



118-2172024-002

Agenda Item **Nos. 5 (b and c)**
Meeting of March 19, 2024

MEMORANDUM

TO: Commission on Community Investment and Infrastructure

FROM: Thor Kaslofsky, Executive Director

SUBJECT: Authorizing an Amended and Restated Loan Agreement with Transbay 2 Family, L.P., a California limited partnership, to increase the contract amount by \$53,961,845 for a total aggregate loan amount of \$61,961,845, and a Childcare/Community Commercial Loan Agreement with Transbay 2 Family Commercial LLC, a California limited liability company, in an amount of \$8,676,682, for the development of 184 affordable rental housing units (including two manager's units), a childcare facility space, and two community-serving commercial spaces at Transbay Block 2 East; Transbay Redevelopment Project Area

Authorizing a Residential Ground Lease with Transbay 2 Family, L.P., a California limited partnership, and a Childcare and Community Commercial Ground Lease with Transbay 2 Family Commercial LLC, a California limited liability company, for the development of 184 affordable rental housing units (including two manager's units), a childcare facility space, and two community-serving commercial spaces at Transbay Block 2 East; Transbay Redevelopment Project Area

Providing notice that the above-described actions are within the scope of the Transbay Redevelopment Project approved under the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Final Environmental Impact Statement/Environmental Impact Report, a Program EIR, and are adequately described therein for purposes of the California Environmental Quality Act ("CEQA"); Transbay Redevelopment Project Area

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EXECUTIVE SUMMARY

The Successor Agency to the Redevelopment Agency of the City and County of San Francisco (commonly known as the Office of Community Investment and Infrastructure or “OCII”) is completing the enforceable obligations of the former Redevelopment Agency of the City and County of San Francisco (“Former Agency”) in the Transbay Redevelopment Project Area (“Project Area”). These include implementing the Redevelopment Plan for the Transbay Redevelopment Project Area (“Redevelopment Plan”), acquiring and facilitating the development of the former Transbay Temporary Terminal site, and ensuring that at least 35% of all new housing in the Project Area is permanently affordable. To meet the Project Area affordability requirement, 100% of residential units on Transbay Block 2 (“Block 2”), except for on-site manager’s units, will be affordable. In addition to complying with the Project Area affordability requirement, the planned units on Block 2 will contribute significantly toward addressing the City’s obligations under the 2023-2030 Regional Housing Needs Allocation as set forth in the Housing Element.

Mercy Housing California (“Mercy” or the “Developer”) is collaborating with Chinatown Community Development Center (“CCDC”) (together, Mercy and CCDC are the “Co-Developers”) under a Joint Development Agreement (“JDA”) to develop Block 2 with two mixed-use affordable housing projects. Mercy is the lead developer and long-term owner/operator of the eastern half of the site (“Block 2 East”) which is a proposed mixed-use residential building serving families and families experiencing homelessness (the “Project”). CCDC is the lead developer and long-term owner/operator of a planned mixed-use building serving seniors and senior households experiencing homelessness on the western half of Block 2 (“Block 2 West” or the “Senior Project”).

Since selection of the Co-Developers in 2021, the Commission has taken numerous actions to facilitate the development of both the Project and the Senior Project, including, but not limited to, approvals of predevelopment funding, schematic designs, gap financing commitments, and a short-term horizontal ground lease. Most recently, the Commission approved loan agreements and ground leases for the Senior Project, facilitating the close of construction financing and issuance of a construction notice to proceed on March 7, 2024.

Mercy leveraged the funding commitment from OCII to secure additional financing for the Project and is now prepared to close on construction financing and begin construction in mid-May 2024. In addition to the OCII funding, Mercy secured Low-Income Housing Tax Credits (“LIHTC”), a competitive tax-exempt bond allocation from the California Debt Limit Allocation Committee (“CDLAC”), and a competitive award from the California Department of Housing and Community Development Affordable Housing and Sustainable Communities (“AHSC”) Program.

In preparation for the close of construction financing, Mercy requests Commission approval of the following agreements (collectively, the “Project Agreements”):

1. Amended and Restated Loan Agreement, in an aggregate loan amount of approximately \$61,961,845 (“Residential Loan Agreement”) ([Attachment 2](#)).
2. 75-year residential Ground Lease (“Residential Ground Lease”) ([Attachment 3](#)).

3. Childcare/Community Commercial Loan Agreement for development of the childcare and commercial spaces in an amount of approximately \$8,676,682 (“Commercial Loan Agreement”) with Transbay 2 Family Commercial LLC, (“Commercial Affiliate”) a California limited liability company affiliated with Mercy (Attachment 4).
4. 75-year Childcare and Commercial Ground Lease (“Commercial Ground Lease”) (Attachment 5) with Commercial Affiliate.

Staff recommends that the Commission authorize the Residential Loan Agreement, the Residential Ground Lease, the Childcare/Commercial Loan Agreement, the Childcare and Commercial Ground Lease, and adopt environmental findings pursuant to CEQA.

BACKGROUND

Transbay Redevelopment Project Area

The Board of Supervisors established the Project Area and approved the Redevelopment Plan by Ordinances No. 124-05 (June 21, 2005) and No. 99-06 (May 9, 2006), as amended by Ordinances No. 84-15 (June 16, 2015), No. 62-16 (April 26, 2016), and No. 09-23 (January 24, 2023). The Redevelopment Plan establishes the land use controls for the Project Area, and divides the Project Area into two sub-areas:

- Zone One in which the Redevelopment Plan and Development Controls and Design Guidelines for the Transbay Redevelopment Project (“Development Controls”) define the development standards, and
- Zone Two in which the San Francisco Planning Code applies.

A major focus of the Project Area is to redevelop 10 acres of former highway access ramp properties previously owned by the State of California (the “State-Owned Parcels”) to generate funding for the Transbay Joint Powers Authority (“TJPA”) to construct what is now the Salesforce Transit Center (the “Transit Center”) and its related improvements. OCII’s role is to complete the enforceable obligations that the State Department of Finance has finally and conclusively approved under Redevelopment Dissolution Law. These enforceable obligations include the Implementation Agreement between TJPA and the Former Agency, which requires OCII to facilitate the sale and development of certain State-Owned Parcels to third parties, to implement the Redevelopment Plan, and to comply with California Assembly Bill 812, codified in Section 5027.1 of the California Public Resources Code (“AB 812”). AB 812 requires that 35% of all new or rehabilitated residential units in the Project Area be affordable to low- and moderate-income households.

Within the Project Area, a total of 2,666 residential units have been completed, 28% of which are affordable. Based on overall Project Area construction to date and the inclusion of the Project and the Senior Project, the Project Area affordability is projected to be approximately 36%. However, this percentage will fluctuate over time as additional housing projects are proposed within Zone Two.

Block 2 Background

Block 2 is a formerly State-Owned Parcel located within Zone One of the Project Area. OCII acquired, by Resolution No. 23-2020 (August 18, 2020), the former Temporary Terminal site from TJPA in January 2021. In June 2020, OCII issued a request for proposals seeking a team to develop, own, and operate mixed-use 100% affordable rental family and senior housing units on Block 2, including units set aside for households experiencing homelessness. Based on the results of an interdisciplinary evaluation panel, OCII staff recommended the team led by Mercy and CCDC. According to the proposal, Mercy would be the owner and property manager of the Project with supportive services provided by Episcopal Community Services.

