contractor shall assist M/WBEs in their efforts to obtain bonds, lines of credit and insurance. The Borrower and Contractor shall require no more stringent bond or insurance standards of M/WBEs than required of other business enterprises.
 9. The Borrower and Contractor shall establish delivery schedules, which encourage participation of M/WBEs.
 10. The Borrower and its General Contractor shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize M/WBEs as lower tier subcontractors.
 11. The Borrower and Contractor shall use the services of minority and woman contractor associations, federal, state and local M/WBE assistance offices and other organizations that provide assistance in the recruitment and placement of M/WBEs, including the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

V. PROCEDURES.

- A. Notice to Agency. The Borrower or Contractor shall provide the Agency with the following information within 10 days of awarding a contract or selecting a subcontractor:
 1. the nature of the contract, e.g. type and scope of work to be performed;
 2. the dollar amount of the contract; and
 3. the name, address, license number, gender and ethnicity of the person to whom the contract was awarded.

- B. Affidavit. If the Borrower or Contractor contend that the contract has been awarded to an MBE or WBE, the Borrower or Contractor shall, at the same time also submit to the Agency an M/WBE Application for Certification and its accompanying Affidavit (Exhibit 1 hereto) completed by the minority or woman owner; provided that an M/WBE that was previously recognized by the Agency may, instead, submit only the short M/WBE Eligibility Statement (Exhibit 2 hereto).
- C. Good Faith Documentation. If the contract is not awarded to an MBE or WBE, the Borrower or Contractor shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Borrower or Contractor's good faith efforts is not resolved at this meeting, the Borrower or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts:
1. A report showing the responses, rejections, proposals and bids (including the amount of the bid) received from M/WBEs, including the date each response, proposal or bid was received. This report shall indicate the action taken by the Borrower or Contractor in response to each proposal or bid received from M/WBEs, including the reasons(s) for any rejections.
 2. A report showing the date that the bid was received, the amount bid by and the amount to be paid (if different) to the non-M/WBE contractor that was selected. If the non-M/WBE contractor who was selected submitted more than one bid, the amount of each bid and the date that each bid was received shall be shown in the report. If the bidder asserts that there were reasons other than the respective amounts bid for not awarding the contract to an M/WBE, the report shall also contain an explanation of these reasons.
 3. Documentation of advertising for and contacts with M/WBEs, minority or female contractor associations or development centers, or any other agency which disseminates bid and contract information to minority and woman-owned business enterprises.
 4. Copies of initial and follow-up correspondence with M/WBEs, minority or female contractor associations and other agencies which assist M/WBEs.
 5. A description of the assistance provided minority and woman-owned firms relative to obtaining and explaining plans, specifications and contract requirements.
 6. A description of the assistance provided to M/WBEs with respect to bonding, lines of credit, etc.

7. A description of efforts to negotiate or a statement of the reasons for not negotiating with M/WBEs.
 8. A description of any divisions of work undertaken to facilitate M/WBE participation.
 9. Documentation of efforts undertaken to encourage subcontractors to obtain minority and woman-owned business enterprise participation at a lower tier.
 10. A report which shows for each private project and each public project (without an M/WBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to MBEs and the percentage of contract dollars awarded to WBEs.
 11. Documentation of any other efforts undertaken to encourage participation by minority and woman-owned business enterprises.
- D. Waiver of Submissions. The Agency may waive any of the submission requirements set forth in paragraph C (1) through (11) of this §IV if the Agency determines that a specific requirement is not relevant to the particular situation at issue, that M/WBEs were not available, or that M/WBEs were attempting to exploit the program by charging an unreasonable price.
- E. Presumption of Good Faith Efforts. If the contractor achieves the Participation Goals, it will not be required to submit Good Faith Effort documentation.
- F. M/WBE Determination. Where the Borrower or Contractor makes a submission pursuant to paragraph B of this §V, the Agency shall make a determination, pursuant to the criteria set forth below in §VI.B of this Schedule B as to whether or not an enterprise which the Borrower or Contractor claims is minority or woman-owned is in fact owned and controlled by minority group persons or women. If the Agency determines that the enterprise is not an MBE or a WBE, the Agency shall give the Borrower or the Contractor a *Notice of Non-qualification* and provide the Borrower or the Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a submission, in accordance with paragraph C of this §V, concerning its good faith efforts. If the Borrower or Contractor disagrees with the Agency's *Notice of Non-qualification*, the Borrower or Contractor may request arbitration pursuant to §VII of this Schedule B.

- G. Where the Borrower or Contractor makes a submission pursuant to paragraph C of this §V and, as a result, the Agency has cause to believe that the Borrower or the Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Borrower or the Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency may recommend only the remedies and sanctions set forth in §IX.I of Attachment No. 4 of the Agreement. The Agency shall give the Borrower and Contractor a written *Notice of Non-compliance* setting forth its findings and recommendations. If the Borrower and Contractor disagree with the findings and recommendations of the Agency as set forth in the *Notice of Non-compliance*, the Borrower and Contractor may request arbitration pursuant to §VII of this Schedule B.

VI. CRITERIA FOR DETERMINING M/WBE ELIGIBILITY.

- A. Agency's Role. The Agency shall exercise its reasonable judgment in determining whether a firm, whose name is submitted by the Borrower or Contractor as an MBE or WBE, is owned and controlled by minority group persons and/or women. A firm's appearance in any of the Agency's current directories of Minority or Woman-Owned Construction Contractors and Truckers will be considered by the Agency as prima facie evidence that the firm is an MBE or a WBE.
- B. M/WBE Certification Criteria.
1. The Agency will accept the certifications or denials of the Human Rights Commission of the City and County of San Francisco unless the Agency has reasonable grounds to believe that the certification or denial is inappropriate or otherwise incorrect.
 2. In order to be certified as an MBE, WBE or W/MBE the business must meet the definition of MBE set forth in Attachment No. 4 §II.M or WBE set forth in §II.U or W/MBE set forth in §II.V.
 3. In order for the M/WBE component of a *joint venture* to be recognized the ownership interest must meet a 35 percent threshold; provided, that if the joint venture subcontracts to non-M/WBEs a percent of the work in excess of the percentage interest that the M/WBE has in the joint venture, the joint venture shall not be recognized as an M/WBE.
 4. The Agency will not recognize a *subcontractor* as an M/WBE if it subcontracts more than 50 percent of its subcontract amount to non-M/WBEs.
 5. A contractor may substitute the amount of a purchase order to a minority or woman-owned supplier for up to 15 percent of the M/WBE

subcontractor goals. The Agency will not recognize a supplier as an M/WBE if it is acting solely as a conduit or manufacturer's representative. In order to be recognized, a supplier must perform a commercially useful function in the supply process. However, if the supplier is acting as a mere conduit such as a manufacturer's representative or broker then only the amount of the commission or *three* percent, whichever is greater, will be credited towards meeting the M/WBE goals. If none of the work is to be subcontracted, minority and woman-owned suppliers may be counted without limitation.

