

**LOAN AGREEMENT
(CITY AND COUNTY OF SAN FRANCISCO
2019 GENERAL OBLIGATION BOND FOR AFFORDABLE HOUSING AND LOW
AND MODERATE INCOME HOUSING ASSET FUND)**

By and Between

THE CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, represented by the Mayor,
acting by and through the Mayor's Office of Housing and Community Development,

and

Sunnydale Commercial LLC

for

**SUNNYDALE HOPE SF BLOCK 3A
1545 Sunnydale Avenue
\$12,409,247**

2019 General Obligation Bond for Affordable Housing: \$10,000,000
Low and Moderate Income Housing Asset Fund: \$2,409,247

Dated as of May 2, 2023

TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS	3
1.1	Defined Terms	3
1.2	Interpretation	10
1.3	Websites for Statutory References	10
ARTICLE 2	FUNDING	11
2.1	Funding Amount	11
2.2	Use of Funds	11
2.3	Accounts; Interest	11
2.4	Records	11
2.5	Conditions to Additional Financing	11
ARTICLE 3	TERMS	12
3.1	Maturity Date	12
3.2	Compliance Term; Declaration of Restrictions	12
3.3	Interest	12
3.4	Default Interest Rate	13
3.5	Repayment of Principal	13
3.6	Changes In Funding Streams	13
3.7	Additional City Approvals	13
ARTICLE 4	CLOSING	14
4.1	Generally	14
4.1	Closing	14
4.2	Conditions Precedent to Closing	14
4.4	Disbursement of Funds	15
4.5	Disbursements	15
ARTICLE 5	DEMOLITION, REHABILITATION OR CONSTRUCTION	16
5.1	Labor Requirements	16
5.2	Plans and Specifications	16
5.3	Change Orders	16
5.4	Insurance, Bonds and Security	17
5.5	Notice to Proceed	17

5.6	Commencement and Completion of Project	17
5.7	Rehabilitation/Construction Standards	17
	ARTICLE 6 RESERVED	17
	ARTICLE 7 LEASING RESTRICTIONS	17
7.1	Nondiscrimination	17
7.3	Tenant Leases	18
	ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE PROJECT	18
8.1	Borrower's Responsibilities	18
8.2	Contracting With Management Agent	18
8.3	Borrower Management	19
	ARTICLE 9 GOVERNMENTAL REQUIREMENTS	19
9.1	Borrower Compliance	19
	ARTICLE 10 COMMERCIAL PROJECT MONITORING, REPORTS, BOOKS AND RECORDS	19
10.1	Generally	19
10.3	Annual Reporting	20
10.3	Capital Needs Assessment	20
10.4	Response to Inquiries	20
10.5	Delivery of Records	20
10.6	Access to the Project and Other Project Books and Records	20
10.7	Records Retention	21
	ARTICLE 11 USE OF INCOME FROM OPERATIONS	21
11.1	Project Operating Account	21
	ARTICLE 12 REQUIRED RESERVES	21
12.1	Replacement Reserve Account	21
12.1	Other Reserve Requirements	22
	ARTICLE 13 DISTRIBUTIONS	22
13.1	Definition	22
13.2	Conditions to Distributions	22
13.3	Prohibited Distributions	22
13.3	Borrower's Use of Residual Receipts	23
	ARTICLE 14 RESERVED	23
	ARTICLE 15 DEVELOPER FEES	23

15.1	Amount	23
15.2	Fee Payment Schedule	23
ARTICLE 16 TRANSFERS		23
16.1	Permitted Transfers/Consent	23
ARTICLE 17 INSURANCE AND BONDS		24
17.1	Borrower's Insurance	24
ARTICLE 18 GOVERNMENTAL APPROVALS		24
18.1	Compliance	24
ARTICLE 19 DEFAULT		24
19.1	Event of Default	24
19.2	Remedies	26
19.3	Force Majeure	27
ARTICLE 20 REPRESENTATIONS AND WARRANTIES		27
20.1	Borrower Representations and Warranties	27
ARTICLE 21 NOTICES		28
21.1	Written Notice	28
21.2	Required Notices	29
ARTICLE 22 HAZARDOUS SUBSTANCES		29
22.2	Covenant	29
ARTICLE 23 INDEMNITY		30
23.1	Borrower's Obligations	30
23.2	No Limitation	30
ARTICLE 24 GENERAL PROVISIONS		31
24.1	Subordination	31
24.2	No Third Party Beneficiaries	31
24.3	No Claims by Third Parties	31
24.4	Entire Agreement	31
24.5	City Obligations	31
24.6	Borrower Solely Responsible	31
24.7	No Inconsistent Agreements	32
24.8	Inconsistencies in City Documents	32
24.9	Governing Law	32
24.10	Joint and Several Liability	32

24.11	Successors	32
24.12	Attorneys' Fees	32
24.13	Severability	32
24.14	Time	33
24.15	Further Assurances	33
24.16	Binding Covenants	33
24.17	Consent	33
24.18	Counterparts	33
24.19	Borrower's Personnel	33
24.20	Borrower's Board of Directors	33
24.22	Exhibits	33

EXHIBITS

A	Description of the Commercial Parcel
B-1	Table of Sources and Uses of Funds
B-2	Annual Operating Budget
B-3	20 Year Cash Flow Proforma
C	Interagency Workforce MOU
D	MOHCD Commercial Underwriting Guidelines
E	Governmental Requirements
F	Lobbying/Debarment Certification Form
G	Developer Fee Policy
H	MOHCD Residual Receipts Policy
I	Intentionally omitted
J	Intentionally omitted
K	Intentionally omitted
L	Insurance Requirements

LOAN AGREEMENT

(City and County of San Francisco
2019 General Obligation Bond for Affordable Housing and Low and Moderate Income Housing
Asset Fund)
(1545 Sunnydale Avenue)

THIS LOAN AGREEMENT ("Agreement") is entered into as of May 2, 2023, ("Effective Date") by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "City"), represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development ("MOHCD"), and **SUNNYDALE COMMERCIAL LLC**, a California limited liability company ("Borrower").

RECITALS

A. On November 5, 2019, the voters of the City and County of San Francisco approved Proposition A (Ordinance 168-19), which provided for the issuance of up to \$600 million in general obligation bonds to finance the construction, acquisition, improvement, rehabilitation, preservation and repair of certain affordable housing improvements (the "2019 GO Bond"). To the extent permitted by law, the City intends to reimburse with proceeds of the Bond amounts disbursed under this Agreement to Borrower for the development and construction of affordable housing. The funds provided from the 2019 GO Bond under this Agreement will be referred to herein as the "2019 GO Bond Funds."

B. The San Francisco Board of Supervisors designated the Mayor's Office of Housing and Community Development the Successor Housing Agency of the San Francisco Redevelopment Agency, effective February 1, 2012, upon dissolution of state redevelopment agencies. Pursuant to California Assembly Bill 1484, the Successor Housing Agency was required to create a fund called the Low and Moderate Income Housing Asset Fund ("LMIH Asset Fund") to collect proceeds from former redevelopment agency housing assets transferred to the City and County of San Francisco. Monies in the LMIH Fund are derived from loan repayments and other housing asset program income and must be used in accordance with California Redevelopment Law. The funds provided from the LMIH Fund under this Agreement shall be referred to herein as the "LMIH Asset Fund Funds" and together with the 2019 GO Bond Funds, HOME Funds, and HOPE SF General Funds, collectively, the "Funds."

C. On March 3, 2017 Sunnydale Development Co., LLC, the the Housing Authority of the City and County of San Francisco ("SFHA") entered into a Development Agreement (the "Development Agreement") for a proposed larger master development that will demolish the 775 existing public housing units and construct up to approximately 1,770 new units of replacement public housing, affordable housing, and market rate housing, commonly known as the Sunnydale HOPE SF development (the "Master Development"). The Development Agreement included, amongst other things, the agreed upon Phasing Plan and Master Infrastructure Plan for the Master Development.

D. Borrower intends to acquire a commercial leasehold interest in a portion of the real property (the "Site") located at 1545 Sunnydale Avenue, San Francisco, California (the

“Commercial Parcel”) under a Commercial Ground Lease Agreement dated May 1, 2023 (the "Commercial Ground Lease"), by and between Borrower as lessee and SFHA as lessor. A final condominium plan is being recorded for the Site substantially concurrently herewith, that will result in the creation of two separate condominiums (referred to on such map as Unit R and Unit C). Unit R includes the residential component of the Project (as defined below) (the "Residential Parcel"), which is subject to a Residential Ground Lease between Sunnydale Block 3A Housing Partners, L.P., the residential parcel developer (the “Residential Owner”) as lessee and SFHA as lessor.

E. The Commercial Parcel will be located on the ground floor of an 80-unit multifamily rental housing development (the "Improvements") to be constructed by Residential Owner and affordable to low-income households which will be known as Sunnydale HOPE SF Block 3A (the “Project”). The Project is part of Phase 1A3 of the Master Development.

F. The Borrower and the Residential Owner are both entities affiliated with Mercy Housing California, a nonprofit corporation formed to develop, own and manage affordable housing properties. The Funds secured through this Loan Agreement will be used to build the cold and warm shell for the Commercial Parcel for the community-serving commercial spaces connected to the Project and outlined in the Cost Sharing Agreement dated May 1, 2023, between the Borrower and the Residential Owner. The commercial spaces will include a services space operated by a Mercy Housing California affiliate (the “Services Center”), a health and wellness center managed and operated by the San Francisco Department of Public Health (the “Wellness Center”), and an early childhood education center, as well as two additional retail spaces (collectively, the “Commercial Project”). Funds under this Agreement will also be used for the build out of tenant improvements for the Services Center and the Wellness Center. A Declaration of Restrictions dated May 19, 2023, will require all space in the Commercial Parcel to be community serving to benefit residents of the Project and the larger Sunnydale site.

G. The Citywide Affordable Housing Loan Committee has reviewed Borrower's application for Funds and, in reliance on the accuracy of the statements in that application, has recommended to the Mayor that the City make a loan of Funds to Borrower (the "Loan") in an amount not to exceed Twelve Million Six Hundred Thirty Four Thousand Two Hundred Forty Seven and No/100 Dollars (\$12,409,247.00) (the "Funding Amount") under this Agreement to fund certain costs related to the Commercial Parcel. The Funding Amount is comprised of (i) 2019 GO Bond Funds in the amount of Ten Million and No/100 Dollars (\$10,000,000) and (ii) LMIH Asset Fund Funds in the amount of Two Million Four Hundred Nine Thousand Two Hundred Forty-Seven and No/100 Dollars (\$2,409,247).

H. Borrower has secured the following funding for the Project (as defined below):

1. a grant to Borrower in the amount of Two Million and No/100 Dollars (\$2,000,000.00) from the San Francisco Department of Public Health, through the Mental Health Services Act, as evidenced by the Memorandum of Understanding dated May 19, 2023, and the Development Services Agreement dated May 19, 2023, which will be used to reduce MOHCD’s total loan;

I. On May 3, 2023, the City's Board of Supervisors and the Mayor approved this Agreement by Resolution No. 201-23 for the purpose of developing the Commercial Parcel of the Project.

AGREEMENT

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

ARTICLE 1 DEFINITIONS.

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

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

"Agreement" means this Loan Agreement.

"Agreement Date" means the date first written above.

"Approved Plans" has the meaning set for in **Section 5.2**.

"Approved Specifications" has the meaning set forth in **Section 5.2**.

"Authorizing Resolution" means a certified copy of the resolutions adopted by the board of directors of its Manager satisfactory to the City and evidencing Borrower's authority to execute, deliver and perform the obligations under the City Documents to which Borrower is a party or by which it is bound.

"Borrower" means **Sunnydale Commercial LLC**, a California limited liability company whose sole member and manager is Mercy Housing Calwest, a California nonprofit public benefit corporation ("Manager"), and its authorized successors and assigns.

"Capitalized Commercial Reserve" has the meaning set forth in Section 12.2.

"CC&Rs" means the Sunnydale Block 3A Association Declaration of Restrictions (CC&Rs) being recorded against the Residential Parcel and Commercial Parcel substantially concurrently herewith.

"CFR" means the Code of Federal Regulations.

"Charter Documents" means: (a) in the case of a limited liability company, its operating agreement and any LLC certificate or statement. The Charter Documents must be delivered to

the City in their original form and as amended from time to time and be accompanied by a certificate of good standing for Borrower issued by the California Secretary of State and, if Borrower is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than ninety (90) days before the Agreement Date.

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

"City Documents" means this Agreement, the Note, the Deed of Trust and any other documents executed or, delivered in connection with this Agreement.

"City Project" has the meaning set forth in **Exhibit E, Section 13(c)**.

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

"Commercial Ground Lease" has the meaning set forth in Recital D.

"Commercial Income" means all receipts received by Borrower from the operation of the Commercial Project, including rents, fees, deposits (other than security deposits), any accrued interest disbursed from any reserve account authorized under this Agreement for a purpose other than that for which the reserve account was established, reimbursements and other charges paid to Borrower in connection with the Commercial Space.

"Commercial Leasing Reserve" has the meaning set forth in Section 12.2.

"Commercial Loan" means this loan of Twelve Million Six Hundred Thirty-Four Thousand Two Hundred Forty Seven and No/100 Dollars (\$12,409,247.00) to fund certain costs related to the Commercial Parcel as outlined in this Agreement.

"Commercial Parcel" has the meaning set forth in Recital D.

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

"Commercial Project Expenses" means the following costs, which may be paid from Commercial Project Income in the following order of priority to the extent of available Commercial Project Income: (a) all charges incurred in the operation of the Commercial Project for utilities, maintenance, CAM charges and other fees due and payable under the CC&Rs, audits, income taxes, franchise taxes, real estate taxes and assessments, asset management fees, and premiums for insurance required under this Agreement or by other lenders providing secured

financing for the Commercial Project; (b) salaries, wages and any other compensation due and payable to the employees or agents of Borrower employed in connection with the Commercial Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) required payments of interest and principal, if any, on any junior or senior financing secured by the Commercial Parcel and used to finance the Commercial Project that has been approved by the City; (d) all other expenses actually incurred to cover operating costs of the Commercial Project, including maintenance, repairs, and turnover expenses; (e) required deposits to the Replacement Reserve Account, Commercial Leasing Reserve Account, Tenant Improvement Reserve, and any other reserve account required under this Agreement; (f) Commercial Ground Lease rent (if applicable and approved by MOHCD); (g) any extraordinary expenses approved in advance by the City (other than expenses paid from any reserve account); and (h) the approved annual asset management fees indicated in the Annual Operating Budget and approved by the City. Project Expenses excludes depreciation, amortization, depletion, other non-cash expenses or expenditures from reserve accounts.

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

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

"Commercial Shell" means all components of an unfinished Commercial Project as further defined by MOHCD's commercial space policy, as it may be amended from time to time.

"Community Serving Uses" has the same meaning set forth in Exhibit D "MOHCD Commercial Underwriting Guidelines".

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

"Declaration of Restrictions" means a recorded declaration of restrictions in form and substance acceptable to the City executed by Borrower that requires Borrower and the Commercial Project to comply with the use restrictions in this Agreement related to the Commercial Parcel even if the Loan is repaid or otherwise satisfied, this Agreement terminates or the Deed of Trust is reconveyed.

"Deed of Trust" means the deed of trust executed by Borrower granting the City a lien on the Commercial Parcel to secure Borrower's performance under this Agreement and the Note, in form and substance acceptable to the City

"Department of Building Inspection" has the meaning set forth in **Section 5.2**.

"Developer" means Mercy Housing California, a nonprofit public benefit corporation, and Related Development Company of California, LLC, a California limited liability company, and its authorized successors and assigns.

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

"Development Agreement" has the meaning set forth in Recital C.

"Development Expenses" means all costs incurred by the Commercial Project and approved by the City in connection with the development of the Commercial Project, including: (a) hard and soft development costs; (b) deposits into required capitalized reserve accounts; (c) the expense of a cost audit; and (d) allowed Developer Fees.

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

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

"DPH" means the San Francisco Department of Public Health.

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

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

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

"Funding Amount" has the meaning set forth in **Recital C**.

"Funds" has the meaning set forth in **Recital C**.

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

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

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

"In balance" means that the sum of undisbursed Funds and any other sources of funds that Borrower has closed or for which Borrower has firm commitments will be sufficient to complete construction of the Project, as determined by the City in its sole discretion.

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

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

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

"Interest" has the meaning set forth in Section 3.3..

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

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

"Manager" means Mercy Housing Calwest, a California nonprofit public benefit corporation.