On April 6, 2021, by Resolution No. 09-2021, the Commission authorized the Exclusive Negotiations Agreement (“ENA”) as well as two Predevelopment Loan Agreements, one each for the Project and Senior Project. Development roles and responsibilities between the Block 2 Co-Developers are described in the JDA provided to the Commission with the ENA approval in 2021. Under the JDA, Mercy leads the overall site coordination and Mercy’s commercial affiliate (Mercy Housing Commercial or “MHC”) leads the marketing and securing tenants for the commercial spaces on Block 2.

On November 1, 2022, by Resolution Nos. 39-2022 through 44-2022, the Commission approved schematic designs for the Project and Senior Project and took related actions to entitle the Project including making CEQA findings and approving amendments to the Redevelopment Plan (“Plan Amendment”) and Development Controls necessary to build Block 2. The Plan Amendment was given its final approval by the Board of Supervisors on January 24, 2023 (Ordinance No. 09-23).

In collaboration with OCII staff, the Co-Developers assessed financing prospects for both the Project and Senior Project in the current highly competitive environment. To improve the likelihood of awards and to keep construction schedules as closely aligned as possible, OCII worked with the Co-Developers to apply to CDLAC in back-to-back funding rounds in 2023 and divided the funding into three parts:

- 1) Residential funding (one for each project)
- 2) Commercial (one for each project)
- 3) Site preparation (one across all of Block 2)

Separating the site preparation and commercial costs lowered residential costs, improving funding application scoring for both the Project and Senior Project.

On May 2, 2023, by Resolution No. 15-2023, Commission authorized the commitment of partial permanent gap loan funds to CCDC for development of the Senior Project based on the above-described approach. CCDC proceeded to submit a CDLAC application on May 23, 2023 and succeeded in securing an award on August 23, 2023.

On August 15, 2023, by Resolution No. 24-2023, Commission authorized the commitment of residential gap loan funds for the Project. In addition, by Resolution No. 25-2023, Commission approved an increase in predevelopment loan funds for the Project to a total of \$8M (an increase of \$4.5M from the \$3.5M approved in April 2021). Finally, Commission approved a short-term Horizontal Ground Lease with the Commercial Affiliate to facilitate and fund, in an amount not to exceed \$2,333,653, site work on Block 2 to prepare for the construction of the Project and Senior Project. Mercy proceeded to submit

a CDLAC application on September 6, 2023 and succeeded in securing an award on December 6, 2023.

Under the Horizontal Ground Lease, site preparation work on Block 2 commenced in September 2023 and was completed in February 2024. Work included the demolition of existing improvements, archaeological coring and trenching, and removal of underground support piles from the former Embarcadero Freeway.

On January 15, 2024, by Resolutions 02-2024 and 03-2024, Commission approved loan agreements and ground leases for the Senior Project with CCDC. The Senior Project closed on construction financing on March 7, 2024 and started construction on March 11, 2024 and a groundbreaking ceremony is preliminarily planned for May 2024.

Project Description

The Project is comprised of 184 residential rental units, including two unrestricted manager's units. Utilizing "income tiering" the 182 units targets households with incomes ranging from zero to 80% of the Area Median Income ("AMI") as published annually by the Mayor's Office of Housing and Community Development ("MOHCD"). In the Project are also 40 units for families experiencing homelessness, which will be supported through the City's Local Operating Subsidy Program ("LOSP").

Along with the residential units, the Project includes resident amenity spaces, public and private open spaces, streetscape improvements, bicycle parking, a space for a childcare facility, and two ground floor commercial spaces ("Commercial Units"). The program for the Project is summarized in the table below.

Transbay 2 East Project Development Program	
Residential units	184 units, including 2 manager's units
Population served	Families, including 40 units set aside for households experiencing homelessness
Target Income levels	<ul style="list-style-type: none"> • 0-30% AMI – 40 units (22%) (LOSP*) • 40% AMI – 6 units (3%) • 60% AMI – 100 units (55%) • 80% AMI – 36 units (20%)
Unit types/sizes	<ul style="list-style-type: none"> • Studio: 17 (9%), avg. 418 sf • One-bed: 76 (41%), avg. 542 sf (including 1 manager's unit) • Two-bed: 54 (29%), avg. 825 sf (including 1 manager's unit) • Three-bed: 37 (20%), avg. 1,132 sf
Commercial Units	<ul style="list-style-type: none"> • 6,447 sf childcare facility space with adjacent outdoor open space play areas, and • 1,959 sf community-serving commercial in 2 spaces with adjacent space for outdoor seating
Resident amenities/open spaces	<ul style="list-style-type: none"> • Ground floor multi-purpose room and upper floor amenity room • Two roof terrace open spaces • Community room with kitchen and roof terrace access

	<ul style="list-style-type: none"> • Three laundry rooms • Pet washroom
Public open space	Approx. 12.5 ft wide by 134 ft long central pedestrian mews with landscaping and public seating (adjacent to an equally sized mews on the Senior Project, for a combined 25 ft wide walkway)
Streetscape improvements	Sidewalks and bulb-outs, street trees and other plantings, public seating, streetlights, and bicycle racks
Parking	<ul style="list-style-type: none"> • No vehicular parking • 92-Class I secured bicycle spaces

** LOSP units will primarily serve extremely low-income households with incomes from zero to 30% AMI, however, these units will be restricted at 50% MOHCD AMI, pursuant to MOHCD policy, to allow for maximum flexibility.*

Childcare Facility Space

Through a competitive selection process, Mercy selected Wu Yee Children's Services ("Wu Yee") as the childcare facility owner/operator. Wu Yee participated in the design of the space throughout predevelopment and secured financing from the Low-Income Investment Fund for tenant improvements. Wu Yee will enter into a 15-year lease with MHC, for the childcare facility space, which is located on two-floors with adjacent private outdoor space on two levels. Wu Yee has committed to maintain at least half of enrollment for low- to moderate-income households and will strive to place families who qualify for subsidized services through Head Start/Early Head Start, a Title 5 contract, subsidy vouchers, and City-funded Early Learning Scholarships. Wu Yee will give first priority to children of families that reside at Block 2 East.

Commercial Units

The Commercial Units will be built to a warm shell condition and will be restricted to Public Benefit and Community Serving Uses (as defined below and in the MOHCD Commercial Underwriting Guidelines attached to the Commercial Loan Agreement):

- **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, office space for non-profit organizations, 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.
- **Community Serving Use.** A land use, typically retail or other sales and services use, that provides a direct benefit to the community, as determined by OCII in its sole discretion. Such use to be documented pursuant to the Commercial Loan Agreement and through a Community Commercial Services Agreement, to be and reported on annually through the MOHCD Annual Monitoring Report. Goals of the of benefit include:
 - Economic Development
 - Community and Social Development
 - Sustainable Job Creation and Retention and Wealth Creation
 - Investment Diversification and Partnerships Development
 - Environmentally Sustainable Outcomes

Examples include:

- Early childhood education center,
- Nonprofit office/services provision,
- Food market with affordable and healthy produce and other goods,
- Community banking,
- Restaurant offers low-cost meals,
- Business hires low-income workers,
- Business owned by underrepresented community, or
- Other neighborhood serving uses that have a demonstrated benefit to the residents of the affordable housing project.