6. An eligible MBE or WBE shall be an independent business. In determining whether a business is independent, the Agency shall examine the adequacy of the business' resources for the scope of work under a proposed contract, its financial independence, the extent of its equipment leasing and its relationships with non-minority firms; whether the firm:
 - a. is known in the industry or trade to be operated by a non-minority male;
 - b. is operated in tandem with a non-M/WBE;
 - c. has multiple licenses, some of which belong to non-M/WBEs;
 - d. itself owns the equipment or trucks that are to be used on the job;
 - e. is listed in the telephone book, preferably in the Yellow Pages under the class for which it is seeking Agency recognition;
 - f. subcontracts back to, leases from or is back-contracted by its prime contractor or subcontractor or joint venturer(s) in an amount unrelated to shared risks and profits. Back contracting includes any agreement or other arrangement between a prime contractor and its subcontractor where the prime contractor performs or secures the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefit of the subcontract. Said agreement or other arrangement includes, but is not limited to, situations where either a contractor or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor;
 - g. maintains a permanent office separate from that of its sources of vehicles, subcontractors, the general contractor or from any joint venturer(s); and
 - h. in the case of a supplier, carries the material being supplied as a regular part of its inventory.

7. A minority or woman-owned firm shall not have any formal or informal restrictions which limit the customary discretion of the minority or woman owner. The owner should have the authority to perform all of the below functions:
 - a. manage either the marketing or production aspects of the business;
 - b. be authorized to sign on all bank accounts, to draw against letters of credit, and to secure surety bonds and insurance; and
 - c. control the profit sharing, pensions or stock option plans.

8. The minority or woman owner must serve as the Chief Executive Officer of the firm, i.e. be the boss. If there are part-owners of the firm who are not minority group persons or women and who are disproportionately responsible (according to percent or degree of ownership) for the operation of the firm, then the firm shall be deemed not controlled by minority group persons or women and shall not be considered an eligible MBE or WBE. Where the actual day-to-day management of the firm is handled by individuals other than the owner, those persons who have the ultimate power to hire and fire the managers shall be considered as controlling the business. Among the factors considered in making a determination are whether the owner itself:
 - a. possesses sufficient working experience and knowledge to perform the contract; and
 - b. controls at least 51 percent of the *directors' votes* if the firm is incorporated.

9. All securities evidencing full or partial ownership and/or control of a business entity for purposes of establishing it as an MBE or WBE shall be held directly by minority group persons or women.

10. Minority and woman owners of firms shall make real and substantial contributions of capital and expertise to acquire their interests in the firm. Examples of insufficient contributions include a note payable to the firm or those of its part-owners who are neither minority group persons nor women, or the participation as an employee without management authority.

11. License Qualification Essential: An unregistered person who is used to qualify a professional business as an M/WBE does not meet the Agency's M/WBE requirements of having management and control of the business. Likewise, a person used to qualify a construction business who is not the *Qualifying Partner, Responsible Managing Employee or Responsible Managing Officer* as these terms are used by the Contractors' State License Board, cannot meet the Agency's M/WBE requirements of having management and control of the business. An owner who is certified by the Agency for one profession, e.g. electrical engineering, cannot attribute that certification to another profession, e.g. mechanical engineering, unless he or she is registered for more than one professional license. By extension a certified minority-owned plumbing business must also be certified to perform electrical work to be an eligible minority-owned electrical contractor.
12. A business requesting to be certified as an MBE or WBE shall supply the Agency with all such additional information as the Agency may deem relevant in order to make a determination of such status. If such information is not supplied within 45 days of it being requested, the Agency may consider the Application for certification withdrawn.
13. A change in ownership of a firm from majority to minority or woman ownership will be carefully scrutinized. The following factors shall be considered:
 - a. The reason of the timing of the change in ownership of the business relative to the time that bids are opened or proposals are considered;
 - b. Whether an employee-owner who had previous or continuing employee-employer relationship between or among present owners has management responsibilities and capabilities; and
 - c. Whether the interest of the non-minority or non-woman ownership conflicts with the ownership and control requirements of the Agreement.

VII. ARBITRATION OF DISPUTES.

- A. Subject to paragraphs B through D of this §VII, the Agency, Borrower and any affected Contractor may take any dispute concerning the interpretation, implementation or alleged breach of this Schedule B to arbitration pursuant to the arbitration provisions of Attachment No. 4 of the Agreement.

- B. Where the Borrower or Contractor disagree with the Agency's *Notice of Non-qualification* or *Notice of Non-compliance*, the Borrower or Contractor shall have seven (7) days, unless otherwise stipulated by the parties, in which to file a *Request for Arbitration*. If the Borrower or Contractor fails to file a timely *Request for Arbitration*, the Borrower or Contractor shall be deemed to have accepted and to be bound by the finding of Non-qualification or the findings and recommendations contained in the *Notice of Non-compliance*.
- C. The burden of proof with respect to MBE or WBE status and/or good faith efforts shall be on the Borrower or Contractor.
- D. In the case of a dispute over MBE or WBE status, the arbitrator shall make a final decision on the enterprise's status. In all other cases, including disputes over an alleged failure to make good faith efforts, the arbitrator shall have authority to issue relief authorized by §IX.I of Attachment No. 4 of the Agreement.

VIII. TERM. The obligations of the Borrower and the Contractors with respect to minority and woman-owned business enterprises, as set forth in Attachment No. 4 of the Agreement and this Schedule B, shall remain in effect until completion of all work to be performed by the Borrower in connection with the original construction of the Site and any tenant improvements on the Site performed by or at the behest of the Borrower.

**APPLICATION FOR CERTIFICATION
(MINORITY OR WOMAN-OWNED BUSINESS ENTERPRISE AFFIDAVIT)
(To be completed by Minority or Woman Owner)**

(Name of Project) _____
(General Contractor if not the General itself)

1. Name of Firm _____
(Has business operated under another name? _____ If so, explain under item 22.)

2. Contact Person _____

3. Business Address _____
(P. O. Box is unacceptable)

4. Mailing Address _____
(If different)

5. Telephone Number(s) _____ FAX: _____

6. Is business address or phone number also that of a residence? _____ If so, please explain under item 22.

7. Indicate the type of industry or the business:

- | | | |
|---------------------------------------|--|--------------------------------------|
| <input type="checkbox"/> Construction | <input type="checkbox"/> Professional Consultant | <input type="checkbox"/> Supplier |
| <input type="checkbox"/> Manufacturer | <input type="checkbox"/> Manufacturer's Representative | <input type="checkbox"/> Other _____ |

Identify types of services or products offered. (Equipment operator or trucker should identify the equipment it owns here or under item 22.)