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

"Master Development Agreement" means that agreement executed March 3, 2017, between the SFHA, City and Sunnydale Development Co., LLC for the Sunnydale HOPE SF master development and has the meaning set forth in Recital C.

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

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

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

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

"out of balance" means that the sum of undisbursed Funds and any other sources of funds that Borrower has closed or for which Borrower has firm commitments will not be sufficient to complete acquisition/construction/rehabilitation of the Project, as determined by the City in its sole discretion.

"Payment Date" means the first June 30th after the end of the calendar year of the Effective Date, and each succeeding June 30th until the Maturity Date.

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

"Project" means the development described in **Recital A**.

"Public Benefit Use" has the same meaning set forth in Exhibit D "MOHCD Commercial Underwriting Guidelines".

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

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

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

"Residual Receipts" means Commercial Project Income remaining after payment of Commercial Project Expenses. The amount of Residual Receipts must be based on figures contained in audited financial statements.

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

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

"SFHA" means the Housing Authority of the City and County of San Francisco.

"SFHA Commercial Ground Lease" means the commercial ground lease between SFHA and the Borrower and has the same meaning as in Recital D.

"Sunnydale Block 3A" means Sunnydale Block 3A Housing Partners, L.P., a California limited partnership.

"Table" means the Table of Sources and Uses.

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

"Tenant Improvement Reserve" has the meaning set forth in Section 12.2.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 FUNDING.

2.1 Funding Amount. The City agrees to lend to Borrower up to a maximum principal amount equal to the Funding Amount in order to finance the construction of the Commercial Parcel.

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

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

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

2.5 Conditions to Additional Financing. The City may grant or deny any application by Borrower for additional financing for the Project in its sole discretion. Borrower will satisfy the following conditions before applying to the City for additional financing:

- MOHCD will review and approve final commercial GMP pricing & closing proforma. All construction and design related contingencies outside of the approved owners hard cost contingency will be taken out of the proforma. All budget line-item reductions in the commercial proforma will instantly reduce the MOHCD gap loan amount.
- All commercial CAM costs, beyond the commercial operating reserve requested in this evaluation, will be paid directly by the Mercy commercial entity at TCO until spaces are leased.
- Sponsor will seek other funding sources for commercial space reserves and buildout, including but not limited to OEWD programs. Any additional funds secured for commercial space improvements will be used to reduce MOHCD's gap loan. Sponsor

will provide MOHCD with monthly updates on their progress. MOHCD reserves the right to withhold up to \$320,000 in commercial developer fee if it determines no good faith effort has been made to seek out other funding sources.

- Sponsor must provide MOHCD with a detailed and acceptable Sunnydale campus-wide staffing and services plan outlining the services to the residents, community benefits, and any operational efficiencies it will generate. MOHCD reserves the right to withhold up to \$320,000 in commercial developer fee if a staffing and services plan is not agreed upon by MOHCD and HOPE SF for the campus-wide plan within six months of Block 3B construction close (September 2023).
- MOHCD to review and approve TI budgets, design, and specifications for the Mercy Customer Service Center space. MOHCD reserves the right to withhold up to \$320,000 in commercial developer fee if TI budget, design, and specifications are not approved by MOHCD.
- MOHCD to review and approve a commercial lease up and activation plan for the grocery and restaurant/café space. MOHCD reserves the right to withhold up to \$320,000 in commercial developer fee if a plan is not approved by MOHCD.
- Sponsor to provide MOHCD an analysis and plan for a higher commercial property tax assessment on the commercial spaces prior to closing.
- Sponsor must provide quarterly updated response to any letters requesting corrective action.

ARTICLE 3 TERMS. Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Note, which will govern in the event of any conflicting provision in this Agreement.

3.1 Maturity Date. Borrower must repay all amounts owing under the City Documents on the date that is the fifty-seventh (57th) anniversary of the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County (the "Maturity Date").

3.2 Compliance Term; Declaration of Restrictions. Borrower will comply with all provisions of the City Documents relating to the use of the Commercial Parcel and the Project as set forth in the Declaration of Restrictions to be recorded in the Official Records, for the period commencing on the date the Deed of Trust is recorded in the Official Records and ending on the Maturity Date (the "Compliance Term"), even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed before the end of the Compliance Term.

3.3 Interest. Except as provided in Section 3.4, the outstanding principal amount of the Loan will bear simple interest at the rate of three percent (3%) per annum, as provided in the Note.

3.4 Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, the principal balance of the Loan will bear interest at the default interest rate set forth in the Note, with such default interest rate commencing as of the date an Event of Default occurs and continuing until such Event of Default is fully cured. In addition, the default interest rate will apply to any amounts to be reimbursed to the City under any City Document if not paid when due or as otherwise provided in any City Document.

3.5 Repayment of Principal The outstanding principal balance of the Loan, together with all accrued and unpaid interest will be due and payable on the Maturity Date according to the terms set forth in full in the Note.

3.6 Changes In Funding Streams. The City's agreement to make the Loan on the terms set forth in this Agreement and the Note is based in part on Borrower's projected sources and uses of all funds for the Project, as set forth in the Table of Sources and Uses. Borrower covenants to (a) deliver to the City copies of commitments for financing set forth in the Table of Sources and Uses within five (5) business days after receipt by Borrower; (b) prior to execution, deliver to the City for review and approval loan documents from any proposed lender or equity documents from any proposed investor, which approval shall not be unreasonably withheld; provided, however, that if any such source of funds is not included on the Table of Sources and Uses, such source of funds shall be satisfactory to the City in its sole discretion; and (c) provide written notice to the City within thirty (30) days of any significant changes in budgeted funding or income set forth in documents previously provided to the City. The City reserves the right to modify the terms of this Agreement based upon any new information provided pursuant to (a) through (c), in its reasonable discretion.

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

ARTICLE 4 CLOSING.

4.1 Generally. Subject to the terms of this Agreement, the City will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses.

4.2 Closing. Unless otherwise agreed by the City and Borrower in writing, Borrower will establish an escrow account with the title company issuing the Title Policy, or any other escrow agent Borrower chooses, subject to the City's approval (the "Escrow Agent"). The parties will execute and deliver to the Escrow Agent written instructions consistent with the terms of this Agreement. In the event the escrow does not close on or before the expiration date of escrow instructions signed by the City, or any other mutually agreed date, the City may declare this Agreement to be null and void.

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

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

(b) Borrower must have delivered to the City: (i) Borrower's Charter Documents and Manager's Charter Documents; and (ii) a comprehensive maintenance and operating plan for the Commercial Project duly approved by Borrower's governing body that includes, but is not limited to, plans for emergencies and emergency maintenance, vacant unit turnover, preventive maintenance and inspection schedule, and marketing and tenant selection.

(d) Borrower must have delivered to the City insurance endorsements and, if requested by the City, copies of policies for all insurance required under **Exhibit L** of this Agreement.

(e) Borrower must have delivered to the City a preliminary report on title for the Site dated no earlier than thirty (30) days before the Agreement Date.

(f) Borrower must have submitted a "Phase I" environmental report for the Site, or any other report reasonably requested by the City, prepared by a professional hazardous materials consultant acceptable to the City.

(g) The Deed of Trust must have been recorded as a valid lien in the official records of San Francisco County, subject only to the Permitted Exceptions.

(h) The Escrow Agent must have committed to provide to the City the Title Policy in form and substance satisfactory to the City.

4.4 Disbursement of Funds. Following satisfaction of the conditions in **Section 4.3**, the City will authorize the Escrow Agent to disburse Funds as provided in the City's escrow instructions.

4.5 Disbursements. The City's obligation to approve any expenditure of Funds after Loan closing is subject to Borrower's satisfaction of the conditions precedent under this Section as follows:

(a) Borrower will have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City. Additionally, Borrower will obtain the City's prior written approval for all requested reallocations of Funds for line items previously approved by the City.

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

(c) With respect to any Expenditure Request that covers rehabilitation or construction costs, Borrower will have certified to the City that the Project complies with the labor standards set forth in **Section 5.1**, if applicable.

(d) With respect to any Expenditure Request that covers travel expenses, Borrower's travel expenses will be reasonable and will comply with the following:

(i) Lodging, meals and incidental expenses will not exceed the then-current per diem rates set forth by the United States General Services Administration for the County of San Francisco found at: <https://www.gsa.gov/portal/category/104711>.

(ii) Air transportation expenses will use fares for coach-class accommodations, provided that purchases for air travel will occur no less than one week before the travel day.

(iii) If ground transportation is required, the City urges the use of public transit or courtesy shuttles if provided by a lodging. If courtesy transportation is not provided by a lodging, ground transportation expenses for travel to or from regional airports will not exceed Fifty Dollars (\$50.00) each way. Other ground transportation expenses will not exceed then-current San Francisco taxi rates found at: <https://www.sfmta.com/getting-around/taxi/taxi-rates>. Ground transportation will not include any expenses for luxury

transportation services, such as a limousine, or any expenses related to travel to or from Project site meetings by Borrower's employees.

(iv) Miscellaneous travel expenses will not exceed Fifty Dollars (\$50.00) without prior written approval of the City.

(v) Any Expenditure Request for travel expenses will include supporting documentation, including, without limitation, original itemized receipts showing rates and cost, air travel itinerary, proof of payment, and any written justification requested by the City.

For the purpose of this Section, the terms "lodging," "meals" and "incidental expenses" will have the same meanings defined in 41 CFR Part 300-3; the term "coach-class" will have the same meaning defined in 41 CFR Part 301-10.121(a); and the term "miscellaneous" means copying services, printing services, communication services, or other services reasonably related to travel for the Project and approved by the City.

(e) The Loan will be In Balance.

ARTICLE 5 DEMOLITION, REHABILITATION OR CONSTRUCTION.

5.1 Labor Requirements. Borrower's procurement procedures, contracts, and subcontracts will comply, and where applicable, require its contractors and subcontractors to comply, with the applicable labor requirements under **Exhibit E** of this Agreement, including, but not limited to, the selection of all contractors and professional consultants for the Project and payment of prevailing wage.

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

5.3 Change Orders. Borrower may not approve or permit any change orders to the plans and specifications approved by the City without the City's prior written consent. Borrower

will provide adequate and complete justification for analysis of any change order request to the City. The City will provide any questions, comments or requests for additional information to Borrower within five (5) business days of receipt of a change order request. City will review and approve or disapprove of a change order request within ten (10) business days of a complete submission by Borrower. In the event the City fails to approve or disapprove the change order request within such ten (10) business day period, the change order will be deemed approved. Borrower acknowledges that the City's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional Funds for the Project, unless the City agrees in its sole discretion to amend the Table of Sources and Uses or provide additional Funds for that purpose.

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

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

5.6 Commencement and Completion of Project. Unless otherwise extended in writing by the City, Borrower will: (a) commence demolition, rehabilitation or construction by a date no later than August 15, 2023; (b) complete demolition, rehabilitation or construction by a date no later than December 31, 2025, in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion (the "Completion Date"); and (c) achieve occupancy of ninety five percent (95%) of the Units by a date no later than April 5, 2026.

5.7 Rehabilitation/Construction Standards. All rehabilitation or construction will be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City and in accordance with all applicable codes.

ARTICLE 6 RESERVED.

ARTICLE 7 LEASING RESTRICTIONS.

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

7.2 Tenant Leases. MOHCD must have reviewed and approved proposed commercial tenant leases for space located within the Commercial Parcel. All commercial tenant leases must be to bona fide third party tenants capable of performing their financial obligations under their leases, which must reflect arms'-length transactions at the then-current market rental rate for comparable space, *provided that*, leases for Public Benefit Use or Community Serving Use may be at below-market rates so long as Commercial Project Income meets approved cash flow requirements for the Commercial Project. Allowed uses of the Commercial Parcel must be consistent with all applicable redevelopment plans and local planning and building codes and the Declaration of Restrictions and be reasonably compatible with the design and purpose of the Commercial Project. Each lease must restrict its use to Public Benefit Use or Community Serving Use or all Residual Receipts generated as a result of a market-rate lease of the Commercial Space must be directed toward repayment of the Commercial Loan, payments due under the Commercial Ground Lease, or to pay for Project losses in the event of a deficit. Any use of Residual Receipts generated as a result of a market-rate lease of the Commercial Space will be subject to MOHCD approval. All Residual Receipts shall be subject to the MOHCD Policy on the Use of Residual Receipts as described in Section 13.4.

ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE COMMERCIAL PROJECT.

8.1 Borrower's Responsibilities.

(a) Subject to the rights set forth in **Section 8.2**, Borrower will be specifically and solely responsible for causing all maintenance, repair and management functions performed in connection with the Commercial Project, including lease up of the Community Parcels to the extent applicable, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower must maintain or cause to be maintained the Commercial Project, in a safe and sanitary manner in accordance with local health and building codes, and all applicable state and federal requirements.

(b) Borrower must take prudent measures to ensure the security of the Commercial Parcel. Measures may include erecting a fence; covering and securing all openings in any vacant building, hiring security guards, and / or installing cameras as appropriate for the circumstances.

8.2 Contracting With Management Agent.

(a) Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in **Section 8.1(a)**, subject to the City's prior written approval of both the management agent and, at the City's discretion, the management contract between Borrower and the management agent, *provided, however*, that the arrangement will not relieve Borrower of responsibility for performance of those duties. Any management contract must contain a provision allowing Borrower to terminate the contract without penalty upon no more than thirty (30) days' notice. As of the Agreement Date, the City has approved

Mercy Housing Management Group as Borrower's management agent, subject to approval of the management contract.

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

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

ARTICLE 9 GOVERNMENTAL REQUIREMENTS.

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

ARTICLE 10 COMMERCIAL PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

(a) Borrower understands and agrees that it will be monitored by the City from time to time to assure compliance with all terms and conditions in this Agreement and all Laws. Borrower acknowledges that the City may also conduct periodic on-site inspections of the Commercial Project. Borrower must cooperate with the monitoring by the City and ensure full access to the Commercial Project and all information related to the Commercial Project as reasonably required by the City.

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all Funds, including all documents evidencing any Commercial Project Income and Expenses. Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Commercial

Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) Borrower must provide written notice of the replacement of its executive director or any equivalent position within thirty (30) days after the effective date of such replacement.

10.2 Annual Reporting. Borrower must file with the City annual audited financial statements with an income and expense statement for the Commercial Project covering the applicable reporting period, a statement of balances, deposits and withdrawals from all Accounts, line item statements of Commercial Project Expenses, Commercial Project Income, Residual Receipts and any Distributions made, evidence of required insurance, no later than one hundred twenty (120) days after the end of Borrower's fiscal year

10.3 Capital Needs Assessment. Borrower must deliver to MOHCD an updated CNA every five (5) years after the Completion Date for approval. The updated CNA must include an analysis of Borrower's actual expenditures for capital needs compared to the most recently approved CNA, Borrower's 20-Year Proforma and initial Annual Operating Budget and its then-current Annual Operating Budget. The Borrower may request to waive any CNA subject to the discretion of MOHCD. Any such request must be submitted in writing to MOHCD.

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

10.5 Delivery of Records. At the request of the City, made through its agents, employees, officers or attorneys, Borrower must provide the City with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:

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

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

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

10.6 Access to the Project and Other Project Books and Records. In addition to Borrower's obligations under **Sections 2.4, 10.1, 10.2, 10.3, 10.4 and 10.5** and any other obligations to provide reports or maintain records in any City Document, Borrower agrees that duly authorized representatives of the City will have: (a) access to the Project throughout the

Compliance Term to monitor compliance by Borrower with the terms of this Agreement; and (b) access to and the right to inspect, copy, audit and examine all books, records and other documents Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under **Section 10.8**

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

ARTICLE 11 USE OF INCOME FROM OPERATIONS.

11.1 Commercial Project Operating Account.

(a) Borrower must deposit all Commercial Project Income, if any, promptly after receipt into a segregated depository account (the "Commercial Project Operating Account") established exclusively for the Commercial Project. Withdrawals from the Commercial Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget attached as Exhibits B-2 and B-3 , as it may be revised from time to time with the City's approval. Borrower may make withdrawals from the Commercial Project Operating Account solely for the payment of Commercial Project Expenses. Withdrawals from the Commercial Project Operating Account (including accrued interest) for other purposes may be made only with the City's express prior written approval.

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

ARTICLE 12 REQUIRED RESERVES.

12.1 Replacement Reserve Account.

(a) Commencing no later than sixty (60) days after the Agreement Date, or any other date the City designates in writing, Borrower must establish or cause to be established a segregated interest-bearing replacement reserve depository account (the "Replacement Reserve Account") equal to \$150,000.