The Community Commercial Services Agreement is an annual monitoring tool that outlines the Benefit Goals stated above and measures the Project's alignment with the benefit goals, by reporting on key metrics such as number of permanent jobs created, number of participants served, and number of consultations held with local stakeholders in the San Francisco area.

MHC has begun outreach to refine potential uses and identify tenants for the Commercial Units. MHC has attended community meetings and spoken directly to residents within the neighborhood, particularly affordable housing residents. During construction, MHC will develop a comprehensive marketing package and will begin active marketing approximately one year prior to construction completion. Their intent is to lease the Commercial Units to local businesses that are owned/operated by people of color, women, immigrants, and other people who may have otherwise have difficulty securing an affordable commercial location in San Francisco. To help accomplish this, MHC will offer below-market rents and assistance with tenant improvements.

DISCUSSION

Project Financing and Loan Terms

Underwriting for the Project was approved on August 4, 2023 by the Citywide Affordable Housing Loan Committee ("Loan Committee"). The approved Loan Evaluation is enclosed as Attachment 6. Loan Committee recommended approval of a total OCII subsidy amount not to exceed \$72,972,179 (the "OCII Subsidy"). As noted in the background discussion above, to improve competitive scoring potential, the OCII Subsidy structure is as follows:

1. Residential. Residential Loan Agreement for the LIHTC residential component – the OCII "Gap Loan" of approximately \$61,961,845, will fund construction of the residential units, residential amenities, and other related improvements ("Residential Project"). The Residential Loan Agreement will include standard terms and conditions for OCII affordable projects.
2. Commercial. Commercial Loan Agreement for the commercial component – OCII will fund a Community Commercial Loan of approximately \$8,676,682, to construct a childcare facility space, and two commercial spaces to a warm shell condition ("Commercial Project").
3. Site Preparation. Horizontal Ground Lease provides site control and funding in an amount not to exceed \$2,333,653. Work is complete and the Horizontal Ground Lease will terminate on the effective date of the Residential Ground Lease.

In addition to the OCII Subsidy, the Project is financed with investor equity raised from the sale of 4% Federal Low-Income Housing Tax Credits, an AHSC Loan, and a construction loan backed by tax-exempt bonds issued by the City. Funding sources and uses for the Project are summarized in the table below:

Permanent Sources	Amount	Per Residential Unit	Per Building Sq. Ft.
Federal Tax Credit Equity	\$98,536,983	\$535,527	\$491
AHSC	\$28,000,000	\$152,174	\$140
Deferred Developer Fee	\$540,000	\$2,935	\$3
Subtotal of Non-OCII Sources	\$127,076,983	\$690,636	\$633
OCII Gap Loan (residential)	\$61,961,845	\$336,749	\$309
OCII Commercial Loan	\$8,676,682	\$47,156	\$43
OCII Horizontal Ground Lease	\$2,333,653	\$12,683	\$12
Subtotal of OCII Subsidy	\$72,972,179	\$396,588	\$364
Total Development Sources	\$200,049,163	\$1,087,224	\$997
Uses	Amount	Per Unit	Per Sq. Ft.
Site Preparation	\$2,333,653	\$12,683	\$12
Hard Costs	\$167,203,417	\$908,714	\$833
Soft Costs	\$25,598,267	\$139,121	\$128
Reserves	\$1,448,826	\$7,874	\$7
Developer Fee (residential)	\$3,040,000	\$16,522	\$15
Developer Fee (commercial)	\$425,000	\$2,310	\$2
Total Development Costs	\$200,049,163	\$1,087,224	\$997

The AHSC amount noted in the table above is a low-interest loan to the Residential Project, however, it represents only a portion of the total award. The Developer secured \$41,011,377 in the competitive AHSC application process. AHSC requires partnership among an affordable housing developer, a local municipality, and a local transit agency with a scope of work that would demonstrably reduce greenhouse gas emissions through affordable housing development, housing-related infrastructure, active transportation infrastructure, transit operations and capital improvements, and related social programming. Separate from OCII, Mercy partnered with BART, and, through MOHCD, with the San Francisco Municipal Transportation Agency and San Francisco Public Works. The non-residential grant funds, which total \$13,011,377 will be used for local transportation improvements including the purchase of new BART cars and Howard Street streetscape improvements near Block 2. In addition, the AHSC award will fund transit passes for Block 2 East residents.

Residential Loan Agreement

If approved by Commission, OCII and Transbay 2 Family, L.P. will enter into the Residential Loan Agreement with a term of 55 years to finance construction and operation of the Residential Project. The Residential Loan Agreement requires the Developer to maximize tax credit equity to the Project while meeting the Internal Revenue Code requirement that at least 50% of Project costs be paid for by the tax-exempt bond financed loan. Project costs associated with the Commercial Project are not eligible

for tax credits. Prior to closing, the Developer will optimize the allocation of costs between Project elements, the Gap Loan and the Commercial Loan amounts may be adjusted as part of the Final Financial Plan¹ (“FFP”). In addition, any unused funds remaining under the Horizontal Ground Lease may be reallocated to the Gap Loan or Commercial Loan. All OCII funding for the Project may not exceed the total OCII Subsidy amount of \$72,972,179.

The interest rate may be adjusted between 0% and 3% based on the Project’s financial feasibility. Similarly, the total OCII subsidy may be reduced depending on the final sources and uses for the Project. The Project’s financing is finalized via the FFP confirmation letter approved by the OCII Executive Director and MOHCD Director.

The Gap Loan closing and funds disbursement are subject to conditions established in the approved Loan Evaluation (Attachment 6, see Section 9.6) and Loan Agreement (see Section 3.12). Key conditions, amongst other standard MOHCD and OCII loan agreement conditions, include:

Gap Loan Closing Key Conditions

- a. Working with OCII, MOHCD, and the Department of Homelessness and Supportive Housing (“HSH”) to finalize the LOSP budget and secure approval for a LOSP grant agreement in accordance with the Residential Loan Agreement and timeframe and procedure set forth in HSH’s LOSP Manual². Any proposed deviation(s) from a pro rata cost split between LOSP and the operating budget are subject to review and approval by OCII and MOHCD, and must be justified by the Developer.
- b. Refining the supportive services plan and budget for review and approval by OCII and HSH, and working with HSH to finalize a supportive services contract for the Project.
- c. Providing an Early Outreach Plan one month after the start of construction and an initial draft Marketing Plan within 12 months of anticipated temporary certificate of occupancy, outlining the affirmative steps it will take to market the Project to OCII’s preference program participants including Certificate of Preference (“COP”) holders, displaced tenants, and neighborhood residents. In addition, the Marketing Plan will describe how the Marketing Plan promotes positive outcomes for African American San Franciscans. Along with the Marketing Plan submittal, Developer will provide a lease-up staffing plan for OCII and MOHCD review.

As previously shown in the Project development program table, Block 2 East units will serve households with incomes ranging from zero to 80% AMI. However, maximum rent and income restrictions will range from 40% to 80% AMI. As noted above, LOSP units will be restricted at 50% MOHCD AMI, consistent with the LOSP Program Policies and Procedures Manual, however, tenants referred into the units will typically be extremely low-income, with a household income at or below 30% AMI. LOSP unit tenants will pay 30% of their actual income toward rent. LOSP will make up the balance of the cost to operate the unit. To the extent that Project cash flow can support it, the Residential Loan Agreement requires

¹ The Final Financial Plan is the final Project budget including adjustments to the interest rate and final total funding amount (within the total OCII subsidy amount of \$72,972,179) based on the final sources and uses for this Project, which will be approved by the OCII Executive Director and MOHCD Director closer to the start of construction of the Project.