8. Type of ownership: Corporation Sole Proprietor Partnership
 Joint Venture Indicate if another entity _____

9. With your application please submit true and correct copies of the following documents:

- a. Proof of ethnic identification, such as birth certificate or tribal registration, if you are a minority owner.
- b. Contractors' State License No. _____
(Name of person who qualified for license)

NOTE: *If you have formed a partnership or incorporated since becoming a contractor, the partnership or corporation must have its own Contractors' State License.*

- c. Registration and license issued by the State Board of Architectural Examiners, the Board of Registration for Professional Engineers and Land Surveyors, the State Board of Accountancy or the State Bar of California.
- d. Local business license(s) and permits(s).
- e. Fictitious name filing, if you are doing business as a fictitious entity. The names on the Contractors' State License and the fictitious name filing must match.
- f. Partnership Agreement, if the firm is a partnership. The names of the partners must match those shown to be partners on the Contractors' State License.
- g. If the firm is a corporation:
 - i. Articles of Incorporation,
 - ii. Corporate Bylaws and
 - iii. Minutes of the first meeting.
- h. Joint Venture Agreement (including dollar amount of capital contribution), if a joint venture is the applicant.
- i. Federal personal tax returns, Form 1040, in full with W-2 statements and all supporting schedules and statements for *all* shareholders for the past two years.
- j. Federal corporate tax returns, Form 1120 (including Schedule E), in full with *all* supporting schedules and statements such as Form 4562 for the past two years.
- k. Resumes pointing out the years of specific experience to qualify for the responsibilities delegated to each *Management* person listed in item 15 of this Application.
- l. Proof, if the firm is registered as a disadvantaged business under section 8(a) of the Small Business Act.
- m. Inventory (not to exceed a 10-page extract), if the firm is a manufacturer or supplier.

10. List the owners who have an interest of five (5) percent or greater:

<u>Name</u>	<u>Ethni- city*</u>	<u>Gender M/F</u>	<u>Date of Ownership</u>	<u>Number of Shares</u>	<u>Vote %</u>	<u>U. S. Citizen (yes/no)</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

If more Owners, check here and continue listing under item 22.

*American Indian or Alaskan Native, which includes Alaskan Indians, Inuits and Aleuts (any person having origins in the indigenous peoples of North America and who is an enrolled member of a federally-recognized tribe), Asian (any person of Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian-Indian or South East Asian), Black (any person having origins in any of the Black racial groups of Africa), Latino (any person of Spanish culture with origins in Mexico or other Spanish speaking countries in Central or South America, or the Caribbean Islands).

11. List the contributions of money, equipment, real estate, or expertise of each of the owners for firms with less than 100 percent disadvantaged ownership.

12. Date firm was established _____. The total number of years the firm has been in business is _____. The number of years the firm has been in business under present ownership is _____. The following is a brief explanation of the change in ownership of the firm (if applicable):

13. Board of Directors:

<u>Name</u>	<u>Title</u>	<u>Ethni- city</u>	<u>Gender M/F</u>	<u>Date Elected/ Expiration/Term</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

If more Directors, check here and continue listing under item 22.

14. If the Board of Directors has changed within the last three years, list the names of the former Directors, their ethnicity, gender and date of resignation under item 22.

15. **Management:** The following duties are actually performed by the persons indicated below:

a. Preparation of estimates and bids:

by _____ who reports to _____
name name

b. Hiring, firing of management personnel:

by _____ who reports to _____
name name

c. Purchasing of major equipment, material or supplies:

by _____ who reports to _____
name name

d. Financial control:

by _____ who reports to _____
name name

e. Negotiations and approval of contracts:

by _____ who reports to _____
name name

f. Administration of contracts:

by _____ who reports to _____
name name

g. Supervision of field operations:

by _____ who reports to _____
name name

h. Marketing and sales activities:

by _____ who reports to _____
name name

i. Warehouse inventory and control:

by _____ who reports to _____
name name

16. Federal identification no. _____

17. Indicate the firm's gross receipts and average number of employees for the last three tax years:

Year ending _____ Amount _____ Employees _____

Year ending _____ Amount _____ Employees _____

Year ending _____ Amount _____ Employees _____

18. **MANUFACTURERS AND SUPPLIERS ONLY**: For last year:

a. Lowest no. of employees _____

b. Highest no. of employees _____

c. No. of employees whose job lasted the entire year _____

d. Were any of the employees on another firm's payroll? _____ If so, identify the firm: _____

e. Value of current inventory \$ _____

f. Location of inventory _____

19. How were applications to other local agencies handled?

	<u>Name of local agency</u>	<u>L/M/WBE?</u>	<u>Approved</u>		<u>Date</u>
			<u>Yes</u>	<u>No</u>	
a.	_____	_____	_____	_____	_____
b.	_____	_____	_____	_____	_____
c.	_____	_____	_____	_____	_____
d.	_____	_____	_____	_____	_____

20. Name of Surety _____

Name of Agent _____ Telephone No. _____

Bonding Limit _____ Sources of letter of credit _____

21. If the firm or other firms with any of the same officers has previously been denied recognition as an M/WBE, MBE or WBE please explain the circumstances.

22. Identify any owner or management official of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Describe present business relationships which include sharing space, equipment, financing or employees, as well as common owners. Please use this additional space to supplement the information provided above, especially under items 1, 6, 10, 11, 12 and 13. You may attach additional sheets.

23. The firm intends to subcontract _____ percent of the work to be performed under its contract with _____ to the following:

	<u>Name</u>	<u>M/WBE Yes/No</u>	<u>Amount of Subcontract</u>	<u>Scope of Work</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____
d.	_____	_____	_____	_____

AFFIDAVIT

(To be completed by Minority or Woman Owner)

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of _____
(Name of Firm)

as well as the ownership thereof. Further, the undersigned covenant(s) and agree(s) to provide to the local agency current, complete and accurate information regarding actual joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under state law concerning false statements."