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

(c) Subsequent to withdrawals from the Replacement Reserve Account the Replacement Reserve Account must be replenished through annual required deposits.

(c) Borrower acknowledges that funds provided under this Agreement are to be used to perform capital improvements, and that such funds may not be used for subsequent repairs or improvements to the Commercial Project following completion. To fund such subsequent work, Borrower shall establish an adequate building repair and maintenance program, subject to review and approval by City, which preserves and enhances the life expectancy of the improvements. This may include seeking monies from other sources to establish a building repair/maintenance reserve fund to cover future improvements.

12.2 Other Reserve Requirements. Commencing no later than sixty (60) days after the Agreement Date, or any other date the City designates in writing, Borrower shall establish a segregated interest-bearing capitalized commercial reserve (the "Capitalized Commercial Reserve") depository account (the "Capitalized Commercial Reserve Account") in the amount of Two Hundred Thirty-Two Thousand Seven Hundred Twelve and No/100 Dollars (\$232,712.00). Borrower may use the funds in the Capitalized Commercial Reserve Account only for the payment of Commercial Project Expenses in excess of Commercial Income up to the date in which the Commercial Income is sufficient to cover all Commercial Project Expenses, and the following upfront expenses related to the Commercial Project: 1) warm shell improvements; 2) leasing fees; 3) audit fees; and 4) permanent mortgage legal and other fees, including any permanent lender-required operating reserves.

ARTICLE 13 DISTRIBUTIONS.

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

13.2 Conditions to Distributions. The 20-Year Cash Flow Proforma attached hereto as Exhibit B-2 includes projections of annual Distributions. Exhibit B-3 is not intended to impose limits on the amounts to be annually distributed. Distributions for a particular fiscal year may be made only following: (a) the City's determination that Borrower is not in default under this Agreement or any other agreement entered into with the City and County of San Francisco or the City for the Commercial Project; and (b) the City's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement. The City will be deemed to have approved Borrower's written request for approval of a proposed Distribution unless the City delivers its disapproval or request for more information to Borrower within thirty (30) business days after the City's receipt of the request for approval.

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

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

(b) when the City determines that Borrower or Borrower's management agent has failed to comply with this Agreement; or

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

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

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

13.4 Borrower's Use of Residual Receipts. If Borrower is found by the City to be in compliance with all applicable requirements and agreements, one-third (1/3) of Residual Receipts may be retained by Borrower, and the remaining two-thirds (2/3) of Residual Receipts shall be paid to the City.

ARTICLE 14 RESERVED.

ARTICLE 15 DEVELOPER FEES.

15.1 Amount. The City has approved the payment of a commercial developer fee from the Loan to the Developer in an amount not to exceed Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) for developing the Project ("Developer Fees"), subject to the Developer Fee Policy and the terms and conditions set forth in full in the Developer Fee Agreement between the City and Developer.

15.2 Fee Payment Schedule. Developer will receive payment of the Developer Fees pursuant to Section 2(b) of the Developer Fee Agreement.

ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Commercial Parcel or Commercial Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Commercial Project, other than: (a) leases, subleases or occupancy agreements for space; or (b) security interests for the benefit of lenders securing loans for the Commercial Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion. Any other transfer, assignment, encumbrance or lease without the City's prior written consent will be voidable and, at the City's election, constitute an Event of Default under this Agreement.

The City's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Agreement.

ARTICLE 17 INSURANCE AND BONDS.

17.1 Borrower's Insurance. Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance set forth in **Exhibit L** throughout the Compliance Term of this Agreement at no expense to the City.

ARTICLE 18 GOVERNMENTAL APPROVALS.

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

ARTICLE 19 DEFAULT.

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

(a) Borrower fails to make any payment required under this Agreement within ten (10) days after the date when due; or

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

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

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

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

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

(g) Without the City's prior written consent, Borrower assigns or attempts to assign any rights or interest under any City Document, whether voluntarily or involuntarily, except as permitted under **Section 16.1**; or

(h) Without the City's prior written consent, Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in Borrower or of its right, title or interest in the Commercial Project or the Commercial Parcel except as permitted under **Article 16**; or

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

(j) The Deed of Trust ceases to constitute a valid and indefeasible perfected lien on the Commercial Parcel and improvements, subject only to Permitted Exceptions; or

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and

continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Commercial Parcel, the improvements or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(l) Any material adverse change occurs in the financial condition or operations of Borrower that has a material adverse impact on the Commercial Project; or

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

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

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

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

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

(b) The City at its option may terminate all commitments to make Disbursements or to release the Commercial Parcel from the Deed of Trust or, without waiving the Event of Default, the City may determine to make further Disbursements or to release all or any part of the Commercial Parcel from the Deed of Trust upon terms and conditions satisfactory to the City in its sole discretion.

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

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

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

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

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

Notwithstanding anything to the contrary contained herein, City hereby agrees that a cure of any default or Event of Default made or tendered by Sunnydale Block 3A hereunder shall be accepted or rejected on the same basis as if made or tendered by Borrower. City further agrees that upon the occurrence of an Event of Default, and cure of such Event of Default by Sunnydale Block 3A to the extent such Event of Default is capable of cure by Sunnydale Block 3A (however, if such Event of Default is not capable of being cured by Sunnydale Block 3A then no such cure shall be required), City shall fund the Loan directly to Sunnydale Block 3A under the same terms and conditions as the Loan would be funded to the Borrower.

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

ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

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

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

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

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

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

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

(f) The Loan is in balance, and the Funding Amount, together with all other committed sources of financing for the Commercial Project, are sufficient to complete the Commercial Project in accordance with this Agreement.

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

ARTICLE 21 NOTICES.

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

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

To Borrower: Sunnydale Commercial LLC, a California limited liability company
1256 Market Street
San Francisco, CA 94102
Attn: Ramie Dare
Email: rdare@mercyhousing.org

With a Copy to: Related/Sunnydale Block 3A Development Co., LLC
c/o The Related Companies of California, LLC
44 Montgomery Street, Suite 1310
San Francisco, California 94104
Attention: Ann Silverberg

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

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

ARTICLE 22 HAZARDOUS SUBSTANCES

22.1 Intentionally Omitted.

22.2 Covenant. Unless the City otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, Borrower must: (a) comply with all applicable Environmental Laws relating to the Commercial Parcel and the Commercial Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Commercial Parcels, *provided that* nothing contained in this Section will prevent Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; *provided further* that prior to the date Borrower enters into the Commercial Ground Lease, compliance under 22.2(a) will apply to activities of Borrower or Borrower's agents, employees, contractors and invitees in connection with the Commercial Parcel and the Commercial Project; and (b) deliver to the City notice of the discovery by Borrower of any event rendering any representation contained in this Section incorrect in any respect promptly following Borrower's discovery.

ARTICLE 23 INDEMNITY.

23.1 Borrower's Obligations. Borrower must Indemnify the City and its respective officers, agents and employees (individually or collectively, an "Indemnitee") against any and all Losses arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the City Documents (including those covenants set forth in **Article 22** above); (b) any failure of any representation by Borrower to be correct in all respects when made; (c) from and after the date Borrower enters into the Commercial Ground Lease, injury or death to persons or damage to property or other loss occurring on or in connection with the Commercial Parcel or the Commercial Project, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise; (d) from and after the date Borrower enters into the Commercial Ground Lease, any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the City Documents, the Loan, the Commercial Parcel (from and after the date Borrower enters into the Commercial Ground Lease) or the Commercial Project or any transaction contemplated by, or the relationship between Borrower and the City or any action or inaction by the City under, the City Documents; (f) the occurrence, from and after the date Borrower enters into the Commercial Ground Lease, before the expiration of the Compliance Term, of any Environmental Activity or any failure of Borrower or any other person to comply with all applicable Environmental Laws relating to the Commercial Project or the Commercial Parcels; (g) the occurrence, after the Compliance Term, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring before the Compliance Term; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under **Sections 9.1, 18.1 and 22.2**; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnitee will be entitled to indemnification under this Section for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, upon written notice, Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at Borrower's sole expense. Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement.

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

ARTICLE 24 GENERAL PROVISIONS.

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

24.2 No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of the City, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the City and Borrower or Borrower's agents, employees or contractors; provided, however, Sunnydale Block 3A shall be a third party beneficiary of this Agreement with respect to Section 19.2.

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

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

24.5 City Obligations. The City's sole obligation under this Agreement is limited to providing the Funds as described in this Agreement, up to the Funding Amount. Under no circumstances, including breach of this Agreement, will the City be liable to Borrower for any special or consequential damages arising out of actions or failure to act by the City in connection with any of the City Documents. Notwithstanding the foregoing, the City, subject to the budgetary discretion of the City's Board of Supervisors is using good faith best efforts to provide funding for the Project consistent with the processes contained in Exhibit O of the Development Agreement.

24.6 Borrower Solely Responsible. Borrower is an independent contractor with the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Borrower is solely responsible for: (a) its own acts and those of its agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees;

(b) any losses or damages incurred by Borrower, any of its contractors or subcontractors and the City and its officers, representatives, agents and employees on account of any act, error or omission of Borrower in the performance of this Agreement or any other City Document and the development and operation of the Commercial Project; and (c) all costs and expenses relating to Borrower's performance of obligations under the City Documents, the delivery to the City of documents, information or items under or in connection with any of the City Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing and/or recording of any City Document or document required under any City Document.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBITS

- A Description of the Commercial Parcel
- B-1 Table of Sources and Uses of Funds

- B-2 Annual Operating Budget
- B-3 20 Year Cash Flow Proforma
- C Interagency Workforce MOU
- D MOHCD Commercial Underwriting Guidelines
- E Governmental Requirements
- F Lobbying/Debarment Certification Form
- G Developer Fee Policy
- H MOHCD Residual Receipts Policy
- I Intentionally omitted
- J Intentionally omitted
- K Intentionally omitted
- L Insurance Requirements

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

THE CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
London N. Breed
Mayor

By: _____
Eric D. Shaw
Director, Mayor's Office of Housing
and Community Development

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Heidi J. Gewertz
Deputy City Attorney

BORROWER:

SUNNYDALE COMMERCIAL LLC, a California limited liability company

By: Mercy Housing Calwest
a California nonprofit public
benefit corporation,
its sole member/manager

By: Ramie Dare
Ramie Dare, Vice President

EXHIBIT A
Description of Commercial Parcel

Block 3A is located on the southwest corner of Sunnydale Avenue and Hahn Street and will serve as the most prominent building at the Sunnydale HOPE SF revitalized community's gateway entrance. Block 3A is also one of only two mixed-use buildings in the entire Sunnydale development. By featuring approximately 20,028 square feet of active nonprofit and community-serving retail spaces, Block 3A will meet one of HOPE SF's longstanding commitments to the community. The non-residential component will wrap around the north, east, and south side of the building. This retail program has been well designed through years of community engagement as well as demonstrated need. Below are the gross square feet of the five spaces and the intended uses:

- Retail Space No. 1: 2,926 square foot retail space, currently planned for grocery or food-related business.
- Retail Space No. 2: 1,204 square foot retail space, currently planned for food hall or food-related business.
- Mercy Office: 4,775 square feet. Available for all Sunnydale residents from any building to seek immediate property management and resident service assistance.
- DPH Health & Wellness Center: 2,662 square feet. Permanent replacement center for its Sunnydale operations.
- Felton Institute Early Childhood Education Center: 8,070 sf (including outdoor courtyard). Provides a second early childhood education center, after Wu Yee at Block 1, at the Sunnydale site for an additional 60+ children in the neighborhood. While there are no set asides in place yet, the Sponsor anticipates there will be a tiered prioritization for slots as follows: Sunnydale, Zip code, Visitacion Valley, then San Francisco. This has not yet been confirmed with Felton.

EXHIBIT B-1

Table of Sources and Uses of Funds

Application Date: 4/20/23 # Commercial Spaces:
 Project Name: Sunnydale HOPE SF Block 3A
 Project Address: 1545 Sunnydale Avenue
 Project Sponsor: Related & Mercy

Don't forget to fill in D138:D140!

COMMERCIAL SPACE	Commercial Use - Description	Space 1	Space 2	Space 3	Space 4	Space 5	%age Total Building Costs in Commercial Budget
	Gross SF	20028					20,028
							Total Commercial SF

SOURCES	Name of Sources:	12,409,247	-	-	-	-	Total Sources	Comments
	MOHCD						12,409,247	

USE\$	Acquisition							
	Acquisition cost or value	0					0	
	Legal / Closing costs / Broker's Fee	1,793					1,793	
	Holding Costs	0					0	
	Transfer Tax	0					0	
	TOTAL ACQUISITION	1,793	0	0	0	0	1,793	

CONSTRUCTION (HARD COSTS)								
	Unit Construction/Rehab	0					0	
	Commercial Warm Shell Construction	3,447,752					3,447,752	See MOHCD Commercial Underwriting Guidelines: http://sfmohcd.org/documents-reports-and-forms
	Commercial Cold Shell Construction	4,833,305					4,833,305	
	Demolition	0					0	
	Environmental Remediation	0					0	
	Onsite Improvements/Landscaping	0					0	
	Offsite Improvements	0					0	
	Infrastructure Improvements	0					0	
	Parking	0					0	
	GC Bond Premium/GC Insurance/GC Taxes	220,409					220,409	
	GC Overhead & Profit	243,244					243,244	
	CG General Conditions	465,329					465,329	
	<i>Sub-total Construction Costs</i>	<i>9,210,039</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>9,210,039</i>	
	Design Contingency (remove at DD)	174,928					174,928	Contractor's Contingency (1,028,035)
	Bid Contingency (remove at bid)	469,248					469,248	Owner's Contingency (2,724,825)
	Plan Check Contingency (remove/reduce during Plan Review)	0					0	
	Hard Cost Construction Contingency	0					0	
	<i>Sub-total Construction Contingencies</i>	<i>644,176</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>644,176</i>	
	TOTAL CONSTRUCTION COSTS	9,854,215	0	0	0	0	9,854,215	

SOFT COSTS	Architecture & Design							
	Architect design fees	392,264					392,264	See MOHCD A&E Fee Guidelines: http://sfmohcd.org/documents-reports-and-forms
	Architecture design fees for Schematic Drawings for tenant-paid tenant improvements	0					0	
	Design Subconsultants to the Architect (Incl. Fees)	0					0	
	Architect Construction Admin	0					0	
	Reimbursables	0					0	
	Additional Services	0					0	
	<i>Sub-total Architect Contract</i>	<i>392,264</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>392,264</i>	
	Other Third Party design consultants (not included under Architect contract)	118,969					118,969	
	Total Architecture & Design	511,232	0	0	0	0	511,232	

Engineering & Environmental Studies								
	Survey	7,172					7,172	
	Geotechnical studies	26,178					26,178	
	Phase I & II Reports	31,736					31,736	
	CEQA / Environmental Review consultants	0					0	
	NEPA / 106 Review	0					0	
	CNA/PNA (rehab only)	0					0	
	Other environmental consultants	0					0	Name consultants & contract amounts
	Total Engineering & Environmental Studies	65,086	0	0	0	0	65,086	

Financing Costs	Construction Financing Costs							
	Construction Loan Origination Fee	0					0	
	Construction Loan Interest	0					0	
	Title & Recording	35,860					35,860	
	CDLAC & CD/AC fees	0					0	
	Bond Issuer Fees	0					0	
	Other Bond Cost of Issuance	0					0	
	MOHCD Advisor, 1% Fee, Deferred Interest	0					0	
	<i>Sub-total Const. Financing Costs</i>	<i>35,860</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>35,860</i>	
	Permanent Financing Costs	0	0	0	0	0	0	
	Permanent Loan Origination Fee	0					0	
	Credit Enhance. & Appl. Fee	0					0	
	Title & Recording	0					0	
	Commercial Loan Origination Fee	0					0	
	<i>Sub-total Perm. Financing Costs</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	
	Total Financing Costs	35,860	0	0	0	0	35,860	

Legal Costs								
	Borrower Legal fees	75,000					75,000	
	Land Use / CEQA Attorney fees	0					0	
	Tax Credit Counsel	0					0	
	Bond Counsel	0					0	
	Construction Lender Counsel	0					0	
	Permanent Lender Counsel	0					0	
	Other Legal (specify)	0					0	
	Total Legal Costs	75,000	0	0	0	0	75,000	

Other Development Costs								
	Appraisal	5,000					5,000	
	Market Study	0					0	
	Insurance	423,367					423,367	
	Property Taxes	0					0	
	Accounting / Audit	15,746					15,746	
	Organizational Costs	0					0	
	Entitlement / Permit Fees	279,708					279,708	
	Marketing / Lease-up	0					0	
	Furnishings	0					0	
	PGE / Utility Fees	0					0	
	TCAC App / Alloc / Monitor Fees	0					0	
	Financial Consultant fees	0					0	
	Construction Management fees / Owner's Rep	34,964					34,964	
	Security during Construction	35,860					35,860	
	Relocation	0					0	
	Other (specify)	0					0	
	Other (specify)	0					0	
	Other (specify)	0					0	
	Total Other Development Costs	794,644	0	0	0	0	794,644	

Soft Cost Contingency								
	Contingency (Arch, Eng, Fin, Legal & Other Dev)	138,705					138,705	Total Soft Cost Contingency as % of Total Soft Costs 9.4%
	TOTAL SOFT COSTS	1,620,527	0	0	0	0	1,620,527	

RESERVES								
	Operating Reserves	232,712					232,712	
	Replacement Reserves	150,000					150,000	
	Tenant Improvements Reserves	0					0	
	Commercial Lease-Up Reserves	0					0	
	Other (specify)	0					0	
	TOTAL RESERVES	382,712	0	0	0	0	382,712	

DEVELOPER COSTS								
	Commercial Developer Fee - Cash-out Paid at Milestones	550,000					550,000	
	Other (specify)	0					0	
	Other (specify)	0					0	
	TOTAL DEVELOPER COSTS	550,000	0	0	0	0	550,000	

TOTAL DEVELOPMENT COST								
		12,409,247	0	0	0	0	12,409,247	
	Development Cost/SF by Source	620						
	Development Cost/Unit as % of TDC by Source							
	Acquisition Cost/SF by Source	0					0	
	Construction Cost (inc Const Contingency)/SF By Source	492						
	Construction Cost (inc Const Contingency)/SF	492.02					86.74	

Commercial Loan Amount: Fill in with value or 'N/A' if not applicable.
 Commercial Loan Term (in years): Fill in with value or 'N/A' if not applicable.
 Commercial Interest Rate (as %): Fill in with value or 'N/A' if not applicable.