² Execution of the LOSP grant agreement is anticipated in 2025, pursuant to the timeframe set forth in the LOSP Manual.

the Developer to continue to refine income levels for the non-subsidized units and seek to lower units to a 50% AMI tier. Final AMI tiering will be reflected in the FFP.

Commercial Loan Agreement

If approved by Commission, OCII and the Commercial Affiliate will enter into a Commercial Loan Agreement with a term of 55 years and an interest rate of 0%. Under the terms of the Commercial Loan Agreement, OCII will disburse funds to the Commercial Affiliate for construction and operation of the Commercial Project. The final amount of funding allocated to the Commercial Loan Agreement may be adjusted based on final project costs and to maximize tax credit equity to the Project (subject to any adjustment being included in the FFP approved by the OCII Executive Director and MOHCD Director and without increasing total OCII Subsidy for the Project).

The Commercial Loan closing and funds disbursement are subject to conditions established in the Commercial Loan Agreement (see Section 3.12). Key conditions, amongst other standard MOHCD and OCII loan agreement conditions, include:

Commercial Loan Agreement Key Conditions

- a. Submit an updated Commercial Space Plan to OCII that documents further outreach to prospective tenants, particularly Small Business Enterprises ("SBEs") (especially SBEs in OCII Project Areas), describes racial equity efforts and expected outcomes, and outlines plans to achieve community benefits pursuant to the Community Commercial Services Agreement. The updated Commercial Space Plan shall include a third-party prepared market study. In addition, the updated Commercial Space Plan shall include an analysis of resources available to fund tenant improvements such as, but not limited to, programs from the Office of Economic Workforce and Development.
- b. Based on findings from the updated Commercial Space Plan and market study as referenced above, provide a recommended tenant improvement allowance responsive to current market conditions and anticipated tenant uses and related improvement cost estimates for OCII review and approval. The final tenant improvement allowance will be included as an attachment to the OCII commercial loan agreement.
- c. Following initial lease-up and a period of stabilized commercial occupancy, pursue a permanent commercial loan to reimburse OCII's commercial loan to the extent feasible.

Ground Lease Terms

As is typical for OCII affordable projects, the proposed ground leases would give the Developer control of the Block 2 East site to build, own, and operate the proposed Project, while OCII will maintain ownership of the land. This is intended to ensure the long-term affordability and viability of the Project. The Residential Ground Lease and Commercial Ground Lease terms are both 75-years each with an option for an additional 24-year extension. Each ground lease requires the Developer to construct the Project in compliance with applicable approvals and approved documents and require OCII approval of any proposed changes to the construction plans after construction has commenced. Staff will continue to monitor progress on the Project through construction completion, lease-up, and the conversion to permanent financing.

Following the conversion to permanent financing, OCII will transfer its fee interest (land) in the Project site, together with OCII's interest in the Project Agreements, to MOHCD as the Housing Successor Agency. MOHCD will perform long-term asset management and ensure compliance with the terms of the Project Agreements.

Residential Ground Lease

Transbay 2 Family, L.P. will construct, own and operate the Residential Project under the Residential Ground Lease. The Residential Ground Lease terms include payment of annual rent equal to \$833,563 (10% of the unrestricted value of the Residential Project site) and will consist of: 1) a base rent of \$15,000, which is paid out of the Residential Project's annual operating expenses and accrues if not paid, and 2) a residual rent that is equal to the annual rent less the \$15,000 base rent. Residual rent is paid to OCII only if there is surplus cash after the Residential Project pays operating expenses and does not accrue if not paid. This structure allows OCII/MOHCD to collect rent if there is sufficient cash flow without affecting the financial stability of the Project. Upon transfer of the Project to MOHCD, residual rent will be paid to MOHCD.

Commercial Ground Lease

The Commercial Affiliate will construct, own, and operate the Commercial Project under the Commercial Ground Lease. Commercial Ground Lease terms include payment of annual rent consisting of: 1) a base rent of \$1.00 per year, and 2) a percentage rent that is equal to 40% of the annual net commercial cash flow (commercial income minus expenses). Percentage rent is paid only after full repayment of the Commercial Loan. The less-than-fair-market-value rent is necessary to ensure the continued and successful operation of the Commercial Project.

Marketing and Leasing Preferences

Marketing, through implementation of an Early Outreach Plan and Marketing Plan, will target COP Holders and their descendants. With the exception of the 40 LOSP units, all units will be leased through the MOHCD DAHLIA process and occupancy priorities will follow the April 16, 2019 Commission action (Resolution 09-2019), as follows: 1) COP holders (including descendants); then to 2) Displaced tenant housing preference for 20% of the units; 3) neighborhood residential housing preference for 40% of the units; and 4) San Francisco residents or workers.

Tenants for the 40 LOSP units will be referred to the Project by HSH through the Coordinated Entry System. COP holders (including descendants) will receive first priority for the LOSP-supported units as well.

EQUAL OPPORTUNITY AND COMPLIANCE WITH OCII POLICIES

The Developer is required to comply with OCII's Economic Opportunity Programs, including Nondiscrimination in Contracts, Minimum Compensation Policy, Health Care Accountability Policy, Construction Workforce Policy, Labor Standards Policy (Prevailing Wage), and is working closely with OCII Contract Compliance staff to meet OCII's SBE Program which establishes a 50% SBE contracting goal.

The Project is exceeding OCII's 50% SBE participation goal for professional services contracts. To date, the Project has achieved 88.3% SBE participation for Professional Services. Of the total awards, 81.1% went to San Francisco-based SBEs, 34.8% to Minority-owned Business Enterprises, 3.7% to Minority Women Business Enterprises, and 39.5% to Women-owned Business Enterprises.

In terms of Construction, the Developer has selected Swinerton Builders and Rubecon Builders (a minority-owned San Francisco-based LBE) joint venture ("JV") as the general contractor for the Project. As of the date of this memo, approximately 28.9% of the construction subcontracts have been awarded, with the remaining scopes being either out to bid or under review. To date, for construction contracts, SBE participation is approximately 59.3% of total construction contracting dollars, when including the Swinerton/Rubecon JV's fees for general conditions.

As previously mentioned, OCII's SBE policy requires that the Developer make good-faith efforts to award 50% of contracting dollars to SBEs. Compliance with this policy is measured by the development team's good-faith efforts to meet the 50% SBE contracting goal. Throughout the procurement process, the development team has demonstrated a strong commitment to OCII's contracting goals, including working closely with OCII staff to maximize contracting opportunities for San Francisco and Project Area firms.

The development team has demonstrated robust good-faith efforts, including advertising bid packages on the City and County of San Francisco's procurement portal and engaging in targeted outreach to the small local business community. In terms of outreach, Swinerton/Rubecon has hosted 5 pre-bid meetings and 2 additional networking events at the Southeast Community Center to foster relationships between prime contractors and small local businesses. Swinerton/Rubecon has also promoted the Project to SBEs at various industry events including Western Regional Minority Supplier Development Council (WRMSDC) Construction Day; SFO Resource Fair; and SFO Bus Maintenance Facility LBE Outreach Event. In terms of community engagement Swinerton/Rubecon has and invited interested LBEs in to meet and discuss strategies for procurement; they have also met with various community groups throughout the Project including SF Hyper Local Contractors, the African American Construction Collective, and the SF Latino Builders Association.