NOTE:

- a. The conditions outlined in this affidavit are applicable to any additional information that is required to be provided to authenticate the affiant's firm.
- b. You are required to notify the agency if any significant changes occur that would alter your status as an M/WBE.
- c. Section 94.4 of the Streets and Highways Code states that a D/M/WBE is subject to a civil penalty of not more than \$5,000 if said firm willfully and knowingly makes a false statement with the intent to defraud this certification.

Name of Firm

Signature

Name and Title

Name of Firm

Signature

Name and Title

Date _____

Date _____

On this _____ day of _____, 199_____, before me appeared _____
_____, to me personally known, who, being duly sworn,
did execute the foregoing affidavit, and did state that he or she was properly authorized by
_____ to execute the affidavit and did so as his or her free act and deed.
(Name of Firm)

Notary Public _____ Commission expires _____
(Seal)

Date _____, State of California, County of _____

On this _____ day of _____, 199_____, before me appeared _____
_____, to me personally known, who, being duly sworn,
did execute the foregoing affidavit, and did state that he or she was properly authorized by
_____ to execute the affidavit and did so as his or her free act and deed.
(Name of Firm)

Notary Public _____ Commission expires _____
(Seal)

Date _____, State of California, County of _____

M/WBE ELIGIBILITY STATEMENT
(To be completed by Minority or Woman Owner)

(Name of Project)

(General Contractor if not the General itself)

I, _____, declare:

1. I have carefully reviewed the **Affidavit/Declaration** executed by myself

on _____ on behalf of _____
Date Name of Firm

2. The only changes to said document are:

I have personal knowledge of the foregoing facts and if called as a witness I could and would testify competently thereto. I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date

in _____
Place of Execution

Signature of Declarant

Title

ATTACHMENT NO. 4

SCHEDULE C

PERMANENT WORK FORCE OF THE BORROWER AND RETAIL TENANTS

- I. **PURPOSE.** The purposes of the Agency and the Borrower in entering into this Schedule C are to ensure:
- A. that minority group persons and women are provided equal opportunity for and are not discriminated against in employment in the Borrower's permanent work force that occupies the improvements on the Site covered by the Loan Agreement and in the work forces of retail businesses which lease space in the Site.
 - B. that San Francisco residents obtain *50 percent* of the permanent jobs in the work forces of the Borrower and retail tenants at the Site.
 - C. that San Francisco residents are given first consideration for employment by the Borrower and retail tenants for permanent employment at the Site.
- II. **APPLICATION OF THIS SCHEDULE TO RETAIL TENANTS.** The Borrower shall include verbatim in its leases and require the incorporation verbatim in all subleases for retail space in the Site the provisions of §§I, II, III, IX and XI of Attachment No. 4 of the Loan Agreement and this Schedule C. The lease shall make the incorporated provisions binding on and enforceable by the Agency against the retail tenant to the same extent as the provisions are binding on and enforceable against the Borrower; except that:
- A. Unless agreed otherwise by the Agency, a retail tenant with *26 or more* employees shall submit its equal opportunity plan (EOP) through the Borrower to the Agency not later than 90 days prior to hiring any permanent employees to work on the tenant's premises; rather than pursuant to the requirements set forth in §V.B of this Schedule C.
 - B. A retail tenant with 25 or less employees shall not be required to submit an EOP pursuant to §IV, but instead shall undertake and document in writing the good faith efforts it made to meet the goals and first consideration in employment requirements set forth in §III of this Schedule C. The standards and requirements of Subpart C of Revised Order 4, 41 CFR Part 60-2, shall be applied in determining if such a retail tenant has exercised good faith efforts.
 - C. A retail tenant with less than 25 employees shall submit to the Agency the reports required by §VII of this Schedule C not later than 60 days after it opens for business and annually thereafter.

III. GOALS AND OBJECTIVES.

A. The Borrower and each retail tenant shall:

1. make good faith efforts to achieve in each job category in its permanent work force at the Site an ethnic and gender mix which reflects the composition of the civilian work force of the City and County of San Francisco. These goals are not to be perceived as inflexible quotas, but rather as objectives to be pursued by the mobilization of available resources and by good faith efforts to fulfill the respective equal opportunity plans.
2. make good faith efforts to employ 50 percent of its work force at the Site in each job category from residents of the City and County of San Francisco.
3. as provided in §IV.B.1 of this Schedule C, give first consideration for employment at the Site to SoMa area residents and then to other residents of San Francisco.

B. If a conflict arises, achieving the ethnic and gender goals set forth in subparagraph A.1 shall take precedence over the San Francisco residency goal and the requirement to give first consideration in employment as set forth in subparagraphs A.2 and A.3 respectively, of this §III.

IV. EQUAL OPPORTUNITY PLAN.

A. The Borrower and each retail tenant with more than 26 employees, whether or not it is a federal contractor, shall prepare and adopt an EOP for its permanent work force at the Site which meets the requirements of Executive Order 11246 and all applicable regulations promulgated pursuant thereto (in effect as of March 1, 1990), including Revised Order No. 4, 41 CFR Part 60-2. The utilization analysis and the goals shall be based on the civilian labor force of the City and County of San Francisco according to the most recent census data. A separate utilization analysis shall be performed and a separate goal shall be set for each ethnic group, i.e., American Indian, Asian/Pacific Islander, Black, Latino, and for women.

B. In addition to the elements required under paragraph A of this §IV, the EOP shall contain the following:

1. Detailed procedures for ensuring that San Francisco residents who are equally or more qualified than other candidates obtain first consideration for employment. These procedures shall include specific recruiting, screening and hiring procedures (e.g., phased hiring) which ensure that

qualified residents of San Francisco receive offers of employment prior to other equally or less qualified candidates. If a candidate(s) who is entitled to first consideration is not selected for the position, the Borrower or retail tenant shall have the burden of establishing to the Agency and the arbitrator (if the matter is taken to arbitration), that the candidate who was selected was better qualified for the position than the candidate(s) who was entitled to first consideration.

2. Where it is a reasonable expectation that 10 percent or more of the employees in any job category will regularly work less than 35 hours per week, detailed procedures for ensuring that minority group persons, women, and San Francisco residents do not receive a disproportionate share of the part time work.
3. An agreement that not more than 15 percent of the positions in any job category will be filled by persons transferred from other facilities operated by the Borrower, without the prior approval of the Agency. The Agency shall grant approval upon a showing that transfers in excess of 15 percent do not unreasonably interfere with the objective of creating new jobs for San Francisco residents and that such transfers further legitimate business needs of the Borrower. Transfers shall be counted in determining if the Borrower has met the employment goals for each ethnic group and women.
4. Where required by the Agency, detailed procedures for utilizing Outreach Organizations as meaningful referral sources for job applicants.