EXHIBIT B-2
Annual Operating Budget

BLOCK 3A (EAST) PROJECT INFO

Schedule

NTP	5/30/2023
Duration (mos)	21 mos
TCO	2/28/2025

Commercial Spaces	Rentable Area Info		Rent			NNN			Add'l Info		
	SQFT	Share	PSFPM	Mo.	Ann.	PSFPM	Mo.	Ann.	Incl.	Free Mo.	Incr.
Food Market/Grocery	2,779	15%	\$1.25	\$3,474	\$41,685	\$1.36	\$3,783	\$45,392.55	Yes	18	3%
Restaurant / Food Hall	1,094	6%	\$1.25	\$1,368	\$16,410	\$1.36	\$1,489	\$17,869.54	Yes	18	3%
Felton ECEC	7,123	39%	\$0.28	\$2,000	\$24,000	\$0.52	\$3,677	\$44,129	Yes	9	3%
DPH Wellness	2,577	14%	\$0.58	\$1,500	\$18,000	\$0.52	\$1,330	\$15,965	Yes	9	3%
Mercy Sunnydale Cust. Ctr	2,820	16%	\$0.00	\$0	\$0	\$0.52	\$1,456	\$17,471	No	3	3%
Mercy CBO Sublease	1,648	9%	\$0.61	\$1,000	\$12,000	\$0.52	\$851	\$10,210	No	3	3%
N/A				\$0	\$0		\$0	\$0	No		
All Rentable Spaces	18,041		\$0.52	\$9,341	\$112,095	\$0.70	\$12,586	\$151,036			3%
Nonrental Spaces	638										
Total Net Commercial	18,679										
Total Gross Commercial	21,677										

CAM	Building	Commercial	
	Annual	Annual	Monthly
CAM Total		\$66,768	\$5,564
Month Start	12		
Insurance			
Building Total			
Commercial Only		\$45,000	\$3,750
Real Estate Taxes		\$39,268	\$3,272
NNN Total		\$151,036	
Turnover Expense			
Month Start	24		
Square Feet	3,873		
Turnover Frequency	25%		
Turnover Expense	\$35	\$33,889	
Base Annual Revenue	\$58,095		
Commission Expense	7%	\$4,314	
Turnover Expenses		\$38,203	\$3,184
Misc Expenses			
Audit & Accounting		\$10,000	\$833
Insurance Deductible		\$10,000	\$833
Property Management Expenses	5% of EGR		

EXHIBIT B-3
20-Year Cash Flow Proforma

Block 3A (East) Annual Cash Flow

Year Date	0 2025	1 2026	2 2027	3 2028
Revenue				
Food Market/Grocery	\$0	\$21,468	\$44,224	\$45,550
Restaurant / Food Hall	\$0	\$8,451	\$17,409	\$17,932
Felton ECEC	\$6,000	\$24,720	\$25,462	\$26,225
DPH Wellness	\$4,500	\$18,540	\$19,096	\$19,669
Mercy Sunnydale Cust. Ctr	\$0	\$0	\$0	\$0
Mercy CBO Sublease	\$9,000	\$12,360	\$12,731	\$13,113
N/A	\$0	\$0	\$0	\$0
Total Gross Revenue	\$19,500	\$85,539	\$118,922	\$122,489
Vacancy	\$0	(\$5,984)	(\$12,327)	(\$12,696)
Effective Gross Revenue	\$19,500	\$79,555	\$106,595	\$109,793
Operating Expenses				
CAM	(\$16,692)	(\$70,106)	(\$73,612)	(\$77,292)
Insurance	(\$45,000)	(\$47,250)	(\$49,613)	(\$52,093)
Real Estate Tax	(\$39,268)	(\$40,053)	(\$40,854)	(\$41,672)
NNN Subtotal	(\$100,960)	(\$157,410)	(\$164,079)	(\$171,057)
Turnover Expenses	\$0	\$0	(\$40,530)	(\$41,746)
Audit & Accounting	(\$10,000)	(\$10,200)	(\$10,404)	(\$10,612)
Insurance Deductible	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)
PM Fee	(\$975)	(\$3,978)	(\$5,330)	(\$5,490)
OpEx Subtotal	(\$121,935)	(\$181,588)	(\$230,342)	(\$238,904)
Reimbursement				
Food Market/Grocery	\$0	\$18,727	\$38,636	\$39,865
Restaurant / Food Hall	\$0	\$7,372	\$15,210	\$15,693
Felton ECEC	\$6,089	\$46,335	\$48,652	\$51,084
DPH Wellness	\$2,203	\$16,763	\$17,602	\$18,482
Mercy Sunnydale Cust. Ctr	\$0	\$0	\$0	\$0
Mercy CBO Sublease	\$0	\$0	\$0	\$0
N/A	\$0	\$0	\$0	\$0
Reimbursement Subtotal	\$8,292	\$89,197	\$120,100	\$125,124
Net Operating Income	(\$94,143)	(\$12,835)	(\$3,647)	(\$3,987)
Capital Reserve Calculation	\$345,408			

4 2029	5 2030	6 2031	7 2032	8 2033	9 2034	10 2035
\$46,917	\$48,324	\$49,774	\$51,267	\$52,805	\$54,389	\$56,021
\$18,470	\$19,024	\$19,594	\$20,182	\$20,788	\$21,411	\$22,054
\$27,012	\$27,823	\$28,657	\$29,517	\$30,402	\$31,315	\$32,254
\$20,259	\$20,867	\$21,493	\$22,138	\$22,802	\$23,486	\$24,190
\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$13,506	\$13,911	\$14,329	\$14,758	\$15,201	\$15,657	\$16,127
\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$126,164	\$129,949	\$133,847	\$137,863	\$141,999	\$146,259	\$150,646
(\$13,077)	(\$13,470)	(\$13,874)	(\$14,290)	(\$14,719)	(\$15,160)	(\$15,615)
\$113,087	\$116,479	\$119,974	\$123,573	\$127,280	\$131,098	\$135,031
(\$81,157)	(\$85,215)	(\$89,476)	(\$93,949)	(\$98,647)	(\$103,579)	(\$108,758)
(\$54,698)	(\$57,433)	(\$60,304)	(\$63,320)	(\$66,485)	(\$69,810)	(\$73,300)
(\$42,505)	(\$43,355)	(\$44,222)	(\$45,107)	(\$46,009)	(\$46,929)	(\$47,867)
(\$178,360)	(\$186,002)	(\$194,002)	(\$202,375)	(\$211,141)	(\$220,318)	(\$229,926)
(\$42,998)	(\$44,288)	(\$45,616)	(\$46,985)	(\$48,394)	(\$49,846)	(\$51,342)
(\$10,824)	(\$11,041)	(\$11,262)	(\$11,487)	(\$11,717)	(\$11,951)	(\$12,190)
(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)
(\$5,654)	(\$5,824)	(\$5,999)	(\$6,179)	(\$6,364)	(\$6,555)	(\$6,752)
(\$247,836)	(\$257,155)	(\$266,879)	(\$277,026)	(\$287,616)	(\$298,670)	(\$310,209)
\$41,140	\$42,465	\$43,842	\$45,273	\$46,759	\$48,305	\$49,912
\$16,196	\$16,717	\$17,259	\$17,822	\$18,408	\$19,016	\$19,649
\$53,639	\$56,320	\$59,136	\$62,093	\$65,198	\$68,458	\$71,881
\$19,406	\$20,376	\$21,395	\$22,464	\$23,588	\$24,767	\$26,005
\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$130,380	\$135,879	\$141,632	\$147,653	\$153,953	\$160,546	\$167,447
(\$4,369)	(\$4,797)	(\$5,273)	(\$5,800)	(\$6,383)	(\$7,025)	(\$7,730)

11 2036	12 2037	13 2038	14 2039	15 2040	16 2041	17 2042	18 2043
\$57,702	\$59,433	\$61,216	\$63,052	\$64,944	\$66,892	\$68,899	\$70,966
\$22,715	\$23,397	\$24,099	\$24,822	\$25,566	\$26,333	\$27,123	\$27,937
\$33,222	\$34,218	\$35,245	\$36,302	\$37,391	\$38,513	\$39,668	\$40,858
\$24,916	\$25,664	\$26,434	\$27,227	\$28,043	\$28,885	\$29,751	\$30,644
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$16,611	\$17,109	\$17,622	\$18,151	\$18,696	\$19,256	\$19,834	\$20,429
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$155,166	\$159,821	\$164,615	\$169,554	\$174,640	\$179,880	\$185,276	\$190,834
(\$16,083)	(\$16,566)	(\$17,063)	(\$17,575)	(\$18,102)	(\$18,645)	(\$19,204)	(\$19,781)
\$139,082	\$143,255	\$147,552	\$151,979	\$156,538	\$161,234	\$166,072	\$171,054
(\$114,196)	(\$119,906)	(\$125,901)	(\$132,196)	(\$138,806)	(\$145,746)	(\$153,033)	(\$160,685)
(\$76,965)	(\$80,814)	(\$84,854)	(\$89,097)	(\$93,552)	(\$98,229)	(\$103,141)	(\$108,298)
(\$48,825)	(\$49,801)	(\$50,797)	(\$51,813)	(\$52,850)	(\$53,907)	(\$54,985)	(\$56,084)
(\$239,986)	(\$250,521)	(\$261,553)	(\$273,106)	(\$285,207)	(\$297,882)	(\$311,159)	(\$325,067)
(\$52,882)	(\$54,468)	(\$56,102)	(\$57,786)	(\$59,519)	(\$61,305)	(\$63,144)	(\$65,038)
(\$12,434)	(\$12,682)	(\$12,936)	(\$13,195)	(\$13,459)	(\$13,728)	(\$14,002)	(\$14,282)
(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)	(\$10,000)
(\$6,954)	(\$7,163)	(\$7,378)	(\$7,599)	(\$7,827)	(\$8,062)	(\$8,304)	(\$8,553)
(\$322,256)	(\$334,834)	(\$347,969)	(\$361,686)	(\$376,012)	(\$390,976)	(\$406,609)	(\$422,941)
\$51,584	\$53,322	\$55,130	\$57,012	\$58,971	\$61,009	\$63,131	\$65,341
\$20,307	\$20,991	\$21,703	\$22,444	\$23,215	\$24,017	\$24,853	\$25,722
\$75,475	\$79,249	\$83,211	\$87,372	\$91,740	\$96,327	\$101,143	\$106,201
\$27,306	\$28,671	\$30,105	\$31,610	\$33,190	\$34,850	\$36,592	\$38,422
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$174,671	\$182,233	\$190,149	\$198,437	\$207,116	\$216,203	\$225,719	\$235,686
(\$8,503)	(\$9,347)	(\$10,267)	(\$11,269)	(\$12,358)	(\$13,539)	(\$14,818)	(\$16,201)

19 2044	20 2045
------------	------------

\$73,095	\$75,288
\$28,775	\$29,638
\$42,084	\$43,347
\$31,563	\$32,510
\$0	\$0
\$21,042	\$21,673
\$0	\$0
\$196,559	\$202,456

(\$20,374)	(\$20,985)
------------	------------

\$176,185	\$181,471
------------------	------------------

(\$168,719)	(\$177,155)
(\$113,713)	(\$119,398)
(\$57,206)	(\$58,350)
(\$339,638)	(\$354,904)

(\$66,989)	(\$68,999)
(\$14,568)	(\$14,859)
(\$10,000)	(\$10,000)
(\$8,809)	(\$9,074)

(\$440,005)	(\$457,836)
--------------------	--------------------

\$67,642	\$70,039
\$26,628	\$27,572
\$111,511	\$117,086
\$40,343	\$42,360
\$0	\$0
\$0	\$0
\$0	\$0
\$246,124	\$257,057

(\$17,696)	(\$19,308)
------------	------------

EXHIBIT C
Interagency Workforce MOU.

To be attached.

**INTERAGENCY MEMORANDUM OF UNDERSTANDING
AMONG
THE HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO,
THE MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT,
THE CONTRACT MONITORING DIVISION
AND
THE OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
FOR THE
SUNNYDALE-VELASCO PROJECT
(Workforce Compliance, Development and Training)**

TABLE OF CONTENTS

	<u>Page</u>
<u>SECTION I. AGREEMENTS AMONG PARTICIPATING PARTIES.</u>	3
A. Developer Compliance.	3
B. Construction Workforce.	3
C. Professional Services; Trainee Requirements.	4
D. Permanent Workforce.	4
<u>SECTION II. SFHA REQUIREMENTS; WORKFORCE DEVELOPMENT MODIFICATIONS</u>	5
A. Construction Workforce Hiring Goals.	6
B. Permanent Workforce Hiring Goals.	6
C. Employment Placement Priority	6
<u>SECTION III. ROLES AND RESPONSIBILITIES</u>	7
A. Contract Monitoring Division:	7
B. Housing Authority of the City and County of San Francisco:	7
C. Office of Economic & Workforce Development:	7
<u>SECTION IV. DEVELOPER ACKNOWLEDGEMENT</u>	8
<u>SECTION V. PREVAILING WAGE REQUIREMENTS</u>	8
<u>SECTION VI. COUNTERPARTS; FACSIMILE COPIES.</u>	8

**INTERAGENCY MEMORANDUM OF UNDERSTANDING
(SUNNYDALE/VELASCO REVITALIZATION PROJECT)**

This INTERAGENCY MEMORANDUM OF UNDERSTANDING (SUNNYDALE/VELASCO REVITALIZATION PROJECT) (as amended from time to time in accordance with the terms hereof, this "**MOU**"), is entered into as of March 3, 2017 (the "**Effective Date**"), is by and among the Housing Authority of the City and County of San Francisco, a public body, corporate and politic ("**SFHA**" or "**Authority**"), the City and County of San Francisco, a municipal corporation (the "**City**"), represented by and through the Mayor's Office of Housing and Community Development ("**MOHCD**"), its Office of Economic and Workforce Development ("**OEWD**") and its Contract Monitoring Division ("**CMD**"). The SFHA, MOHCD, OEWD and CMD are sometimes referred to herein, individually, as a "**Party**" and, collectively, as the "**Parties**".