Meanwhile, the development team is working closely with their project managers, estimators, and owner representatives to break apart scopes of work that match the capacity of small and micro firms for the remaining trades to be awarded. Additionally, the development team continues to work closely with OCII Contracts Compliance Staff, through every phase of the bid and award process to maximize outcomes per OCII's SBE Policy which requires first consideration be given to project-area and San Francisco Local Business Enterprises (LBEs).

In terms of Construction Workforce, to date, approximately 2,027 workforce hours have been generated through work on Block 2. To date, 524 workforce hours or 26% of the total hours have been performed by local residents. Please see Attachment 7 for the SBE Professional Services Consultant Summary and Attachment 8 for the biographies of select participating SBE firms.

RECOGNIZED OBLIGATIONS PAYMENT SCHEDULE (“ROPS”) AUTHORITY

The requested Residential Loan Agreement and Commercial Loan Agreement funding amounts are included in the approved ROPS 23-24 in line number 416.

COMMUNITY OUTREACH

The Transbay Citizens Advisory Committee (“CAC”) has received regular status reports on predevelopment activities on Block 2 since the RFP issuance in 2020. In August 2022, OCII staff along with the Block 2 Co-Developers presented an informational overview of the Project, focused on the housing and retail programs as well as resident transportation strategies. On September 8, 2022, the Transbay CAC voted unanimously to recommend that the Commission approve the schematic design documents for the Project and Family Project and related approvals. On October 12, 2023, OCII staff along with the Block 2 Co-Developers presented an informational update on the Project.

In addition to the Transbay CAC and public hearings, the Block 2 Co-Developers have presented the Project at meetings of the East Cut Community Benefits District and IDEATE (a local resident group), and have been in communication with residents of Natalie Gubb Commons (a nearby existing OCII affordable housing development) and with the South Beach/Rincon Hill Neighborhood Association. The Block 2 Co-Developers will continue community outreach as the Project progresses.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

On June 15, 2004, the Board of Supervisors affirmed, by Motion No. 04-67, the certification under CEQA of the Final Environmental Impact Statement/Environmental Impact Report for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project (“FEIS/EIR”), which analyzed the environmental effects of the Transbay redevelopment project and its affiliated transportation improvements. Subsequently, the Board of Supervisors adopted, by Resolution No. 612-04 (October 7, 2004), findings that various actions related to the project complied with CEQA and the Former Agency Commission adopted, by Resolution No. 11-2005 (January 25, 2005), findings and a statement of overriding considerations and mitigation and monitoring program adopted in accordance with CEQA. Subsequent to the certification of the FEIS/EIR, ten addenda have been issued and incorporated into the analysis of the FEIS/EIR. The tenth addendum to the FEIS/EIR, issued under Resolution No. 39-2022 (November 1, 2022), specifically analyzed the environmental effects of the Project and the Senior Project. Commission authorization of the Project Agreements, facilitate the development of the Project and are within the scope of the Transbay redevelopment project analyzed in the FEIS/EIR and its subsequent addenda, and thus require no additional environmental review pursuant to CEQA Guidelines Sections 15180, 15162, 15163, and 15164 for the following reasons:

1. Implementation of the Project Agreements does not require major revisions to the FEIS/EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and

2. No substantial changes have occurred with respect to the circumstances under which the project analyzed in the FEIS/EIR will be undertaken that would require major revisions to the FEIS/EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of effects identified in the FEIS/EIR; and
3. No new information of substantial importance to the project analyzed in the FEIS/EIR has become available which would indicate that (i) implementation of the Project Agreements will have significant effects not discussed in the FEIS/EIR; (ii) significant environmental effects will be substantially more severe; (iii) mitigation measures or alternatives found not feasible, which would reduce one or more significant effects, have become feasible; or (iv) mitigation measures or alternatives, which are considerably different from those in the FEIS/EIR will substantially reduce one or more significant effects on the environment that would change the conclusions set forth in the FEIS/EIR.

STAFF RECOMMENDATION AND NEXT STEPS

The Project's City bond issuance documents will be introduced by Mayor London Breed and Supervisor Matt Dorsey at the Board of Supervisors ("BOS") meeting on March 26, 2024:

1. Final approval is being considered at the April 23, 2024 BOS meeting.
2. Full construction financing is anticipated to close on May 17, 2024.
3. Construction will commence immediately after the close of financing, prior to the June 3, 2024 CDLAC allocation expiration.
4. Early outreach plan will be due 30 days after the start of construction.
5. The marketing plan will be due 18 months prior to construction completion.
6. Construction is scheduled to be complete by May 2026.
7. After full occupancy of the Project in 2026/2027, the land and Project Agreements will begin to be transferred to MOHCD as the Housing Successor Agency under Dissolution Law.

(Originated by Kim Obstfeld, Senior Development Specialist)

DocuSigned by:

B10961FA8449406...
Thor Kaslofsky
Executive Director

Attachment 1: Map of Transbay Project Area

Attachment 2: Amended and Restated Loan Agreement

Attachment 3: Residential Ground Lease

Attachment 4: Childcare/Community Commercial Loan Agreement

Attachment 5: Childcare and Commercial Ground Lease

Attachment 6: Citywide Affordable Housing Loan Committee Loan Evaluation dated August 4, 2023

Attachment 7: SBE Consultant and Contracting Summary

Attachment 8: Consultant Biographies

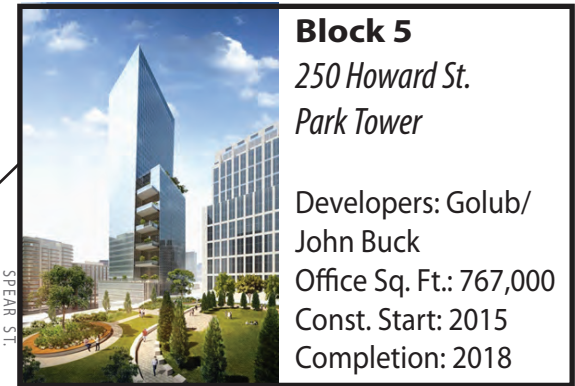
TRANSBAY REDEVELOPMENT PROJECT AREA



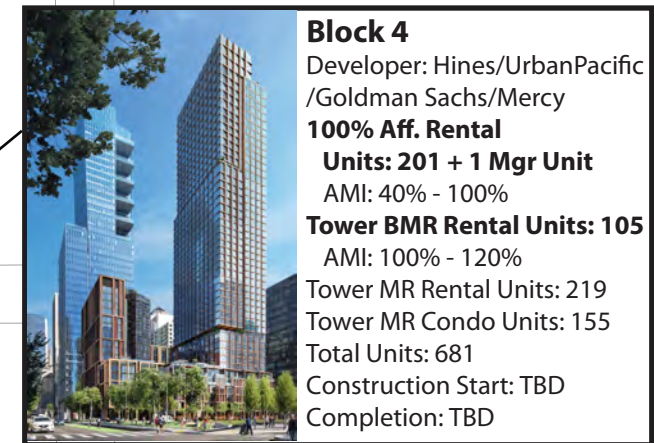
Under-Ramp Park
Acres: 2.4

Parcel F
Developers: Hines/Urban Pacific/Goldman Sachs
Total Units: 165 (est.)
Office Sq. Ft.: 287,000
Hotel Rooms: 250
Construction Start: TBD
Completion: TBD