V. ARBITRATION OF DISPUTES: SUBMISSION AND RESOLUTION OF DISPUTES CONCERNING THE EQUAL OPPORTUNITY PLAN.

- A. The purpose of this §V is to establish procedures for resolving any disputes concerning the Borrower's or retail tenant's EOP prior to the Borrower or retail tenant occupying the Site covered by the Loan Agreement. The arbitration provisions contained in this §V are in addition to the provisions contained in Attachment No. 4.
- B. The Borrower shall submit its EOP to the Agency 120 days prior to the earlier of the following: (1) the date the Borrower commences filling any permanent position for the Site, whether by new hire or transfer, or (2) the date the Site is scheduled to open; provided that if the Borrower has submitted its EOP to the Agency prior to the execution of the Loan Agreement, the EOP shall be deemed submitted to the Agency 30 days after the Loan Agreement is executed.

- C. During the first 30 days after the EOP is submitted, the Agency and the Borrower shall negotiate in good faith concerning any alleged deficiencies in the EOP or any questions the Agency may have about the terms of the EOP or how it was prepared (e.g., the utilization analysis).
- D. At the expiration of the 30 days, the Agency shall advise the Borrower or retail tenant, through a written "Notice of Noncompliance", of any alleged deficiency in the EOP remaining at the close of negotiations. The Notice shall state the specific basis for the alleged deficiency(ies) and the Agency's suggested cure.
- E. The Borrower or retail tenant shall advise the Agency, within 10 days of the mailing of the Notice of Noncompliance, if the Borrower or retail tenant accepts the cure. If the Borrower or retail tenant rejects the cure, either party may proceed immediately to arbitration by filing a Request for Arbitration on EOP with any member of the panel of arbitrators attached as Exhibit 1 to Attachment No. 4 of the Loan Agreement and serving said Request on the other party. The Request for Arbitration on EOP shall specify the issue presented and the relief requested. Where the Request seeks a temporary restraining order, the arbitrator shall hold a hearing not later than two days after the filing and serving of the Request for Arbitration on EOP. In all other situations, unless the parties agree or the arbitrator orders otherwise, a hearing shall be held within 15 days after the filing and serving of the Request for Arbitration.
- F. The arbitrator shall have the authority to:
1. issue temporary restraining orders and preliminary and permanent injunctions, including, but not limited to, orders enjoining the Borrower or retail tenant from recruiting, screening or hiring (through new hires, transfers or otherwise) any person for permanent employment at the Site pending resolution of the alleged deficiency(ies) in the EOP;
 2. require the inclusion or exclusion of specific terms or provisions in the EOP based on a determination that the term(s) added or removed further the requirements and objectives of Attachment No. 4 and this Schedule C. This subparagraph gives the arbitrator the authority to alter, amend, modify, add to or subtract from the EOP submitted by the Borrower or retail tenant;
 3. issue such other relief deemed necessary to ensure that the EOP is written and implemented in a manner which satisfies the requirements and objectives of Attachment No. 4 of the Loan Agreement and this Schedule C.

VI. ARBITRATION OF DISPUTES: ENFORCEMENT OF PROVISIONS RELATING TO THE BORROWER'S OR RETAIL TENANT'S PERMANENT WORK FORCE, INCLUDING THIS SCHEDULE AND EQUAL OPPORTUNITY PLANS. Apart from the procedures established in §V, the Agency, the Borrower or retail tenant may take any dispute concerning the interpretation, implementation or alleged breach of this Schedule C or the Borrower's EOP to arbitration pursuant to the arbitration provisions of Attachment No. 4 of the Loan Agreement.

VII. REPORTS.

- A. The Borrower and each retail tenant shall prepare, for its Site work force, reports for each job category which show by race, gender, residence and where required by the Agency, by transfer/non-transfer and referral source:
1. Current work force composition;
 2. applicants;
 3. job offers;
 4. hires;
 5. rejections;
 6. pending applications;
 7. promotions and demotions; and
 8. employees working, on average, less than 35 hours per week.
- B. The reports shall be submitted quarterly to the Agency, unless otherwise required by the Agency. In this regard the Borrower and each retail tenant agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, the Agency may require daily, weekly or monthly reports containing all or some of the above information. The Borrower and each retail tenant further agrees that the above reports may not be sufficient for monitoring the Borrower's or tenant's performance in all circumstances, that they will negotiate in good faith concerning additional reports, and that the arbitrator shall have authority to require additional reports if the parties cannot agree.

VIII. TERM. The obligations of the Borrower and its retail tenants with respect to their permanent work forces as set forth in the Loan Agreement, Attachment No. 4 and this Schedule C shall arise from the date the Borrower or its retail tenants first assigns employees to the Site on a permanent basis and remain in effect for three years thereafter.

ATTACHMENT 8

Prevailing Wage Provisions

ATTACHMENT NO. 5

PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

11.1 **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Agreement between the Borrower and the Agency of which this Attachment No. 5 and these Labor Standards are a part.

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

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

11.3 **Definitions.** The following definitions shall apply for purposes of this Attachment No. 5:

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

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

11.4 Prevailing Wage.

- (a) All Laborers and Mechanics employed in the construction of the Improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §11.5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of escrow closing the Agency shall provide the Borrower with a copy of the applicable Wage Determination.
- (b) All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.
- (c) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Borrower that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §11.8. The Executive Director of the Agency may require the Borrower to set aside in a separate

interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §11.4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

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

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

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or

- b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
- 3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
- 4. The deduction shall serve the convenience and interest of the employee.
- (e) Any authorized purchase of United States Savings Bonds for the employee.
- (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
- (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

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

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

11.8 **Payrolls and Basic Records.**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.
- (b) 1. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Borrower acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.
- (c) 2. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

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

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

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

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

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

11.13 **Violation and Remedies.**

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

- (b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by §11.2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §11.8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Borrower with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.
- (c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Borrower, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Borrower shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Borrower, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Borrower fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the Improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.
- (d) Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Borrower shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §11.14.
- (e) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the Improvements provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.

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

11.14 Arbitration of Disputes.

- (a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.
- (b) The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- (c) The arbitration shall take place in the City and County of San Francisco.
- (d) Arbitration may be demanded by the Agency, the Borrower or the Contractor.
- (e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Borrower, or as appropriate to one or the other if the Borrower or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §11.4) and copies of all notices sent or received by the Agency pursuant to §11.13. Such material shall be made part of the arbitration record.
- (f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.