RECITALS

A. SFHA, MOHCD and the Developer (as defined below) are parties to that certain Master Development Agreement (the "**MDA**") which sets forth the intentions of the parties to construct and develop on the former public housing projects of Sunnydale Public Housing and Velasco Public Housing Projects (the "**Sites**"), and major revitalization efforts which will consist of (the "**Project**"): (i) the demolition of the existing buildings, including, without limitation, ninety-four (94) two-story residential buildings comprised of seven hundred seventy-five (775) public housing dwelling units, on the Sites; (ii) the construction of up to one thousand seven hundred seventy (1,770) new dwelling units, including one-for-one replacement of the existing public housing units, affordable rental units, and market-rate and affordable for-sale units; (iii) the construction of up to sixteen thousand two hundred (16,200) square feet of neighborhood-servicing retail space; (iv) the construction of up to forty-six thousand three hundred (46,300) square feet of community service, recreational and educational facilities and space; (v) the development of approximately nine and one-half (9.50) acres of new parks and open spaces, including a community garden, a farmer's market pavilion and secure outdoor courtyards within residential buildings; and (vi) the development of approximately twelve and two-tenths (12.2) acres of a new and reconfigured street network, all of which is intended to be constructed to Leadership in Energy Efficient Design ("**LEED**") Neighborhood Development standards on the property.

B. Sunnydale Development Co., LLC, a California limited liability company (the "**Developer**"), whose members include Mercy Housing California, a California nonprofit public benefit corporation, and The Related Companies of California, LLC, a California limited liability company and SFHA entered in that certain Second Amended and Restated Exclusive Negotiating Rights Agreement dated October 22, 2015, as amended, providing, among other things, the Developer with the exclusive rights to negotiate with the SFHA for the redevelopment of the Sunnyvale and Velasco Public Housing Development.

C. Under the MDA, the Developer is responsible for the master development of the Sites, by undertaking certain work necessary to permit construction of new housing developments and other improvements within the Sites, all as more particularly described

therein. Such work includes creating separate legal parcels, grading and soil compacting such parcels, and constructing necessary supporting infrastructure, including parks and open space. The Developer intends to assign its rights under the MDA to the Affordable Housing Development Owners, for the construction of the affordable housing units on the Affordable Housing Development Sites, to Affiliates for the construction of Public Infrastructure and Community Improvements, and to the Market Rate Housing Development Owners for the construction of the market rate housing units on the Market Rate Housing Development Sites.

D. The proposed revitalization and transformation of the Sites is part of the “HOPE SF” initiative sponsored by the City, through MOHCD, and the Authority. HOPE SF is the nation's first large scale public housing transformation collaborative-aimed at disrupting intergenerational poverty, reducing social isolation, and creating vibrant mixed-income-communities without mass displacement of current residents. The City, through its various departments, will oversee the entitlement process and will provide construction, contracting and other regulatory oversight of the Project. On or about the date of this Agreement, the City, the Developer and the Authority are entering into a Development Agreement pursuant to the authority of authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the Administrative Code.

E. Under Resolution No. 4967 adopted by the SFHA Board of Commissioners on February 22, 2001 ("**Resolution 4967**"), SFHA established, among other matters, a goal that contractors, in conjunction with their subcontractors, hire SFHA residents such that SFHA residents constitute a minimum of twenty five percent (25%) of the total workforce (calculated by person-hours) on all contracts covered by Resolution 4967.

F. The Developer is required to comply with certain City policies, including the City’s Chapter 83; First Source Hiring Program ("**FSHP**") that sets forth a goal that fifty percent (50%) of new hire construction and entry-level permanent workforce positions through OEWD workforce system with priority given to qualified Sunnydale/Velasco public housing residents ("**SV Residents**"). As set forth herein, the Developer, its contractors and subcontractors, and its applicable commercial lessees will be required to use good faith efforts to reach the fifty percent (50%) new hire goals of its construction and entry-level permanent workforce in the following order of priority: (1) by qualified SV Residents; (2) District 10 residents of the 94134, 94124 and 94107 zip code areas; and (3) then San Francisco Residents.

G. The primary purpose of this MOU is to clarify and define the roles, responsibilities, goals and procedures of each of the Parties in relation to the "community and public benefit" program of the City for the development commonly known as Sunnydale-Velasco. Such "community benefit" program is designed to institute the mechanisms by which the Developer shall demonstrate the requisite good faith efforts necessary to achieve the specified workforce compliance, development and training goals for the Project.

H. The specific programs to be enforced and/or executed are:

1. MOHCD's Small Business Enterprise Program ("**SBE**");

2. First Source Hiring Program/San Francisco Municipal Code Chapter 83 ("**First Source**");

3. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. §§ 1701u, et seq.), and the implementing regulations at 24 CFR Part 135, et seq. ("**Section 3 Requirements**"); and

4. Housing Authority of the City and County of San Francisco Resolution Number 4967 ("**SFHA Reso. No. 4967**").

These programs are amended through this MOU to incorporate specific goals of SFHA and define how the Developer, the Affiliates, the Affordable Housing Development Owners and their contractors and/or subcontractors may demonstrate good faith efforts to achieve the goals of such programs.

I. Capitalized terms used in this Agreement with are not defined, shall have the same meaning as such terms are given in the MDA.

SECTION I. **AGREEMENTS AMONG PARTICIPATING PARTIES.**

The Parties each respectively agree as follows:

A. Developer Compliance.

The workforce programs described in this MOU are all of the Parties' workforce program applicable to the Project. Accordingly, compliance with all requirements contained in this MOU shall relieve the Developer, Affiliates, the Affordable Housing Development Owners, the Market Rate Housing Development Owners or any assignee of the foregoing of all the workforce requirements, programs and/or policies of each of the Parties. The Parties acknowledge and agree that the workforce hiring priorities as provided in this MOU satisfy the FSHP, Resolution 4967 and if applicable, the Section 3 Requirements.

B. Construction Workforce.

1. Developer, Affiliates and Affordable Housing Development Owners.

- a) The rules of MOHCD's SBE Program governs construction small business procurement.
- b) CMD will monitor and enforce the SBE Program.
- c) OEWD and its CityBuild Program ("**City Build**") will monitor and enforce the construction workforce hiring for the Project.

- d) All Parties shall have access to the electronic small business/local hiring/certified payroll system (e.g., Elations/LBEUTS)
- e) OEWD/CityBuild, in cooperation with SFHA, will serve as the lead and initial point of contact between the Sunnydale community and construction (sub)contractors for construction worker placement with a residency modification to accommodate provisions of the Section 3 Requirements and Resolution 4967. These modifications are detailed in Section II of this MOU.
- f) Contractor and/or subcontractors will also submit to Parties copies of all correspondences to/from CMD, MOHCD, OEWD/CityBuild and/or trade unions requesting resident workers and will attach these documents to their Certified Payroll Reports.

2. Market Rate Housing Development Owners.

- a) OEWD/CityBuild, in cooperation with SFHA will serve as the lead and initial point of contact between the Sunnydale community and construction (sub)contractors for construction worker placement.
- b) Contractor and/or subcontractors will also submit to Parties copies of all correspondences to/from CMD, MOHCD, OEWD/CityBuild and/or trade unions requesting resident workers and will attach these documents to their Certified Payroll Reports.

C. Professional Services.

1. Developer, Affiliates and Affordable Housing Development Owners.

- a) The rules and procedures of the OEWD/ FSHP, govern professional services (sub) consultant placement, with a residency modification to accommodate provisions of the Section 3 Requirements and Resolution 4967. These modifications are detailed in Section II of this MOU.
- b) CMD will monitor and enforce the SBE Program.
- c) OEWD in cooperation with SFHA, will serve as the lead and initial point of contact between the Sunnydale community and professional services (sub)consultants for placement.

2. Market Rate Housing Development Owners.

The rules and procedures of the FSHP, govern professional services (sub)consultant placement, and will be monitored and enforced by OEWD.

D. Permanent Workforce.

1. Developer, Affiliates and Affordable Housing Development Owners.
 - a) The rules of the FSHP governs permanent workforce hiring and placement, with a residency modification to accommodate provisions of the Section 3 Requirements and Resolution 4967. These modifications are detailed in Section II of this MOU.
 - b) CMD will monitor and enforce the SBE Program.
 - c) OEWD/CityBuild will monitor and enforce the permanent workforce hiring.
 - d) OEWD/CityBuild will serve as the lead and initial point of contact between the Sunnydale community and the Developer, Affiliates and Affordable Housing Developer Owners for permanent workforce placement.
 - e) For permanent workforce tracking, the Developer, Affiliates, and the Affordable Housing Development Owners and/or applicable retail tenants will submit a permanent workforce report to OEWD. The Developer, the Affordable Housing Development Owners, and/or applicable retail tenants will submit to Parties copies of all correspondence to/from SFHA, CMD or OEWD requesting assistance to ensure that permanent employment placement occurs according to the Section II priority

2. Market Rate Housing Development Owners
 - a) The rules of the FSHP governs permanent workforce hiring and placement, and compliance will be monitored and enforced by OEWD/CityBuild.
 - b) OEWD/CityBuild, will serve as the lead and initial point of contact between the Sunnydale community and the Market Rate Housing Development Owners for permanent workforce placement.
 - c) For permanent workforce tracking, the Market Rate Housing Development Owners and/or their retail tenants will submit a permanent workforce report to OEWD. The Market Rate Housing Development Owners and/or applicable retail tenants will submit to Parties copies of all correspondence to/from SFHA, CMD or OEWD requesting assistance to ensure that permanent employment placement occurs according to the Section II priority

SECTION II.
SFHA REQUIREMENTS; WORKFORCE DEVELOPMENT MODIFICATIONS

A. **Construction Workforce Hiring Goals.**

1. **SFHA- Goal:** at least 25 percent of all construction workforce hours shall be for Public Housing Residents pursuant to the requirements of SFHA Resolution No. 4967 (the "**SFHA Hiring Goal**") . The SFHA Hiring Goal can be included in the FSHP goal as provided below. The provisions of SFHA Reso. No. 4967 are applicable to any License Agreement entered into between SFHA and the Developer, Affiliates or an assignee or the Affordable Housing Development Owners, but not any Market Rate Housing Development Owners.

2. **First Source Hiring Goal:** Good faith effort of 50 percent of new hires through OWED/CityBuild workforce system. (the "**FSHP Goal**").

B. **Permanent Workforce Hiring Goals.**

1. The Developer, Affiliates and Affordable Housing Development Owners requirements are outlined below.

2. The rules of the FSHP shall govern permanent workforce hiring and placement, with a public housing residency modification to meet the SFHA Hiring Goal. These modifications are detailed in this Section II of this MOU.

3. In accordance with the requirements of Section 3, at least thirty percent (30%) of newly hired permanent, full-time employees hired should be Section 3 residents. After a Section 3 employee has been employed for three (3) years, such employee may no longer be counted as a Section 3 employee for purposes of the thirty percent (30%) Section 3 threshold requirement. Accordingly, recipients should continue to use good faith efforts to hire Section 3 residents when employment opportunities become available.

C. **Section 3 Requirements**

The Parties acknowledge and agree that the Section 3 Requirements are only applicable to the extent required by Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. §§ 1701u, et seq.), and the implementing regulations at 24 CFR Part 135, et seq. If Section 3 Requirements are applicable, CMD will monitor and enforce compliance with the Section 3 Requirements and OEWD/CityBuild will monitor and enforce compliance with the Section 3 workforce hiring goals.

D. **Employment Placement Priority.**

Residents will be placed in employment opportunities in the following order of preference, using good faith efforts:

1. Sunnysdale (HOPE SF) Public Housing residents (named on lease);
2. SFHA residents within 94134

3. SFHA residents in 94124 and 94107;
4. SFHA residents in other zip codes; All other San Francisco residents.

E. **Market Rate Housing Development Owners.**

The Parties acknowledge and agree that the provisions of SFHA Reso. No 4967; and provided no federal funds are provided to the Market Rate Housing Development Sites, the provisions of the Section 3 requirements, are not applicable to the Market Rate Housing Development Owners. The provisions of SFHA Reso. No 4967 are applicable to any License Agreement entered into between SFHA and the Developer, Affiliates or an assignee.

SECTION III.
ROLES AND RESPONSIBILITIES

A. **Contract Monitoring Division:** will serve as the primary agency to collect and share SBE data with Parties. In addition, CMD will be responsible for enforcement of the SBE Program.

B. **SFHA:** upon request, SFHA will verify if participants are public housing residents. OEWD/CityBuild shall provide SFHA with notice and the projected schedules regarding training and employment opportunities available under the Project. SFHA will assist with neighborhood outreach efforts and recruiting public housing residents to apply for the training and employment opportunities. SFHA will also provide resident data to CMD to track resident employment.

C. **Office of Economic & Workforce Development:** The OEWD/CityBuild is responsible for workforce construction data collection and enforcement of the FSHP. Furthermore, OEWD is the primary agency for developing and executing job-training program(s) specifically targeting residents to meet the goals and requirements outlined earlier. OEWD will also serve as the lead for referrals and placements.

1. To ensure an efficient work referral system, OEWD is the single point of contact and to work with the Developer, Affiliates, applicable retail tenants and Sunnydale and community residents for placement of San Francisco residents for permanent employment opportunities.

2. To ensure an efficient work referral system, the OEWD/CityBuild") will be the lead and initial point of contact between the Developer, its contractor/subcontractors and the Sunnydale and community residents for placement of San Francisco residents for construction work.

3. OEWD/CityBuild shall provide written reports to SFHA and MOHCD on a monthly basis on the progress that it has made in complying and implementing the provisions of this MOU.

SECTION IV.
DEVELOPER ACKNOWLEDGEMENT

By its signature below, the Developer acknowledges this MOU. The Developer is an intended third party beneficiary of this MOU. The Parties shall not amend or terminate this MOU in any manner that will adversely affect the Developer without the written consent of the Developer.

SECTION V.
PREVAILING WAGE REQUIREMENTS

All contractors are required to pay not less than the prevailing wage rate as determined by the General Prevailing Wage Determination made by the Director of the California Department of Industrial Relations. To the extent permitted by law, the provisions of this Section V shall not be applicable to the Market Rate Housing Development Owners.

SECTION VI.
COUNTERPARTS; FACSIMILE COPIES.

This MOU shall be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This MOU shall be effective upon transmission by any party to the other parties of a fully-executed facsimile copy of this MOU, so long as a copy of this MOU signed by the transmitting party is delivered to the other parties within five (5) business days thereafter.


[SIGNATURE PAGES FOLLOW]


IN WITNESS WHEREOF, the parties hereto have caused this MOU to be duly executed as of the Effective Date.

SFHA:

Approved as to Form:

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, of the State of California

By: 
Dianne Jackson McLean
Goldfarb & Lipman LLP
Special Legal Counsel

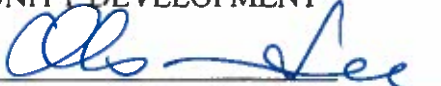
By: 
Name: Barbara T. Smith
Title: Acting Executive Director

MOHCD:

DENNIS J. HERRERA,
City Attorney,
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT

By: _____
Heidi J. Gewertz
Deputy City Attorney

By: 
Name: Olson Lee
Title: Director

OEWD:

DENNIS J. HERRERA,
City Attorney,
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its OFFICE OF WORKFORCE AND ECONOMIC DEVELOPMENT

By: _____
Heidi J. Gewertz
Deputy City Attorney

By: _____
Name: Todd Rufo
Title: Director

CMD:

DENNIS J. HERRERA,
City Attorney,
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its GENERAL SERVICES AGENCY, CONTRACT MONITORING DIVISION

By: _____
Heidi J. Gewertz
Deputy City Attorney

By: _____
Name: _____
Title: Director

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be duly executed as of the Effective Date.

SFHA:

Approved as to Form:

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, of the State of California

By: _____
Dianne Jackson McLean
Goldfarb & Lipman LLP
Special Legal Counsel

By: _____
Name: Barbara T. Smith
Title: Acting Executive Director

MOHCD:

DENNIS J. HERRERA,
City Attorney,
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT

By: _____
Heidi J. Gewertz
Deputy City Attorney

By: _____
Name: Olson Lee
Title: Director

OEWD:

DENNIS J. HERRERA,
City Attorney,
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its OFFICE OF WORKFORCE AND ECONOMIC DEVELOPMENT

By: _____
Heidi J. Gewertz
Deputy City Attorney

By: _____
Name: Todd Rufo
Title: Director

CMD:

DENNIS J. HERRERA,
City Attorney,
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its GENERAL SERVICES AGENCY, CONTRACT MONITORING DIVISION

By: _____
Heidi J. Gewertz
Deputy City Attorney

By: _____
Name: Romulus Asenloo
Title: Director (Acting)

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be duly executed as of the Effective Date.