Parcel T
101 First St.
Salesforce Tower
Developers: Boston Properties/Hines
Office Sq. Ft.: 1.4 Million
Construction Start: 2014
Completion: 2017



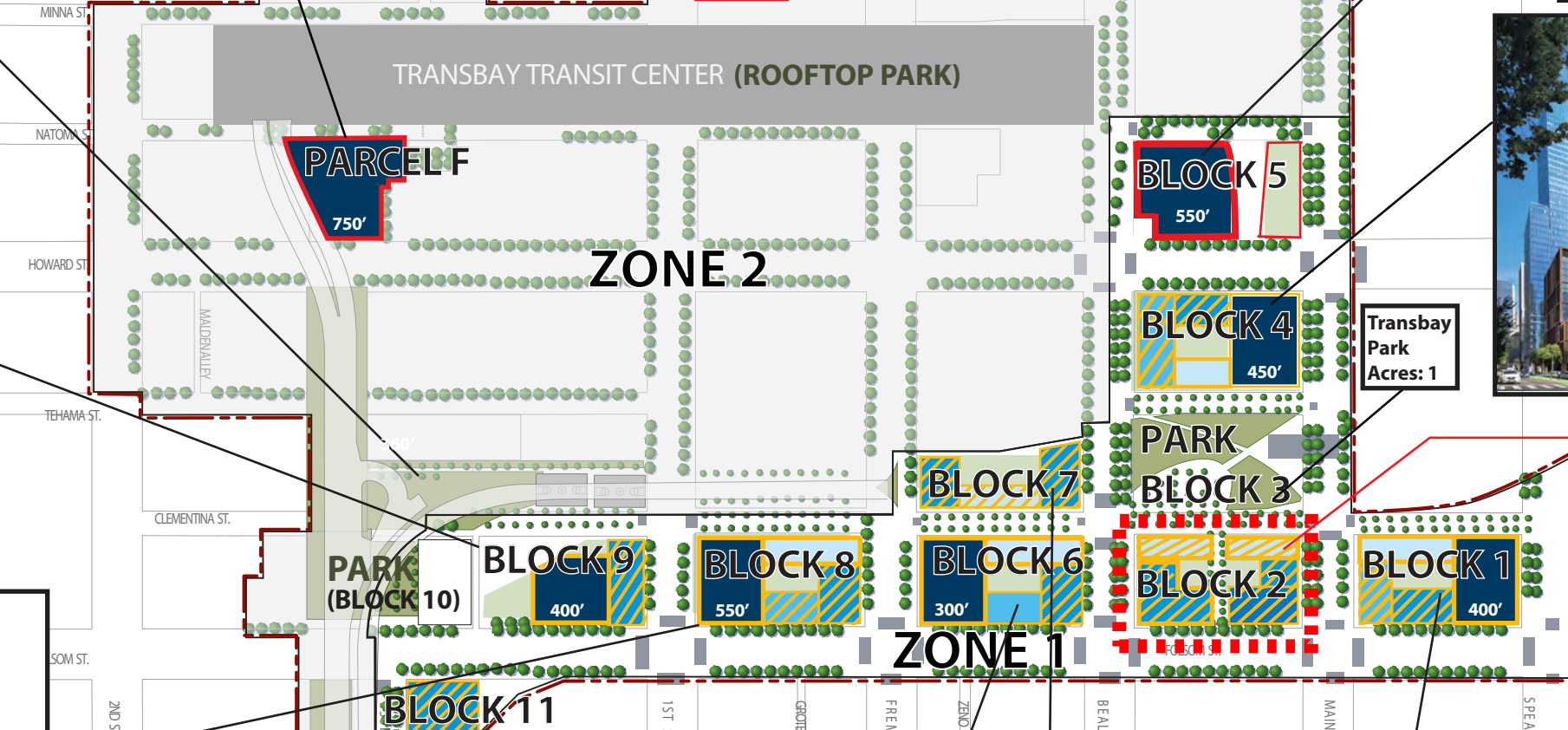
Block 5
250 Howard St.
Park Tower
Developers: Golub/John Buck
Office Sq. Ft.: 767,000
Const. Start: 2015
Completion: 2018



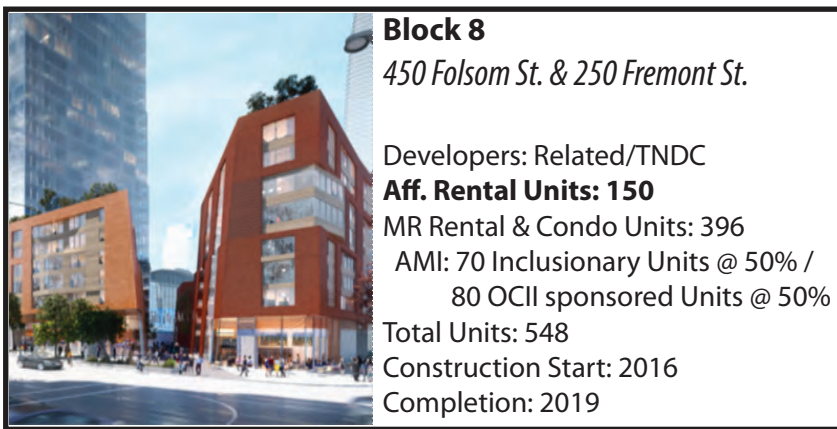
Block 4
Developer: Hines/Urban Pacific / Goldman Sachs/Mercy
100% Aff. Rental Units: 201 + 1 Mgr Unit
AMI: 40% - 100%
Tower BMR Rental Units: 105
AMI: 100% - 120%
Tower MR Rental Units: 219
Tower MR Condo Units: 155
Total Units: 681
Construction Start: TBD
Completion: TBD



Block 9
500 Folsom St.
Developers: Essex/ BRIDGE
Aff. Rental Units: 109
AMI: 50% & below
MR Rental Units: 428
Total Units: 537
Construction Start: 2016
Completion: 2020



Block 2
2W Developer: Chinatown Community Development Center
2W (Aff. Senior); 151 Units
Incl. 1 Mgr. Unit
2E Developer: Mercy
2E (Aff. Family); 184 Units
Incl. 1 Mgr. Unit
Total Units: 335
Construction Start: 2024
Completion: 2026



Block 8
450 Folsom St. & 250 Fremont St.
Developers: Related/TNDC
Aff. Rental Units: 150
MR Rental & Condo Units: 396
AMI: 70 Inclusionary Units @ 50% / 80 OCII sponsored Units @ 50%
Total Units: 548
Construction Start: 2016
Completion: 2019

Essex Open Space
Acres: .5



Block 6
280 Beale St. / 299 Fremont St.
Developers: Golub/Mercy
Aff. Rental Units: 70
MR Rental Units: 409
AMI: 50% & below
Total Units: 479
Construction Start: 2013
Completion: 2016



Block 1
160 Folsom Street
Developer: Tishman Speyer
Aff. Condo Units: 156
AMI: 80% - 120%
MR Condo Units: 236
Total Units: 392
Construction Start: 2017
Completion: 2020