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

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

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

EQUAL OPPORTUNITY NON-DISCRIMI- NATION

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

PREVAILING WAGE

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

OVERTIME

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

APPRENTICES

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

PROPER PAY

If you do not receive proper pay, write
San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3120
or call 749-2546 and ask for
Mr. George Bridges
Contract Compliance Specialist

ATTACHMENT 9

INCOME COMPUTATION AND CERTIFICATION

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the Department of Housing and Urban Project ("HUD") Regulations (24 CFR 813). You should make certain that this form is at all times up to date with the HUD Regulations.

Re: [Address of Apartment Building]

I/We, the undersigned state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the above apartment project. Listed below are the names of all persons who intend to reside in the unit:

1. Name of Members of the <u>Household</u>	2. Relationship to Head of <u>Household</u>	3. <u>Age</u>	4. Social Security <u>Number</u>	5. Place of <u>Employment</u>
_____	HEAD	_____	_____	_____
_____	SPOUSE	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Income Computation

6. The total anticipated income, calculated in accordance with the provisions of this Certification, of all persons over the age of 18 years listed above for the 12-month period beginning the date that I/we plan to move into a unit is \$ _____.

Included in the total anticipated income listed above are:

- (a) all wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services, before payroll deductions;

(b) the net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets),

(c) interest and dividends (including income from assets excluded below);

(d) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including any lump sum payment for the delayed start of a periodic payment;

(e) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;

(f) the maximum amount of public assistance available to the above persons other than the amount of any assistance specifically designated for shelter and utilities;

(g) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

(h) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and

(i) any earned income tax credit to the extent that it exceeds income tax liability.

Excluded from such anticipated income are:

(a) casual, sporadic or irregular gifts;

(b) amounts which are specifically for or in reimbursement of medical expenses;

(c) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses;

(d) amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships or payments to veterans not used for the above purposes are to be included in income;

(e) special pay to a household member who is away from home and exposed to hostile fire;

(f) relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(g) foster child care payments;

(h) the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1977;

(i) payments to volunteers under the Domestic Volunteer Service Act of 1973;

(j) payments received under the Alaska Native Claims Settlement Act;

(k) income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;

(l) payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;

(m) payments received from the Job Training Partnership Act;

(n) income derived from the disposition of funds of the Grand River Band of Ottawa Indians; and

(o) the first \$2,000.00 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims.

7. Do the persons whose income or contributions are included in item 6 above:

(a) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land)?

No _____ Yes _____

(b) have they disposed of any assets (other than at a foreclosure or Credit Bankruptcy sale) during the last two years at less than fair market value?

No _____ Yes _____

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000?

No _____ Yes _____

(d) If the answer to (c) above is yes, state:

(1) the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent:

\$ _____

(2) the amount of such income, if any, that was included in item 6 above:

\$ _____

8. (a) Are all of the individuals who propose to reside in the unit full-time students*?

No _____ Yes _____

*A full-time student is an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance and is not an individual pursuing a full-time course of institutional or farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(b) If the answer to 8(a) is yes, is at least 1 of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return?

No _____ Yes _____

9. Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter the "Owner"), has any family relationship to the Owner; or owns directly or indirectly any interest in the Owner. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trustee held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. This certificate is made with the knowledge that it will be relied upon by the Borrower to determine maximum income for eligibility to occupy the unit, and I/we declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable and that the statement of total anticipated income contained in paragraph 6 is reasonable and based upon such investigation as the undersigned deemed necessary.

11. I/we will assist the Owner in obtaining any information or documents required to verify the statements made herein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

12. I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Owner to lease the unit and will entitle the Owner to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

I/we declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____ in the City of _____, California.

Applicant

Applicant

[Signature of all persons over the age of 18 years listed in number 2 above required]

FOR COMPLETION BY APARTMENT OWNER ONLY:

1. calculation of eligible income:

- a. Enter amount entered for entire household in 6 above: \$ _____
- b. (1) If answer to 7(c) above is yes, enter the total amount entered in 7(d)(1), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$ _____);
- (2) Multiply the amount entered in 7(c) times the current passbook savings rate to determine what the total annual earnings on the amount in 7(c) would be if invested in passbook savings (\$ _____), subtract from that figure the amount entered in 7(d)(2) and enter the remaining balance (\$ _____);
- (3) Enter at right the greater of the amount calculated under (1) or (2) above: \$ _____;
- c. TOTAL ELIGIBLE INCOME
Line 1.a plus line 1.b(3)): \$ _____

2. The amount entered in 1.c:

Qualifies the applicant(s) as a Low Income Tenant(s).

Does not qualify the applicant(s) as a Low Income Tenant(s).

3. Number of apartment unit assigned: _____
Bedroom Size: _____ Rent: \$ _____

4. This apartment unit [was/was not] last occupied for a period of 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit qualified them as Lower Income Tenants.

5. Method used to verify applicant(s) income:

Employer income verification.

Copies of tax returns.

Other (_____)

Manager

ATTACHMENT 10

Additional Provisions

- 10) Developer covenants and agrees for itself, and its successors and assigns to or of the Site, or any part thereof, the following additional covenants:
 - 10.1) Developer shall submit for Agency review and approval the CHFA re-financing commitment and any terms and conditions of that commitment;
 - 10.2) Developer shall secure any applicable approvals by HUD;
 - 10.3) Developer shall create a California nonprofit public benefit corporation, qualified under 501(c)(3) for the ownership of the property, with residents selecting at least 3 out of the total 9 seats on the Board of Directors;
 - 10.4) Developer agrees to a development fee, subject to the terms and conditions of the Mayor's Office of Housing Policy on Development Fees for Non-Tax Credit Projects (Attachment 11), in an amount not to exceed \$200,000, to be paid through an initial payment at closing, and the balance to be paid from Surplus Cash pursuant to Section 10.6 of this attachment, subject to a change in policy currently under consideration which would allow the deferred portion of the developer fee to accrue interest on its remaining balance at a rate no greater than 5% per annum;
 - 10.5) Developer agrees to an allowance for an asset management fee to be paid to the Developer in the flat fee amount of \$5,000 annually;
 - 10.6) If the Developer is found by the Agency to be in compliance with all applicable requirements and agreements, an eligible expense of the project shall be a thirty-three percent portion of the Surplus Cash (to a maximum of \$50,000) after payment of the fixed groundlease payment, required reserves, all amortized debt service, the asset management fee, the deferred Developer Fee payment, the deposit into a CHFA 2nd Loan Accrual Account and any payment of the Agency-repurchased "B Tranche Loan" and any arrears (if any, as described in Section 2.0 of the Agency Mortgage Purchase Obligation Agreement); but before any payment of the residual ground lease payment and any arrears (subject to the Mayor's Office of Housing Policy on the Use of Residual Receipts, see Attachment 12). Consistent with the Mayor's Office of Housing Policy on Development Fees for Non-Tax Credit Projects, such funds shall only be used for CDBG-eligible housing uses within San Francisco;
 - 10.7) The Developer agrees that the City and County of San Francisco Citywide Loan Committee reserves the right to approve or disapprove the final choice of the Property Management firm, subject to CHFA's final

approval for the period of time that CHFA retains mortgages for the property. Such review and reasonable approval is hereby delegated to the Agency's Housing Program Manager;