SFHA:

Approved as to Form:

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, of the State of California

By: _____
Dianne Jackson McLean
Goldfarb & Lipman LLP
Special Legal Counsel

By: _____
Name: Barbara T. Smith
Title: Acting Executive Director

MOHCD:

DENNIS J. HERRERA,
City Attorney,
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT


By: _____
Heidi J. Gewertz
Deputy City Attorney

By: _____
Name: Olson Lee
Title: Director

OEWD:

DENNIS J. HERRERA,
City Attorney,
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its OFFICE OF WORKFORCE AND ECONOMIC DEVELOPMENT

By:  _____
Heidi J. Gewertz
Deputy City Attorney

By:  _____
Name: Todd Rufo
Title: Director

CMD:

DENNIS J. HERRERA,
City Attorney,
as counsel to the Agency

CITY AND COUNTY OF SAN FRANCISCO, a charter city of the State of California, acting by and through its GENERAL SERVICES AGENCY, CONTRACT MONITORING DIVISION

By: _____
Heidi J. Gewertz
Deputy City Attorney

By: _____
Name: _____
Title: Director

Signatures continues on following page

ACKNOWLEDGED AND AGREED:

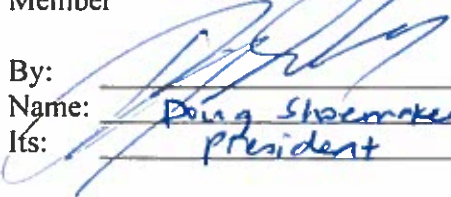
DEVELOPER:

SUNNYDALE DEVELOPMENT CO., LLC

A California limited liability company

By: Mercy Housing Corporation,
a California nonprofit public benefit

Its: Member

By: 
Name: Doug Sporenaker
Its: president

By: The Related Companies of California, LLC
a California limited liability company

Its: Member

By: _____
Name: _____
Its: _____

ACKNOWLEDGED AND AGREED:

DEVELOPER:

SUNNYDALE DEVELOPMENT CO., LLC
A California limited liability company

By: Mercy Housing Corporation,
a California nonprofit public benefit
Its: Member

By: _____
Name: _____
Its: _____

By: The Related Companies of California, LLC
a California limited liability company
Its: Member

By: Frank Cardone
Name: Frank Cardone
Its: President

EXHIBIT D
MOHCD Commercial Underwriting Guidelines.

To be attached.

Mayor's Office of Housing and Community Development Commercial Space Underwriting Guidelines

Effective February 2, 2018

A. Applicability

The following Commercial Space Underwriting Guidelines (Guidelines) are intended to assist applicants for capital financing to prepare financing requests to the Mayor's Office of Housing and Community Development (MOHCD). They apply to new construction projects only. These Guidelines will also be used by MOHCD staff for purposes of evaluating funding requests and presenting them to the Citywide Affordable Housing Loan Committee for consideration. The Loan Committee maintains the right to set final terms and conditions for commitment of funds based on the actual circumstances of each project. MOHCD reserves the right to review and approve any requests for variations to these Guidelines. These Guidelines are subject to change.

B. Goals

1. To repay the City for costs related to the development of commercial spaces located within City-funded affordable housing properties.
2. To create vibrant neighborhoods, especially for those experiencing displacement of low-income residents, by facilitating the development of commercial space for Public Benefit and Community Serving Commercial Uses.
3. To recognize the dynamism and relationship to market conditions in commercial real estate that is not found in affordable housing while also mitigating against the market risk inherent in this dynamism.

C. Definitions

1. **Affiliated Entity:** An entity that is either controlled by the Housing Owner, controls the Housing Owner, or is under common control with Housing Owner. Control, as used in the previous sentence, means the ownership, directly or indirectly, of the right to vote in or direct the ordinary operations of the entity.
2. **Commercial Space:** An entire undifferentiated commercial area for Public Benefit Use, Community Serving Commercial Use, or Commercial Use. If the Project is subdivided, then the Commercial Space would be a condominium or air rights parcel, separate from the Residential Space. It is possible to have more than one Commercial Space in a Project because the developer intends different uses (for example, a space finished to Warm Shell and where use will be Public Benefit Use, while another area is finished to Cold Shell and Commercial Use is intended). A Commercial Space may be demised into more than one Individual Tenant Space as appropriate.
3. **Commercial Use:** A land use, typically retail or other sales and services use, with the sole or chief emphasis on making financial gain and that is not a Public Benefit Use or Community Serving Commercial Use as defined below. Commercial Uses shall not include uses that, in MOHCD's sole discretion, are inconsistent with fostering a stable environment for families and children, including, but not limited to, bars, liquor stores,

tobacco product stores, recreational cannabis shops (medical cannabis dispensaries may be permitted in MOHCD's sole discretion, but only to the extent permitted by funding sources and applicable local, state, and federal law) or other uses that cater exclusively to adults.

4. **Commercial Entity:** A legal entity, separate from the Housing Owner, who may either master lease the Commercial Space from the Housing Owner or ground lease the Commercial Space directly from the City, as provided in Permitted Legal Structures, below.
5. **Commercial Project Costs:** The total of all hard and soft costs associated with the development of the Commercial Space.
6. **Community Serving Commercial Use:** A land use, typically retail or other sales and services use, that provides a direct benefit to the community, e.g. a food market with affordable and healthy produce and other goods, community banking, or other neighborhood serving uses that have a demonstrated benefit to the residents of the Project, as determined by MOHCD in its sole discretion.
7. **Commercial Space Master Tenant:** A Commercial Entity that is an Affiliated Entity and that leases the Commercial Space from the Housing Owner and subleases Individual Tenant Space(s) to Individual Commercial Tenant(s).
8. **Housing Owner:** The owner of the residential improvements at the Project.
9. **Cold Shell:** Commercial Space improvements as defined in detail under Item 18.
10. **Individual Commercial Tenant:** An occupant of Commercial Space rented from the Housing Owner or Commercial Entity (depending on legal structure).
11. **Individual Tenant Space:** Demised portion of the Commercial Space for lease to an Individual Commercial Tenant.
12. **Net Commercial Cash Flow:** Commercial Operating Income less the Commercial Operating Expenses for a Lease Year (or portion thereof). **Commercial Operating Expenses** means the reasonable and customary expenses of reasonable operating and routine maintenance and repair expenses incurred by the Housing Owner or Commercial Entity (depending on legal structure) in the operation of the Commercial Space, debt service, and MOHCD-approved reserves. **Commercial Operating Income** means all income and receipts in any form received by the Housing Owner or Commercial Entity (depending on legal structure) from the operation of the Commercial Space, including rents, fees, deposits, and reimbursements.
13. **Project:** A mixed-use, multifamily residential and commercial project built with substantial reliance on City funding, which may include one or more subdivided residential condominium/air rights parcels and commercial condominium/air rights parcels.
14. **Public Benefit Use:** A land use, typically programs or services, that primarily benefits low-income persons, is implemented by one or more 501(c)(3) public benefit

corporations, and has been identified by the City or community as a priority use. Examples include, but are not limited to, childcare centers, adult day health centers, nonprofit office space, public libraries, supportive services for the residents of the affordable housing development, health clinics that serve the local community at no or low cost, arts-related spaces that provide programs, and classes and/or exhibition spaces available to community members at no or low cost.

- 15. Residential Space:** The entire undifferentiated residential area for future demising and occupancy by residential tenants. If the Project is subdivided, then the Residential Space would be a condominium or air rights parcel, separate from the Commercial Space(s).
- 16. Tenant Improvement Allowance:** A budget allowance sized to accommodate the build out of Warm Shell improvements, which MOHCD may approve when the Individual Commercial Tenant/s is unknown at construction loan closing.
- 17. Warm Shell:** Commercial Space improvements as defined in detail under Item 18.
- 18. *Detailed definition of Cold Shell and Warm Shell improvements (see next page)***

<u>Scope/Trade</u>	<u>Cold Shell</u>	<u>Warm Shell (Cold Shell plus the following)</u> (Note: The cost of Warm Shell improvements should be included in the development budget either as a specific scope of work, if known, or as a Tenant Improvement Allowance, subject to MOHCD approval.)
Walls/Doors	Exterior/perimeter walls and doors. Exterior/perimeter walls must be finished with gyp and fire taping to Code. No partition walls or doors.	Partition walls and doors to Individual Tenant Space/s. Partition walls, doors and locks for bathrooms based on Individual Commercial Tenants and Code requirements.
Finish	Exposed concrete slab with rough-in Plumbing, depressed to allow for anticipated use (floor sinks, drains). Temporary ramps for Certificate of Completion, as required.	Finished floor to minimum specification of Individual Commercial Tenant or exposed slab with clearance to install flooring to level landing at door. Wall and ceiling finish, lighting and finish specialties in bathrooms.
Specialties	Code required signage. Exterior commercial signage program developed and approved by Planning and MOHCD.	Bathroom accessories. Exterior signage design, infrastructure, fabrication and installation.
Structural	Anchors for drop-ceiling. Anchors must be cast-in slab 4' on center in each direction. Coring or block-out for assumed HVAC rough-in.	Code required ramps and railings to assumed final finish floor and level landing at entrance(s).
Elevator	No	As required.

Mechanical	Stub out for heat-pump, space on roof for equipment, and pad (or sidewall where possible). Fire rated shaft for later ducting of restaurant hood(s); supply air / louver on exterior wall.	Venting of bathrooms and all other plumbing fixtures. Ductwork to connect location of heatpump to exterior. Code required smoke control. In the case of an approved restaurant use, minimum of one (1) grease duct plus make up air (MUA) duct to accommodate Type 1 hood. Type 2 hood shaft and venting may be considered. Does not include water heating and all other mechanical equipment.
Gas	Stub-out for gas and gas meter in meter room.	Submeters based on establishment of Individual Tenant Space/s.
Plumbing	Stub-out for domestic water supply and water meter in meter room. Storm sewer 4". Stub out all plumbing (supply and waste) to bathroom location(s). No finish.	Water meters based on establishment of Individual Commercial Tenant/s. Distribute domestic water, waste and vents to plumbing fixture locations within Individual Tenant Space/s. Finish plumbing.
Electrical	200A-600A 3 phase service. Meter in electrical room with service to Commercial Space. Stub out and conduit on ceiling for mechanical. Perimeter walls to have wall receptacles. Light fixtures in space connected to house meter to meet Certificate of Completion requirements only. Emergency lighting battery back-up.	Submeters based on established Individual Commercial Tenant/s and extension of stub-outs to Individual Tenant Space/s. Installation of sub panel at Individual Tenant Space/s.
Telco	Two (2) 2" conduits from MPOE to space for telecom/data/security. Temporary security camera connected to residential system until Commercial Space is occupied.	

<p>Fire Protection/ Alarm</p>	<p>Building Fire Alarm shall be sized and zoned to include Commercial Space. State and Local SFFD Code requirements for Completion and Certificate of Occupancy must be met. Sprinkler shall be installed, activated and monitored.</p>	<p>Zoning of Fire Alarm to Individual Tenant Space/s and re-configuration / programming of main building fire panel.</p>
<p>Site Work</p>	<p>No</p>	<p>No</p>

D. Permitted Legal Structures

a. Each of the following legal structures may be used for a Project, as permitted by MOHCD, taking into account the location of the Project, the community that the Project intends to serve, financing requirements and restrictions, and the capacity and expertise of the developer and Housing Owner. These Guidelines assume MOHCD owns the land on which the Project is located. In the rare scenario in which that is not the case, MOHCD and the Housing Owner will adjust these Guidelines accordingly to achieve the Goals articulated in Paragraph B and the same financing principles related to the use of MOHCD funds.

1. No Subdivision; Single Ground Lease. The real property is not subdivided and the entire property is ground leased to Housing Owner.

a. Direct Leases: Housing Owner leases directly to Individual Commercial Tenant(s); or

b. Commercial Master Lease: Housing Owner leases the Commercial Space to the Commercial Entity (which must be an Affiliated Entity) (the “Commercial Space Master Tenant”). The Commercial Space Master Tenant would then sublease the Individual Tenant Space(s) to Individual Commercial Tenant(s).

2. Subdivision. The real property is subdivided into a separate residential condominium or air rights parcel and a separate commercial condominium or air rights parcel (or subdivided into more than one separate parcels of either use).

a. Single Ground Lease. The real property is subdivided, and the City ground leases the entire property to the Housing Owner.

(i) Direct Leases: Housing Owner retains ownership of the leasehold for the Commercial Space and leases directly to Individual Commercial Tenant(s); or

(ii) Commercial Master Lease: Housing Owner retains ownership of the leasehold for the Commercial Space and leases the Commercial Space to a Commercial Space Master Tenant. The Commercial Space Master Tenant would then sublease the Individual Tenant Space(s) to Individual Commercial Tenant(s).

b. Separate Ground Leases.

(i) The City ground leases the Residential Space to the Housing Owner. The City separately ground leases the Commercial Space to the Commercial Entity. The Commercial Entity may or may not be an Affiliated Entity.

(ii) Where the Commercial Entity is a for-profit company, not related to the Housing Owner, and the Commercial Space will be used for Commercial Use, the City’s strong preference is that the subdivision be in the form of a condominium as opposed to an air rights parcel.

E. Underwriting Guidelines for All Permitted Legal Structures

1. The eligible uses of MOHCD Funds for Commercial Project Costs are:
 - a. Hard Costs: Subject to approval by MOHCD, Borrower may request the use of MOHCD funds for the following:
 - i. Commercial Uses: Cold Shell only. However, MOHCD may provide funding for Warm Shell improvements required to be installed concurrent with residential construction (e.g. restaurant flue shafts with grease ducts and access panels on each floor, drain lines and anchor bolts installed in PT floor and ceiling slabs). If Housing Owner is working with the Commercial Entity or an Individual Commercial Tenant before or during construction, Housing Owner may install ducting to the exterior (roof or louvers on building exterior) as a reimbursable cost to Housing Owner by the Commercial Entity or the Individual Commercial Tenant. Costs for all Cold Shell and Warm Shell improvements must be repaid to MOHCD, in full or in part, through non-housing sources, according to the requirements set forth in Section I below.
 - ii. Community Serving Commercial Uses: Cold Shell and Warm Shell. Borrower is required to seek funding from other City and private sources, such as commercial loans, OEWD or the Child Care Fund, New Market Tax Credits, etc., as appropriate for the proposed use for the purpose of reducing funding required from MOHCD.
 - iii. Public Benefit Uses: Cold Shell and Warm Shell. Borrower is required to seek funding from other City and private sources such as commercial loans, OEWD or the Child Care Fund, New Market Tax Credits, etc. as appropriate for the proposed use, for the purpose of reducing funding required from MOHCD.
 - b. Soft Costs: Subject to MOHCD approval and evaluated based on industry standards and market conditions for comparable projects and uses, including:
 - Construction management and consulting fees for coordination of tenant improvements with shell construction
 - Commercial broker fee
 - Commercial space lease-up reserve
 - Commercial space replacement reserve
 - Commercial space developer fee (see developer fee policy below)
 - Market analysis as is required by MOHCD
 - Future tenant improvements reserve
 - Pro rata share of Project development costs associated with Commercial Space (for example, financing costs and legal fees)

2. Conditions of MOHCD Funds.

- a. Market Analysis: Developer shall provide MOHCD a third party prepared market analysis (e.g. from a broker, appraiser, or market analyst) to determine appropriate terms for Market Rents, Rent Growth, Annual Rent Adjustments, Rent Concessions and/or Tenant Improvement Allowances, Vacancy, Expenses, Expense Growth, Management Fees, Leasing Agent Fees, and Reserves.
- b. Operating Budget. Developer shall provide the Housing Owner's or Commercial Entity's (depending on legal structure) commercial operating budget based on proposed use and market conditions consistent with the third party prepared Market Analysis provided for the project as defined above in 2.a. Commercial rents charged must be sufficient to cover all direct, shared, and allocated costs attributable to commercial use, including, but not limited to: pro-rata share of cleaning, maintenance and utility costs for shared bathrooms and hallways; pro-rata share of maintenance of fire sprinkler and fire alarm systems; pro-rata share of cleaning, maintenance and repair of the trash room; pro-rata share of maintenance and repair of the sidewalk, street trees and bike racks; pro-rata share of hydro-jetting of the sewer laterals; and pro-rata share of back-flow testing of the water lines. Commercial operating expenses shall include all utilities payable by the property for the Commercial Space, commercial property management and asset management fees, commercial operating and replacement reserves, and property taxes and insurance attributable to the Commercial Space.
- c. Leases and Letters of Intent. The Commercial Master Lease and business terms for Direct Leases and subleases are subject to review and approval by MOHCD, in accordance with the Market Analysis and these Guidelines.