Block 11
25 Essex St.
Rene Cazenave Apartments
Developers: BRIDGE/CHP
Aff. Rental Units: 120
AMI: 50% & below
Total Units: 120
Construction Start: 2011
Completion: 2013



Block 7
255 Fremont St./250 Beale St.
Developer: Mercy
Aff. Rental Units: 120
AMI: 50% & below
Construction Start: 2016
Completion: 2018

TRANSBAY REDEVELOPMENT PROJECT AREA

- TRANSBAY REDEVELOPMENT PROJECT AREA
- ZONE 1
- ZONE 2
- LAND USE (SUBJECT TO CHANGE)
 - AFFORDABLE HOUSING
 - MARKET RATE HOUSING
 - COMMERCIAL
- OPEN SPACE
 - OPEN SPACE (PUBLICLY OWNED)
 - OPEN SPACE (PRIVATELY OWNED)
- PROPOSED HEIGHT LIMITS (MIN AND MAX)
 - Townhomes: 35-50'
 - Podium 1: 40-65'
 - Podium 2: 50-85'
 - Mid-Rise: 65-165'
 - Towers (Height Varies)

Aff. = Affordable | MR = Market-Rate
BMR = Below Market-Rate

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AMENDED AND RESTATED LOAN AGREEMENT

By and Between

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

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

and

Transbay 2 Family, L.P., a California limited partnership

for

Transbay Block 2 East

[\$61,961,845]

Dated as of _____, 2024

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**AMENDED AND RESTATED
LOAN AGREEMENT**
Transbay Block 2 East
Transbay Redevelopment Project Area

This AMENDED AND RESTATED LOAN AGREEMENT ("**Agreement**") is entered into as of _____, 2024, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California (commonly referred to as the Office of Community Investment and Infrastructure or "**OCII**"), and Transbay 2 Family, L.P., a California limited partnership (the "**Borrower**"), whose general partner is Transbay 2 Family LLC, a California limited liability company, and their authorized successors and assigns.

RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California ("**CRL**"), the former Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") undertook programs to redevelop and revitalize blighted areas in San Francisco and in connection therewith established a redevelopment project area known as the Transbay Redevelopment Project Area (the "**Project Area**").

B. In 2003, the Transbay Joint Powers Authority ("**TJPA**"), the City and County of San Francisco ("**City**"), and the State of California ("**State**"), entered into a Cooperative Agreement setting forth the process for the transfer of certain State-owned parcels in the Project Area to the City and the TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1, which requires that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households (the "**Transbay Affordable Housing Obligation**"). In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement ("**Implementation Agreement**") which incorporates the Transbay Affordable Housing Obligation and requires the Former Agency (now OCII) to prepare and sell certain formerly State-owned parcels and to construct and fund new infrastructure improvements and to meet affordable housing obligations.

C. The Board of Supervisors of the City and County of San Francisco ("**Board of Supervisors**") approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006, filed in the Office of the Recorder of the City and County of San Francisco ("**Official Records**") as Document No. 2006-I224836, as amended by Ordinance No. 84-15 (June 16, 2015) as Document No. 2015-K135871, as amended by Ordinance No. 62-16 (April 26, 2016) as Document No. 2016-K333253, and as amended by Ordinance No. 09-23 (January 24, 2023) as Document No. 2023041529, and as it may be amended from time to time ("**Redevelopment Plan**").

D. The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the land use controls of the Redevelopment Plan and the Development Controls and

Design Guidelines for the Transbay Redevelopment Project (2005) (and as currently amended “**Development Controls**”) are applicable and are to be administered by the Former Agency (now OCII), and Zone Two in which the San Francisco Planning Code applies and is administered by the San Francisco Planning Department.

E. On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency, by operation of law pursuant to California Health and Safety Code Section 34170 et seq. (“**Redevelopment Dissolution Law**”). Under the authority of the Redevelopment Dissolution Law and San Francisco Ordinance No. 215-12 (October 4, 2012) (establishing the Successor Agency Commission (“**Commission**”) and delegating to it state authority under the Redevelopment Dissolution Law), OCII is administering the enforceable obligations of the Former Agency. The Redevelopment Plan, Development Controls, Transbay Affordable Housing Obligation, Implementation Agreement and other relevant Project Area documents remain in effect and OCII retains all affordable housing obligations in the Project Area.

F. Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are “in compliance with a continuing enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5(a). On April 15, 2013, the California Department of Finance (“**DOF**”) finally and conclusively determined that the Implementation Agreement and its incorporation of the Transbay Affordable Housing Obligation are continuing enforceable obligations of OCII under Redevelopment Dissolution Law. DOF has confirmed that “any sale, transfer, or conveyance of property related to [the Transbay Final and Conclusive Determination] is authorized.” Email from Justyn Howard, Assistant Program Budget Manager, DOF, to Tiffany Bohee, Executive Director, OCII (September 10, 2013, 09:17 am).

G. In accordance with its obligations under the Redevelopment Plan and the Implementation Agreement, OCII intends to fund the development of two affordable housing developments on Block 2 as said block is depicted in the Redevelopment Plan (“**Block 2**”), by subdividing Block 2 into two vertical subdivisions (referred to herein as “**Block 2 East**” and “**Block 2 West**”), providing a subsidy for development and operation of affordable housing developments with ground floor community commercial space on Block 2 East and Block 2 West, and entering into ground lease agreements with affordable housing developers to cause the construction and operation of the two developments. OCII anticipates that its subsidy will facilitate additional public and private financing necessary to make the development and operation of the Block 2 Site financially feasible.

H. On April 6, 2021, by Resolution No. 09-2021, the Commission affirmed the selection of the development team for Block 2, including lead developer Mercy Housing California (“**Mercy**”, the parent entity of Borrower’s general partner) and co-developer Chinatown Community Development Center (“**CCDC**”). In accordance with Mercy and CCDC’s development proposal and their Joint Development Agreement dated as of March 30, 2021 (“**JDA**”), which defines the roles and responsibilities of Mercy and CCDC in developing the Block 2, Mercy participates as developer, property manager, and resident services provider for a mixed-use rental housing project serving low-income families and formerly homeless families on Block 2 East, and CCDC participates as developer, property manager, and services provider for a

mixed-use rental housing project serving low-income seniors and formerly homeless seniors on Block 2 West. Also by Resolution No. 09-2021, the Commission authorized the OCII Executive Director to execute an exclusive negotiations agreement (the “**ENA**”) with Borrower to enable Borrower to pursue predevelopment activities for the construction and management of the development of Block 2 East.

I. Also on April 6, 2021, by Resolution No. 10-2021, Commission authorized the OCII Executive Director to enter into a “**Predevelopment Loan Agreement**” for a loan to the Borrower in the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) (the “**Predevelopment Loan Amount**”) to fund costs of the Borrower’s predevelopment activities for development of the Site. The Oversight Board of the City and County of San Francisco (“**Oversight Board**”) approved, by Oversight Board Resolution No. 03-2022 (January 24, 2022), this expenditure in the Recognized Obligation Payment Schedule (“**ROPS**”) for July 1, 2022 to June 30, 2023, as confirmed by DOF by letter dated April 15, 2022.