- 10.8) The Developer agrees that any excess acquisition funds available after the real estate closing, including but not limited to the acquisition contingency amount, may be used to pay the unpaid balance of the deferred Developer Fee;
- 10.9) In the event that there is any Surplus Cash available after full payment of the residual ground lease payment and any arrears, Developer shall use such available cash to make advanced payments toward the remaining unpaid principal of the "B Tranche Loan." Should there no longer be any principal balance remaining on the "B Tranche Loan" of the first mortgage, then Developer shall use such Surplus Cash to make advanced payments toward the remaining unpaid principal of the assumed second CHFA mortgage. Should there no longer be any principal balance remaining on this second mortgage as well then all Surplus Cash shall be governed by the Mayor's Office of Housing Policy on Use of Residual Receipts, and any applicable CHFA requirements.

10.10) DISTRIBUTIONS

10.10.1) Generally

When used in this Agreement, "Distributions" shall mean cash or other benefits, received as Project Income from the operation of the Project and available to be distributed to Developer or any other party having a beneficial interest in the Project, after payments in priority provided for in Attachment Sections 10.6 and 10.9 but shall not include payments for property management or other services performed by Developer under this Agreement. Subject to the Mayor's Office of Housing Policy on the Use of Residual Receipts, Distribution funds shall be disbursed in the following manner: (a) as advanced payment on any remaining interest and/or principal on the "B Tranche Loan"; (b) if the "B Tranche Loan" has no remaining interest or principal balance, as advanced payment on any future Annual Rent payments; (c) if there are no remaining Annual Rent payments to be made within the original term of this Agreement, as a payment to the Developer over and above the thirty-three percent portion of the Surplus Cash (to a maximum of \$50,000) identified in Attachment Section 10.6. Developer may receive Distributions for a particular fiscal year only upon: (a) approval by the Agency of the annual monitoring report submitted for that year; and (b) determination by the Agency that Developer is in full

compliance with the terms of this Agreement; and prior written determination by the Agency that the amount of such Distributions is consistent with the terms of this Agreement.

10.10.2) Prohibited Distributions

No Distribution shall be made under any of the following circumstances:

(a) when written notice of default has been issued by any entity with an equitable, legal or beneficial interest in the Project; or

(b) when the Agency has determined that Developer or Developer's management agent has failed to comply with Agency's written notice of any reasonable requirement for proper maintenance of the Project; or

(c) if all currently required debt service on all loans secured by the Project and all operating expenses (including, but not limited to the fixed groundlease payment) for the Project have not been paid; or

(d) if the Replacement Reserve Account and/or Operating Reserve Account is not fully funded pursuant to any applicable Agreement.

10.11) CHFA PROVISIONS

10.11.1) Non-applicable Provisions

In the event that CHFA assumes the role of lessee following a foreclosure, the following Ground Lease provisions will not apply to CHFA as a lessee:

(a) Article 7, Annual Income Computation and Certification and Article 14.01, Assignment, Sublease or Other Conveyance; and

(b) For Article 30, Equal Opportunity, CHFA shall comply with all laws of the State of California regarding equal opportunity for business enterprises, and shall make a good faith effort to comply with the Rules and Regulations of the Agency in regard thereto, to the extent that, in the sole determination of CHFA, said Rules and Regulations do not conflict with state or federal law, including, but not limited to, constitutions, statutes, regulations, executive orders, or other pronouncements or directives of the governor, or other state or federal officials; and

(c) The Agency acknowledges that, with the exception of property damage coverage, CHFA does not carry insurance (i.e., is "self-insured"). Therefore, the provisions of the following Articles will not apply to CHFA as Lessee, PROVIDED that should CHFA employ a third party to manage the property, CHFA shall require that the manager comply with these provisions: 22.01b.; 22.01c.(1), (2), (3), (4) and (5)(a) and (b); 22.01d.; and 22.01e.; and

(d) For Article 32, Agency Labor Standards Provisions, CHFA shall comply with all laws of the State of California; and

(e) Upon CHFA's reassignment of the Ground Lease to a new lessee, all provisions of the original Ground Lease will be reinstated.

10.11.2)

Right to Reappraisal and Adjustment of Base Rent

In the event that CHFA forecloses and CHFA, or its subsequent assignee, no longer maintains all 101 units as low-income senior residences (with the possible exception of one manager's unit), the Agency reserves the right to reappraise the property and adjust the base rent to market value and adjust the residual rent accordingly.

ATTACHMENT 11

**City and County of San Francisco Policy on Development Fees for Non-Tax Credit
Projects**

FINAL (10/29/97)

**Mayor's Office of Housing
Policy on Development Fees For Non-Tax Credit Projects**

The Mayor's Office of Housing (MOH) will permit nonprofit housing developers to include development fees as part of an approved development budget for an eligible project receiving MOH capital funding.

Eligibility

Eligible projects shall include: (1) new construction of affordable housing units; (2) acquisition and rehabilitation or conversion of existing units; and (3) acquisition of existing units that are part of the San Francisco Housing Preservation Program.

The nonprofit developer shall be a San Francisco based nonprofit housing developer or its affiliate that is the owner or general partner of a partnership of the project. The nonprofit developer or its affiliate shall be a 501c (3) corporation with the provision of developing affordable housing as part of its Articles of Incorporation.

An eligible project must increase the number of units of the San Francisco affordable housing inventory for at least 50 years, and will include acquisition of expiring project based Section 8 housing and other affordable housing funded under the San Francisco housing preservation program. If the project is the acquisition or transfer of an existing affordable housing project that is currently funded by MOH or the San Francisco Redevelopment Agency, the project will not be eligible for developer fees.

In cases where the project has existing affordable units in place, the number of units eligible for the fee is the net increase in the number of permanently affordable units created (i.e., new building expansion).

San Francisco Redevelopment Agency (SFRA) funded projects will also be included under this MOH policy subject to SFRA action approving this policy.