F. Commercial Space Developer Fee

1. Commercial Uses: The lesser of \$100,000 or 15% of the non-residential depreciable basis, so long as the sum of the Commercial Space Developer Fee and the Residential Developer Fee do not exceed the developer fee limits allowed by TCAC. A one-time additional \$50,000 incremental fee will be allowed for completion of the condominium or air rights subdivision, subject to MOHCD approval of the subdivision and legal structure. The Commercial Space Developer Fee is payable only from non-MOHCD sources, e.g. commercial loan proceeds or transfer of the leasehold estate in the Commercial Space, etc.
2. Public Benefit Uses and Community Serving Uses: The lesser of \$250,000 or 15% of the non-residential depreciable basis, so long as the sum of the Commercial Space Developer Fee and the Residential Developer Fee do not exceed the developer fee limits allowed by TCAC. A one-time additional \$50,000 in fee will be allowed for completing the condominium or air rights subdivision, subject to MOHCD approval of the subdivision and legal structure. Half of the Commercial Space Developer Fee is payable

only from non-MOHCD sources, e.g. commercial loan proceeds, grants, or transfer of the leasehold estate in the Commercial Space.

3. Commercial Space Developer Fee; Net Developer Fee Maximums. To the extent allowable by TCAC, the Commercial Space Developer Fee is in addition to the net developer fee maximums pursuant to MOHCD Developer Fee Guidelines.

G. Change in Use

Change in use from Public Benefit Use or Community Serving Commercial Use to Commercial Use requires approval by MOHCD and will result in required repayment of the costs of Warm Shell improvements funded by MOHCD loan(s). Repayment will be calculated by amortizing the MOHCD-funded costs over the useful life of the improvements and sized based on the number of years the improvements did not serve a Public Benefit or Community Serving Commercial Use.

H. Single Ground Lease Additional Guidelines

The following ground lease terms apply where the City ground leases the entire property to the Housing Owner, whether or not the property has been subdivided.

1. Direct Lease
 - a. **40% City/60% Housing Owner:** 40% of Net Commercial Cash Flow will be paid by Housing Owner to City in the form of increased ground lease payment of Residual Rent (see MOHCD Policy on Ground Leases for defined terms). Housing Owner will retain 60% of Net Commercial Cash Flow.
 - b. Limit on Commercial Revenue: City recommends tax counsel guidance to avoid issues of unrelated business income.
2. Commercial Master Lease
 - a. **40% City/60% Affiliated Entity:** 40% of Net Commercial Cash Flow will be paid by Commercial Entity to Housing Owner and subsequently paid to City in the form of increased ground lease payment of Residual Rent. 60% of Net Commercial Cash Flow is payable to the Commercial Entity (ie. the Commercial Space Master Tenant). The Commercial Entity must be an Affiliated Entity.
 - b. Limit on Commercial Revenue: City recommends tax counsel guidance to avoid issues of unrelated business income.

I. Separate Ground Leases Additional Guidelines

The following MOHCD commercial loan repayment and commercial ground lease terms apply where the property has been subdivided, the City ground leases the Residential Space to the Housing Owner, and the City ground leases the Commercial Space(s) to the Commercial Entity(ies).

1. Reimbursement to MOHCD of Commercial Project Costs depends on the ownership structure and the type of use, as follows:

- a. Public Benefit Uses, Community Serving Commercial Uses, and Commercial Uses when the Commercial Entity is an Affiliated Entity:

Within the earlier of 90 days after 75% occupancy is achieved for Commercial Space or one year after the issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy for the Commercial Space, the Commercial Entity must obtain a commercial loan commitment to repay MOHCD for all Commercial Project Costs included in MOHCD financing. The terms for any repayment source that requires a lien against the Commercial Space are subject to MOHCD approval. The commercial loan must close within 90 days following the issuance of a loan commitment. In the event that the commercial loan is not large enough to fully repay MOHCD for Commercial Project Costs, MOHCD will retain a second position Deed of Trust against the Commercial Space, securing a Note in the amount of any unpaid balance. Any outstanding balance on a MOHCD commercial loan will be payable upon refinance or transfer of the Commercial Space.

- b. Commercial Uses when the Commercial Entity is an unrelated third-party:

The Commercial Entity must repay MOHCD for all Commercial Project Costs included in MOHCD financing at close of purchase of the leasehold interest in the commercial condominium/air rights parcel and/or execution of the commercial ground lease. The terms for any repayment source that requires a lien against the Commercial Space are subject to MOHCD approval.

2. Commercial Space Ground Lease Payment and Payment on Any Outstanding MOHCD Commercial Loan

- a. Public Benefit Uses & Community Serving Commercial Uses: Annual ground lease payment equal to 40% of Net Commercial Cash Flow. However, if there is an outstanding MOHCD commercial loan, the 40% Net Commercial Cash Flow will first be used to pay down the MOHCD commercial loan and then to the annual ground lease payment. Commercial Entity will retain 60% of Net Commercial Cash Flow.

- b. Commercial Uses: Annual ground lease payment equal to market rent based on current comparable leases. Sizing of Base Rent and Residual Rent to be negotiated. If there is an outstanding MOHCD commercial loan (only applicable when the Commercial Entity is an Affiliated Entity), 40% Net Commercial Cash Flow will be used to pay off the MOHCD commercial loan and then go towards payment of Residual Rent, if applicable. Commercial Entity will retain 60% of Net Commercial Cash Flow.

3. Any transfer or sale of the Housing Owner's or Commercial Owner's ground lease interest in the Commercial Space parcel is subject to MOHCD approval as ground lessor. If the Project was developed as air rights parcels, MOHCD may require that the air rights subdivision be converted to condominiums before the Commercial Space may be transferred to an unaffiliated for-profit entity for Commercial Use.

4. Ground Lease Term: To be negotiated based on Market Analysis (see section E.2.a. for requirements for Market Analysis.)

EXHIBIT E
Governmental Requirements

1. Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 6.1. Every contract for the rehabilitation or construction of housing assisted with Funds must comply with Chapter I (commencing with Section 1720) of Part 7 of the California Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) and contain a provision requiring: (1) the payment of not less than the Prevailing Rate of Wage to all laborers and mechanics employed in the development of any part of the housing, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with state law and San Francisco Administrative Code Section 6.22(n), (collectively, “Prevailing Wage Requirements”). The Prevailing Wage Requirements of this Section apply to all laborers and mechanics employed in the development of the Project, including portions other than the assisted Units. Borrower agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements. If applicable, Borrower must include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Chapter 6.

2. Environmental Review. The Project will meet the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations.

3. Conflict of Interest.

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

(b) Borrower represents that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, and Sections 1090 through 1097 and 87100 *et seq.* of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify the City immediately if Borrower at any time obtains knowledge of facts constituting a violation.

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

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

5. Lead-Based Paint. Borrower will satisfy the requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.*) and implementing regulations at 24 CFR part 35. Borrower will also comply with the

provisions contained in 17 CCR 350000 *et seq.*, and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.

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

7. Low-Income Hiring Requirements. The use of Funds triggers compliance with certain hiring requirements imposed by the City's First Source Hiring Ordinance (S.F. Admin. Code Chapter 83). To ensure compliance with those requirements, Borrower must include the provisions attached as **Exhibit D** in its contract with the general contractor for the Project. Borrower will be responsible to the City for ensuring compliance with the requirements listed on **Exhibit D**.

8. Non-Discrimination in City Contracts and Benefits Ordinance.

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

(b) Subcontracts. Borrower will incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code. Borrower's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits. Borrower does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Contract. As a condition to this Agreement, Borrower will execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the executed form by the San Francisco Contract Monitoring Division.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B ("Nondiscrimination in Contracts") and 12C ("Nondiscrimination in Property Contracts") of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Borrower will comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Borrower understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Borrower and/or deducted from any payments due Borrower.

9. MacBride Principles. Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Borrower acknowledges and agrees that he or she has read and understood this Section.

10. Tropical Hardwood & Virgin Redwood Ban. Pursuant to § 804(b) of the San Francisco Environment Code, City urges all grantees and borrowers not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

11. Preservative-Treated Wood Containing Arsenic. Borrower may not purchase preservative-treated wood products containing arsenic until the Deed of Trust has been fully reconveyed unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" will mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Borrower may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Borrower from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" will mean a pressure-treated wood that is

used for construction purposes or facilities that are partially or totally immersed in saltwater.

12. Submitting False Claims; Monetary Penalties. Any borrower, grantee, contractor, subcontractor or consultant who submits a false claim will be liable to the City for the statutory penalties set forth in that section. A borrower, grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the borrower, grantee, contractor, subcontractor or consultant:

- (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;
- (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;
- (c) conspires to defraud the City by getting a false claim allowed or paid by the City;
- (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or
- (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

13. Sunshine Ordinance.

(a) Borrower acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking contracts, will be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Borrower that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request. Further, Borrower specifically agrees that any meeting of the governing body of its general partner/manager that addresses any matter relating to the Project or to Borrower's performance under this Agreement will be conducted as a passive meeting.

(b) By executing this Agreement, Borrower agrees to comply with the provisions of Chapter 12L of the San Francisco Administrative Code to the extent applicable.

(c) In accordance with the Citizen's Right to Know Act of 1998 (S. F. Admin. Code Chapter 79), no officer, department, board or commission of the City may approve a City Project, as defined in Chapter 79, unless a sign has been posted on the applicable property at least fifteen (15) days before approval. A City Project is a project that involves new construction, a change in use or a significant expansion of an existing use where the City funding for the project is \$50,000 or more. If the Loan will be used for a City Project, this Agreement will not become effective until fifteen (15) days following the posting of the requisite sign, or, in the alternative, thirty (30) days following the delivery of written notices to residents and owners within 300 feet of the Site, and the City will have the right to nullify or revoke this Agreement without cost or liability of any sort whatsoever at any time before that date. If Borrower believes that this Agreement relates to a City Project and that the requisite sign has not been posted, Borrower will notify the City so that the City may determine the applicability of Chapter 79, and, if necessary, post the requisite sign.

14. Prohibition on Use of Public Funds for Political Activities. Borrower will comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Borrower is subject to the enforcement and penalty provisions in Chapter 12G.

15. Nondisclosure of Private Information. Borrower has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information", and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Borrower agrees that any failure of Borrower to comply with the requirements of Section 12M.2 of this Chapter will be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against Borrower pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Borrower.

16. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti will be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

(a) Borrower will remove all graffiti from any real property owned or leased by Borrower in the City and County of San Francisco within forty eight (48) hours

of the earlier of Borrower's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Borrower to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" will not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

(b) Any failure of Borrower to comply with this section of this Agreement will constitute an Event of Default of this Agreement.

17. Resource-Efficient Building Ordinance. Borrower acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. Borrower hereby agrees it will comply with the applicable provisions of such code sections as such sections may apply to the Property.

18. Consideration of Criminal History in Hiring and Employment Decisions.

(a) Borrower agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Borrower's obligations under Chapter 12T is set forth in this Section. Borrower is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement will have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T will only apply to a Borrower's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, will apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, will apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and will not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(c) Borrower will incorporate by reference in all subcontracts the provisions of Chapter 12T, and will require all subcontractors to comply with such provisions. Borrower's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

(d) Borrower or Subcontractor will not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(e) Borrower or Subcontractor will not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 16.16(d), above. Borrower or Subcontractor will not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Borrower or Subcontractor will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Borrower or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Borrower and Subcontractors will post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Borrower or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Borrower understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

19. Food Service Waste Reduction Requirements. Borrower agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Borrower agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Borrower

agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount will not be considered a penalty, but rather agreed monetary damages sustained by City because of Borrower's failure to comply with this provision.

20. Bottled Drinking Water. Unless exempt, Borrower agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Agreement as though fully set forth.

22. Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Borrower will comply with the applicable requirements of the Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance under Administrative Code Chapter 14B ("LBE Ordinance") and will incorporate such requirements in contracts with any Contractors and Subcontractors.

EXHIBIT F

Lobbying/Debarment Certification Form

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

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

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

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

MPCAL LLC, a California limited liability company

BY: Mercy Commercial California, a California nonprofit public benefit corporation, its Manager

NAME: Remix Dan RANIS DARR

TITLE: V.P.

DATE: 4/25/23

EXHIBIT G
Developer Fee Policy

To be attached.

Mayor's Office of Housing and Community Development
Policy on Development Fees For Tax Credit Projects
Effective October 16, 2020

This MOHCD Policy on Development Fees for Tax Credit Projects applies to all developments seeking City funding in conjunction with new Tax Credit financing for the current project, including recapitalization projects with existing MOHCD loans. This does not apply to non-Tax Credit projects such as Small Sites Program (SSP) projects, which are subject to the SSP Program Guidelines. It also does not apply to HOPE SF or RAD projects, which are subject to separate developer fee policies.

Developers may include fees in their project budgets according to the terms below.

I. MINIMUM FEES: 5% of total development costs.

II. MAXIMUM FEES: Notwithstanding any other section of this Policy, the maximum Total Fee that may be included in basis is the Tax Credit limit (currently 15% of Eligible Basis) subject to the additional limitations identified below.

A. Total Development Fee

("Total Fee") for different project types are further detailed below, and reflect the sum of the Cash-Out Fee (Base, Additional, and Deferred) and Non Cash-Out Fee (Deferred and General Partner Equity Contribution).

B. Fee Components

1. Cash-Out Fee (Base and Additional)

Project Type	9% Project - Maximum Cash-Out Fee	4% Project - Maximum Cash-Out Fee	Notes
New Construction	TCAC Maximum	The lesser of TCAC Maximum or \$2,200,000 (Base) + \$10,000 per unit over 100 units (Additional), if additional cash-out requires no additional MOHCD gap funding.	
Newly Acquired and Substantially Rehabilitated (Per unit Hard Cost >= \$75,000)	TCAC Maximum	Same as new construction fee.	-Hard Cost is defined as "Total Construction Costs" summed in the MOHCD Application in cell K37, Tab 4b-Perms&U.
Substantial Rehabilitation (Per unit Hard Cost >=\$75,000) by Existing or Affiliate GP -- Includes New City Funds or Re-structured City Debt	50% TCAC Maximum	The lesser of TCAC maximum or \$1,100,000 (Base) + \$10,000 per unit over 100 units (Additional), if additional cash-out requires no additional MOHCD gap funding.	-Sponsor may take the allowable fee for Newly Acquired and Rehabilitated projects described above if 1) in the project's original syndication, sponsor did not take the maximum allowable developer fee; or 2) sponsor adds new affordable units to the project.

			<p>-Hard Cost is defined as “Total Construction Costs” summed in the MOHCD Application in cell K37, Tab 4b-Perms&U.</p> <p>-Sponsor cash out permissible only per MOHCD Cash Out Acquisition/Rehabilitation, Resyndication, and Refinancing Policy.</p>
<p>Recapitalization, acquisition, or transfer with less than \$75,000 Per unit hard cost capital improvements</p>	No Fee	No Fee	<p>-Hard Cost is defined as “Total Construction Costs” summed in the MOHCD Application in cell K37, Tab 4b-Perms&U.</p> <p>-Sponsor cash out permissible only per MOHCD Cash Out Acquisition/Rehabilitation, Resyndication, and Refinancing Policy.</p>

- a. A note about Cash-Out Additional Fee: If Eligible Basis is less than Threshold Basis, projects over 100 units may take up to \$10,000 per unit over 100 as cash-out fee, but only if such cash payment does not require additional gap funding from MOHCD (see MOHCD Application, Tab 8-DevFeeCalc, for calculation).
2. Cash-Out Fee (Deferred): If Eligible Basis is less than Threshold Basis, Developers may include a Cash-Out Deferred Fee component in the Total Fee up to the aggregate of 50% of surplus cash flow taken over the project’s first 15 years of operation (after typical payments of base ground rent, the general partner management fee, and investor asset management fee, if applicable). Cash-Out Deferred Fee is shown as both a source and a use of funds in the capital budget. Developers may use industry standard inflators of income and expenses to calculate Cash-Out Deferred Fee.
 - a. Distributions of surplus cash as Deferred Fee are in lieu of (not in addition to) the typical 33.3% distribution of surplus cash to the Sponsor. At Year 15 of operations, or earlier if the Deferred Fee is fully repaid before then, a surplus cash distribution shall commence at 33.3% of surplus cash (after typical payments of base ground rent, the general partner management fee, and investor asset management fee, if applicable).
 - b. For projects supported by the Local Operating Subsidy Program, Cash-Out Deferred Fee must be taken over a minimum time period of 5 years.
3. Non-Cash Out Fee (Deferred and General Partner Equity Contribution): Where Eligible Basis is less than Threshold Basis, Developers should include in Total Fee the maximum amount available for re-contribution as General Partner Equity or as Non-Cash Out Deferred Fee. It is

MOHCD’s intent to use Deferred Fee and General Partner Equity Contribution up to 15% of Eligible Basis to reduce MOHCD’s overall contribution to projects, so that MOHCD may invest its funds in the most projects possible. MOHCD will work with developers, lenders, and investors to ensure that the developer fee structure meets MOHCD financing goals and feasibility considerations.