Developer Fee Schedule

The fee schedule shall apply to those projects that receive MOH capital funding. The fee schedule represents the maximum fee amount to be paid to an eligible project receiving MOH funding. If the project generates other funding sources in addition to MOH funding, the project could qualify for higher developer fees. MOH approval shall be required for higher developer fees.

ATTACHMENT 12

City and County of San Francisco Policy on Use of Residual Receipts

Effective: 2/28/00

**Mayor's Office of Housing
Policy on Use of Residual Receipts**

Background:

In general, the Mayor's Office of Housing (MOH) requires repayment of loans provided for the purpose of developing or preserving affordable housing to the extent that such repayment is feasible and does not jeopardize the long-term affordability or maintenance of safe and secure housing for its residents. Repayment therefore may be required under one or a combination of several alternative structures, including amortization, deferral, or payment from residual receipts, depending on the circumstances.

When there is a possibility that, due to the availability of rent or operating subsidies, the retiring of other debt, or some other circumstance, a development financed by MOH could enjoy more income than is needed to pay expenses, service other debt and fully fund its reserves, it is MOH's policy to expect that the remaining "residual" income be directed toward repayment of MOH's investment.

However, in order to provide an incentive for strong asset management, business management, and property management, to ensure accountability both during the development of the housing and its operation, and to enhance successful owner/developers' capacity to develop additional affordable housing in San Francisco, MOH will permit a modest portion of such "residual" income to be retained by the borrower for its own housing-related activities. In this instance, an owner/developer's share of "residual receipts" would be conditioned on MOH's annual determination that certain performance standards and benchmarks have been met.

Definition of Residual Receipts

"Residual Receipts" means the amount by which Project Income exceeds Project Expenses in any given fiscal year. Notwithstanding the above, the partnership management fee and deferred development fee are not part of Residual Receipts. Residual Receipts will be calculated after the disbursement of the partnership management fee and any deferred development fee from funds remaining after the subtraction of Project Expenses from Project Income.

Repayment of MOH Loans by Residual Receipts

When repayment of loans made by MOH is conditioned on the availability of Residual Receipts, starting one year after the completion of the project, and annually thereafter, Borrower shall pay all or part of any Residual Receipts for the previous fiscal year to the City in repayment of the outstanding balance of the loan. Except as recommended by the Loan Committee and approved by the Mayor on a project by project basis, the minimum portion of Residual Receipts to be paid to the City shall be that portion that remains after subtracting the lesser of 1/3 of the Residual Receipts or \$500 per unit per year from the total.

Any such residual receipts payments shall apply toward the unpaid balance of the loan, including accrued interest.

Conditions to Distribution of Residual Receipts to Borrower

Distribution of Residual Receipts to the Borrower of a MOH loan may be made only upon: (1) City approval of the Annual Monitoring Report submitted for that year; (2) determination by the City that the Borrower is not in default under terms of the Loan; and (3) approval by the City that the amount of such Distribution is appropriate. Such approval may be assumed unless the City's disapproval has been presented to the Borrower within days of receiving Borrower's request for such approval.

No distribution of Residual Receipts shall be made under any of the following circumstances:

- (a) when a written notice of default has been issued by any other lender or investor and such default has not been cured;
- (b) when the City determines that the Borrower or the Borrower's management agent has failed to maintain the housing and its surroundings in a safe and sanitary manner in accordance with local health, building, and housing codes;
- (c) if any operating expense, including debt service on non-City loans remains unpaid;
- (d) if any required reserve account is not fully funded according to the terms of the Loan Agreement; or
- (e) in the event of any other material failure to comply with the provisions of the Loan Agreement.

Eligible Owner/Developers

The owner/developer must be a San Francisco based a 501(c)3 nonprofit housing development corporation or an affiliate of such a corporation that owns or acts as general partner of a limited partnership that owns the affordable housing development in question. The Articles of Incorporation of the owner/developer must include the development of affordable housing among its primary purposes.

Use of Residual Receipts Distributed to the Borrower

That portion of Residual Receipts that is not applied toward repayment of the City's loan may be retained by the borrower and used for activities associated with the development or preservation of affordable housing in San Francisco insofar as those activities are eligible uses under the CDBG Program Income rules (except to the extent that those rules may prohibit the use of funds for new construction). Borrower will be required to report annually on the use of such income.

Uses of Project Income for Services and other Extraordinary Costs

With the exception of Residual Receipts distributed to a borrower pursuant to this policy, any other use of the income derived from housing developed or preserved with MOH financing apart from ordinary and routine operating expenses, debt service or required reserves must be approved by the Loan Committee and the Mayor at the time MOH financing is committed and approved.

The Loan Committee may approve variations of this policy on a project-specific basis, including the payment of costs associated with the provision of social, educational, vocational, counseling or other supportive services to residents either as a project expense or out of that portion of Residual Receipts that would otherwise be repaid to the City.

ATTACHMENT 13

CHFA "Side Letter" on Surplus Cash

**CALIFORNIA HOUSING FINANCE AGENCY**

HERESA A. PARKER
Executive Director

CLARK WALLACE
Chairman

July 27, 2000

Mr. Olson Lee
San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102

Re: O'Farrell Tower Apartments
San Francisco, CA
CHFA #99-033-N

Dear Mr. Lee,

This letter serves to outline in general terms the process California Housing Finance Agency ("CHFA") anticipates following in the review and approval of any and all distributions of surplus cash for the O'Farrell Tower Apartments (the "Project"). For the project, CHFA holds a first lien position as a leasehold mortgage subject to a CHFA regulatory agreement. Pursuant to this agreement, CHFA has the right to approve the distribution of surplus cash after the project's financial obligations to CHFA have been met. These financial obligations include the funding of the transition reserve ("TOF") in the regulatory agreement, repair and rehabilitation for the project in the event the project's replacement reserves are not adequate, payment toward the SMP loan and other project related needs as determined by CHFA.

In the event that there is surplus cash after the project's financial obligations to CHFA have been met, CHFA in its sole discretion may approve a distribution to the sponsor. CHFA anticipates that any distribution to the sponsor shall be administered pursuant to the terms of Attachment 10 of the Groundlease, subject to the reasonable and final approval of CHFA as per the terms of the regulatory agreement and CHFA regulations.

Sincerely,

Linn G. Warren
Chief, Multifamily Programs

SACRAMENTO HEADQUARTERS
1121 L STREET, SEVENTH FLOOR
SACRAMENTO, CA 95814-3974
(916) 322-3991

www.chfa.ca.gov

LOS ANGELES OFFICE
100 CORPORATE POINTE, SUITE 250
CULVER CITY, CA 90230-7641
(310) 342-1250