4. Commercial Developer Fee is not addressed in this Policy. Please see MOHCD’s Commercial Underwriting Guidelines for information regarding development fees associated with Commercial, Community Serving Commercial, and Public Benefit Use spaces.

III. FEE DISTRIBUTION: The Cash-Out Base Fee shall be divided equally between “Project Management Fee” and “At-Risk Fee” (subject to the “At-Risk Fee Adjustment” described below). Any Cash-Out Additional Fee will be distributed as At-Risk Fee. Cash-Out Fees (Base and Additional) shall be distributed according to achievement of certain development milestones, as follows:

Example below assumes Base Fee is \$2.2 M and Additional Fee is \$300,000.

Project Management Milestone	% of Fee Distributed	Fee Amount
Acquisition, if applicable, or predevelopment loan closing (or another agreed-upon milestone if acquisition is not applicable, e.g. being awarded a City-owned site through a RFQ/RFP process)*	15%	\$165,000
During Predevelopment with no more than 50% of the total Project Management Fee to be disbursed prior to construction closing*	35%	\$385,000
At Construction Closing	20%	\$220,000
During Construction (disbursed upon request depending on % of construction completion) or at Completion of Construction	20%	\$220,000
Project Close-Out: Placed-In-Service application; 100% lease-up; City approval of sponsor’s project completion report and documents; and City acceptance of final cost certification.	10%	\$110,000
TOTAL PROJECT MANAGEMENT FEE	100%	\$1,100,000

***Joint Venture development team partners must split all Fee during the pre-development period 50%-50%. This helps ensure the new or emerging partner has access to Fee upfront to support their participation in the project and their capacity building.**

At-Risk Fee Milestone	% of Fee Distributed	Fee Amount
Qualified Occupancy (95% Leased up and Draft Cost Certification Audit)	20%	\$280,000
Permanent Loan Closing/Conversion (Final Cost Certification Audit)	50%	\$700,000
Project Close-Out: Placed-In-Service application; 100% lease-up; City approval of sponsor’s project completion report and documents; and City acceptance of final cost certification.	30%	\$420,000
TOTAL AT-RISK FEE	100%	\$1,400,000

A. At-Risk Fee Adjustment

When outside funding sources limit the Cash Out Fee to a value less than allowed under this Policy (e.g., California’s Department of Housing and Community Development), the Developer may still be paid a maximum of \$1.1M as a Project Management Fee and the At-Risk Fee shall be reduced to bring the total Cash-Out Fee (Base and Additional) in line with the outside funding source cap.

IV. WAIVERS OF THE DEVELOPER FEE POLICY

The Citywide Affordable Housing Loan Committee may approve a waiver or modification of any portion of this Policy for the purpose of assuring project feasibility. All recommendations related to this Policy are subject to the Mayor’s approval in his or her sole discretion.

V. CDBG or HOME REQUIREMENTS

If MOHCD uses CDBG or HOME funds to pay the development fee, it is considered “program income”, and, should MOHCD request it, the Sponsor must provide a report to MOHCD on its use of developer fees.

Recipients of CDBG administrative funding may not also receive a Project Management Fee for the same project covering the same time period.

VI. POLICY IMPLEMENTATION

This Policy applies to any development that has not received its gap financing commitment or debt restructuring approval from MOHCD by the effective date of the Policy.

EXHIBIT H
MOHCD Residual Receipts Policy.

To be attached.

Mayor's Office of Housing and Community Development

Residual Receipts Policy

Effective April 1, 2016

INTRODUCTION

The Mayor's Office of Housing and Community Development (MOHCD) typically requires annual payments under the Ground Leases and Loans provided for the purpose of developing or preserving affordable housing to the extent that making payments is feasible and does not jeopardize the long-term affordability or maintenance of safe and secure housing for its residents. Payments may be required under one or a combination of several structures, including amortization, deferral, or payment from residual receipts, depending on the circumstances.

When a development financed by MOHCD is projected to enjoy more income than is needed to pay expenses, service other debt, fully fund its reserves, and make approved payments out of surplus, it is MOHCD's policy that a portion of the remaining "residual" income be directed toward repayment of MOHCD's investment.

MOHCD also permits a modest portion of "residual" income to be distributed by the borrower. Distribution of any portion of "residual receipts" is conditioned on MOHCD's annual determination that certain performance standards and benchmarks have been met.

SUMMARY (see below for detailed requirements)

I. Definition of Residual Receipts	As depicted in the approved MOHCD Operating Budget Proforma for each project, the amount remaining in the annual operating budget after calculation of Net Operating Income (Project Income less Project Expenses) and allowable payments of surplus. .
II. Annual Residual Receipts Payments Due to MOHCD	Generally, $\frac{2}{3}$ rd s of residual receipts is payable to the City. Larger Tax Credit projects may be eligible to use an alternative $\frac{1}{2}$ - $\frac{1}{2}$ split for up the first 10 years of a new tax credit period, see the Developer Fee Policy for more details.
III. When more than one MOHCD contract requires residual payments	The approved MOHCD Operating Budget Proforma is a required exhibit to the last-executed MOHCD contract and must reflect a comprehensive summary of approved cash flow waterfall, listing of all lenders, relative lien positions, underlying loan terms and amounts owed to MOHCD annually across all MOHCD contracts.
IV. When a project has other Lenders in addition to MOHCD that require residual payments	The portion to be repaid to each Lender is typically determined by the proportional amount of capital funded under each loan. The approved MOHCD Operating Budget Proforma must include a list of all loans and details about projected amounts owed annually, including how the portion of residual receipts to be paid to each lender will be calculated, if not based on a proportional amount.
V. Conditions to Distribution of Residual Receipts to Borrower	Distribution of Residual Receipts may be made only upon: (1) MOHCD approval of Annual Monitoring Report; (2) determination by MOHCD that borrower is not in default; and (3) approval by MOHCD of amount of

	Distribution.
VI. Use of Residual Receipts Distributed to the Borrower	MOHCD strongly encourages borrowers to use distributions for activities in San Francisco that would be eligible uses under the CDBG Program Income rules (except to the extent that those rules may prohibit the use of funds for new construction).
VII. Uses of Project Income for Services and other Extraordinary Costs Associated with the Project	Any other use of the income derived from housing developed or preserved with MOHCD 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 MOHCD financing is committed and approved.
MOHCD Repayment Waiver Option	The repayment waiver option has been terminated.

I. Definition of Residual Receipts

- A. Residual Receipts is the amount remaining in the annual operating budget after calculation of Net Operating Income (Project Income less Project Expenses) and allowable payments from surplus.
- B. The project-specific Funding Agreements and/or Ground Leases define what Project Income entails and which Project Expenses are allowable. In general, the definition of allowable Project Expenses will include mandatory or “hard” debt service payments, minimum or Base Rent owed under a Ground or Land lease, and required annual payments into Reserve accounts. Each MOHCD contract will include a copy of the approved Operating Budget Proforma.
- C. When MOHCD requires repayments from Residual Receipts, the formula usually requires payment of a portion of the available Residual Receipts. The use of a proportional formula makes it is essential to clearly define which uses of surplus cash have been approved for payment prior to the calculation of the amount owed to MOHCD.
- D. The approved uses of any available surplus may also be referred to as the cash flow waterfall. The approved MOHCD Operating Budget Proforma is used to document the approved cash flow waterfall. In general, the following expenses may be a part of a cash flow waterfall:
 - 1. Fees payable to the project, the GP, the LP or the parent entity
 - 2. Fees payable to project funders
 - 3. “Soft” debt repayments to lenders / lessors

Please see the City’s Developer Fee Policy and Operating Fees Policy for a list of allowable fees and any applicable limits.

- E. Limited Partnership Agreements may also provide a narrative summary of the cash flow waterfall. In the event that a Limited Partnership Agreements is found to be inconsistent with the MOHCD Funding Agreement and/or the approved MOHCD Operating Budget Proforma, the MOHCD documents shall control.

II. Annual Residual Receipts Payments due under MOHCD Ground Leases & Loans

Except as recommended by the Loan Committee and approved by the Mayor on a project by project basis, the portion to be paid to the City shall be $\frac{2}{3}$ rds of Residual Receipts. Larger Tax Credit projects may be eligible to use an alternative $\frac{1}{2}$ - $\frac{1}{2}$ split for up the first 10 years of a new tax credit period and the borrower's portion of Residual Receipts shall be considered payment of Deferred Developer Fee. See the Developer Fee Policy for more details.

Any residual receipts payments shall be applied toward the unpaid balance of MOHCD loan/s according to the terms in the Promissory Note and/or Funding Agreement, and toward the payments required under the MOHCD Ground Lease.

III. When more than one MOHCD contract requires residual payments:

Some projects supported by MOHCD may be governed by more than one MOHCD contract. The MOHCD Operating Budget Proforma provides a comprehensive summary of the approved cash flow waterfall, a listing of all lenders, the relative position of each lien, the amounts owed and the relevant repayment terms, and will also reflect the cumulative amount of repayments owed to MOHCD annually across all MOHCD contracts. Projects governed by more than one MOHCD contract that extend or initiate a MOHCD contract after the effective date of this policy will be required to get approval of a new MOHCD Operating Budget Proforma.

IV. When a project has other Lenders in addition to MOHCD that require residual payments

A. If any other project lenders besides MOHCD require repayment from residual receipts, the portion to be repaid to each Lender will typically be determined by the proportional amount of capital supplied under each loan. For example, if a project received a \$2 million loan from MOHCD and a \$3 million loan from another lender, MOHCD would receive $\frac{2}{5}$ ths of the amount available to be repaid, and the other lender would receive $\frac{3}{5}$ ths of the amount available to be repaid. The approved MOHCD Operating Budget Proforma must include a list of all Loans and provide an appropriate amount of detail about the projected amounts owed annually including details about how the portions to be paid to each lender will be calculated. If a project makes an agreement with any other lender/s after executing a MOHCD contract containing the final MOHCD-approved Operating Budget Proforma, prior to making any payments to such other lender/s, the project must request and be approved in writing to amend the MOHCD-approved Operating Budget Proforma to include the new lender/s.

B. During operations, MOHCD will require Residual Receipts payments using MOHCD's method of calculating surplus and any amounts owed to the MOHCD. If there is a difference in the amount calculated to be owed to any other lenders under another lender's repayment calculation method when compared to MOHCD method, then each lender will be paid according to its calculation, so long as doing so would not result in a reduction in the amount payable to MOHCD.

V. Conditions to Distribution of Residual Receipts to Borrower

- A. Distribution of Residual Receipts to the borrower of a MOHCD loan, or lessee of a MOHCD ground lease, may be made only upon:
1. MOHCD approval of the Annual Monitoring Report submitted for that year; and
 2. Determination by MOHCD that the borrower is not in default under terms of the Loan; and

3. Approval by MOHCD of the amount to be distributed.
- B. No distribution of Residual Receipts shall be made under any of the following circumstances:
1. When a written notice of default has been issued by any lender or investor and such default has not been cured; or
 2. 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; or
 3. If any operating expense, including debt service on non-City loans remains unpaid; or
 4. If any required reserve account is not fully funded according to the terms of the MOHCD contract/s; or
 5. In the event of any other material failure to comply with the provisions of the MOHCD contract/s.

VI. Use of Residual Receipts Distributed to the Borrower

MOHCD strongly encourages borrowers to use the portion of Residual Receipts that is not applied toward repayment of MOHCD's loan or payment of residual rent under a MOHCD ground lease for activities in San Francisco that would be eligible uses under the CDBG Program Income rules (except to the extent that those rules may prohibit the use of funds for new construction).

VII. Uses of Project Income for Services and other Extraordinary Costs Associated with the Project

- A. With the exception of Residual Receipts retained by a borrower pursuant to this policy, any other use of the income derived from housing developed or preserved with MOHCD 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 MOHCD financing is committed and approved.
- B. 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.

EXHIBIT I

Intentionally Omitted

EXHIBIT J

Intentionally Omitted.

EXHIBIT K

Intentionally Omitted

EXHIBIT L
Insurance Requirements

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

1. **Liability Insurance.** Borrower will obtain and maintain, or cause its contractors, subcontractors, property managers and/or agents, as appropriate for each, to obtain and maintain, insurance and bonds as follows:

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

(b) commercial general liability insurance, with limits no less than Two Million Dollars (\$2,000,000) combined single limit per occurrence and Four Million Dollars (\$4,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Borrower is conducting any activity on, alteration or improvement to the Site with risk of explosions, collapse, or underground hazards;

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

(d) professional liability insurance of no less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Borrower's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Borrower will assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim will be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Borrower's officers and employees against dishonesty with respect to the Funds of no less than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed One Hundred Twenty Five Thousand Dollars (\$125,000) each loss, including the City as additional obligee or loss payee;

(f) as applicable, pollution liability and/or asbestos pollution liability covering the work being performed with a limit no less than Two Million Dollars (\$2,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This

coverage will be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Borrower's contractor, provided that the policy will be "claims made" coverage and Borrower will require Borrower's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

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

(a) During the course of construction, the builder's risk insurance requirement will be satisfied by the Residential Owner and the performance and payment bonds will be satisfied by the Residential Owner's contractor.

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor, including coverage in transit and storage off-site; including coverage for loss of income due to an insured peril for twelve (12) months; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-project basis; and with a deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss, including the City and all subcontractors as loss payees.

(ii) Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Borrower as dual obligees or other completion security approved by the City in its sole discretion.

(b) Upon completion of construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor including coverage for loss of income due to an insured peril for twelve (12) months. For rehabilitation/construction projects that are unoccupied by residential or commercial tenants, Tenant will obtain Property Insurance by the date that the project receives a Certificate of Substantial Completion.

(ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site that is used by Borrower for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as loss payee.

The following notice is provided in accordance with the provisions of California Civil Code Section 2955.5: Under California law, no lender will require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

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

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

(b) commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; advertisers' liability;

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

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

(e) special form coverage insurance, including vandalism and malicious mischief, in the amount of 100% of the full replacement cost thereof, covering all furnishings, fixtures, equipment, leasehold improvements, alterations and property of every kind of the tenant and of persons claiming through the tenant; including coverage for loss of income due to an insured peril for twelve (12) months.

4. General Requirements.

(a) Required Endorsements. Borrower's insurance policies will include the following endorsements:

(i) Commercial General Liability and Commercial Automobile Liability Insurance policies will be endorsed to name as "Additional Insured" the City and County of San Francisco, its officers, agents, and employees.

(ii) The Workers' Compensation policy(ies) will be endorsed with a waiver of subrogation in favor of the City for all work performed by the Borrower, its employees, agents, contractor(s), and subcontractors.

(iii) Commercial General Liability and Commercial Automobile Liability Insurance policies will provide that such policies are primary insurance to any other insurance available to the "Additional Insureds," with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(iv) All policies will be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices will be sent to the City address set forth in **Section 21.1** of the Agreement.

Borrower will provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

(b) Certificates of Insurance. By no later than Loan closing and annually thereafter, Borrower will furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Borrower's liability under this Agreement.

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

(d) Claims Based Policies. All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made form, Borrower will maintain coverage as follows:

(i) for builder's risk, continuously for a period ending no less than three (3) years after recordation of a notice of completion without lapse, to the effect that, if any

occurrences give rise to claims made after completion of the Project, then those claims will be covered by the claims-made policies; or

(ii) for all other insurance under this Exhibit L, continuously through the Compliance Term and, without lapse, for a period of no less than three (3) years beyond the expiration of the Compliance Term, to the effect that, if any occurrences during the Compliance Term give rise to claims made after expiration of the Agreement, then those claims will be covered by the claims-made policies.

(e) Additional Requirements.

(i) If any of the required insurance is provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit will be double the occurrence or claims limits specified above.

(ii) Any and all insurance policies required under this Exhibit L will contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(iii) On City's request, Borrower and City will periodically review the limits and types of insurance carried under this Exhibit L. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Borrower for risks comparable to those associated with the Permit Area, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Borrower to conform to the general commercial practice, unless Borrower demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Borrower.

(iv) Borrower's compliance with the insurance requirements under this Exhibit L will in no way relieve or decrease Borrower's indemnification obligations under this Agreement or any of Borrower's other obligations under this Agreement.