J. On November 1, 2022, by Resolution Nos. 39-2022 through 44-2022, the Commission conditionally approved schematic designs and related actions modifying the scope of development for the Block 2 to include a total of approximately 335 affordable residential units and approximately 11,351 square feet of commercial space in two separate buildings on Block 2 comprised of 151 residential units, amenities and open spaces, and approximately 2,945 square feet of community commercial space on Block 2 West (“**Block 2 West Project**”) and 184 residential units, amenities and open spaces, and 8,406 square feet of community commercial space on Block 2 East (“**Block 2 East Project**”). On February 3, 2023, by Ordinance No. 09-23, the City adopted amendments to the Redevelopment Plan effectuating the modified scope for development of Block 2.

K. Borrower has determined that, to maximize the ability of the Block 2 East Project to obtain affordable housing financing, the Block 2 East Project’s commercial space should be constructed by an affiliate of the Borrower within a separate air rights parcel under a separate commercial ground lease and commercial loan agreement (“**Community Commercial Component**”), and that site preparation work should be completed separate from the construction of the Block 2 West Project and Block 2 East Project under a separate horizontal ground lease (the “**Horizontal Project**”). Borrower succeeded in obtaining a State affordable housing bond and tax credit allocations on December 6, 2023.

L. The Project (as defined in Recital O below) and the Community Commercial Component are integrated components of the overall Block 2 East Project, with the Community Commercial Component providing community-focused uses, including a childcare facility, that are beneficial to residents of the Project and the surrounding community, and the Project providing a stable base of customers for the goods and services provided in the Community Commercial Component.

M. On January 25, 2023, by Resolution No. 02-2023, the Oversight Board approved an expenditure for funding in an amount of up to \$72,972,179 for affordable housing on Block 2 East, through Item No. 416 of the ROPS for the period of July 1, 2023 through June 30, 2024. DOF provided final approval of the expenditure through its letter dated April 14, 2023.

N. On August 4, 2023, the Citywide Affordable Housing Loan Committee (“**Loan Committee**”) approved a total OCII subsidy for the development of the Block 2 East Project in an aggregate amount not to exceed Seventy-Two Million Nine Hundred Seventy-Two Thousand One Hundred Seventy-Nine Dollars (\$72,972,179) (“**Total OCII Subsidy**”), constituting (i) an approximately \$61,961,845 permanent residential loan for the construction and operation of the Project (as defined in Recital N, below) (“**Loan**”), which includes an increase of the Predevelopment Loan Amount by Four Million Five Hundred Thousand Dollars (\$4,500,000) (for a total aggregate Predevelopment Loan Amount of Eight Million Dollars (\$8,000,000)) to fund additional predevelopment costs of the Project (“**Total Predevelopment Loan Amount**”); (ii) approximately \$8,676,682 to fund construction of the Community Commercial Component (“**Community Commercial Loan**”); and (iii) \$2,333,653 in cost reimbursement funding for the Horizontal Project, which amounts may be adjusted, subject to the limit of the Total OCII Subsidy and to MOHCD Director and OCII Executive Director approval through the Final Financial Plan Confirmation Letter (as defined herein), to address changes to the financial conditions of this Agreement after Commission approval but before loan closing.

O. On August 15, 2023, by Resolution No. 25-2023, the Commission authorized a First Amendment to the Predevelopment Loan Agreement, to increase the Predevelopment Loan Amount to the Total Predevelopment Loan Amount. Also on August 15, 2023, by Resolution No. 26-2023, the Commission authorized funding for the Horizontal Project under a horizontal ground lease with Transbay 2 Family LLC (an affiliate of Tenant) (“**Horizontal Ground Lease**”). The Horizontal Ground Lease went into effect on September 22, 2023 and terminates as of the date of the Ground Lease (as defined below).

P. On _____, 2024, by Resolution No. __-2024, the Commission authorized a Ground Lease (as defined below) with Borrower for the purpose of constructing and thereafter operating on the Site (as defined below): approximately one hundred eighty-four (184) residential units, including approximately one hundred eighty two (182) units of low-income rental housing and two unrestricted manager’s units with 40 units set aside to serve formerly homeless families subsidized by the Local Operating Subsidy Program (“**LOSP**”), resident-serving amenities and the portion of the Block 2 pedestrian mews to be constructed on the Site (defined below in Recital P) (“**Project**”). Also on _____, 2024, the Commission separately approved the Community Commercial Loan and ground lease for the Community Commercial Component of the Block 2 East Project.

Q. In furtherance of the foregoing, OCII has subdivided Block 2 by Final Subdivision Map No. 11541 (recorded in the Official Records on December 1, 2023 as Document No. 2023097238 in Book 53 of Parcel Maps at Pages 160-163, “**Final Map**”), creating two vertical subdivisions of roughly equal size (with Parcels 015 and 016 of the Final Map constituting Block 2 West, and Parcels 017 and 018 of the Final Map constituting Block 2 East). The Project will be constructed within Parcel 017 of the Final Map (as further described in Exhibit Q, the “**Site**”), and the Community Commercial Component of the Block 2 East Project will be constructed within Parcel 018 of the Final Map (the “**Community Commercial Parcel**”).

R. OCII now intends to issue the Loan to Borrower in accordance with the terms of this Agreement.

S. Upon completion of construction of the Project, OCII intends to assign its rights and obligations under this Agreement and the Ground Lease, together with conveyance of fee title to Block 2 East (including the Site and the Community Commercial Component) as a mixed-use housing asset, to MOHCD, which is the designated Housing Successor of the City and County of San Francisco under Board of Supervisors Resolution 11-12 (January 24, 2012), as required by Redevelopment Dissolution Law, Health and Safety Code Sec. 34176(a), and OCII's approved Long-Term Property Management Plan dated December 2015.

T. As a mixed-use asset under Section 34176(f) of the Health and Safety Code, the Community Commercial Component and the Project will be transferred to MOHCD as an affordable housing asset because of the overall value to the community and the benefit to taxing entities of keeping these uses together.

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:

"20-Year Cash Flow Proforma" means the 20-year cash flow proforma for the Project attached as Exhibit B-3, as it may be revised and approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date. Any revisions to the 20-Year Cash Flow Proforma so approved by the MOHCD Director and the OCII Executive Director will be attached to and included in this Agreement in the form of the Final Financial Plan Confirmation Letter.

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

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

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

"Annual Operating Budget" means an annual operating budget for the Project attached hereto as Exhibit B-2, as it may be revised and approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date. Any revisions to the Annual Operating Budget so approved by the MOHCD Director and the OCII Executive Director will be attached to and included in this Agreement in the form of the Final Financial Plan Confirmation Letter.

"Area Median Income" or **"AMI"** means area median income as published annually by MOHCD for the City and County of San Francisco, adjusted solely for household size, and derived in part from the income limits and area median income determined by HUD for the San Francisco area, but not adjusted for a high housing cost area (also referred to as unadjusted median income).

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

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

"Borrower" is defined in the first paragraph of this Agreement.

"CFR" means the Code of Federal Regulations.

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

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

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

"Commission" has the meaning set forth in Recital E.

"Community Commercial Component" has the meaning set forth in Recital K.

"Community Commercial Loan" has the meaning set forth in Recital L.

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

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

"Construction Documents" are the Final Construction Documents as defined and described in the Design Review and Document Approval Procedure for Transbay Block 2 (Attachment 7 of the ENA).

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

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

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

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

"Declaration of Restrictions" means a recorded declaration of restrictions in substantially the form and substance attached hereto as Exhibit K that requires Borrower and the Project to comply with the use restrictions in this Agreement for the duration specified therein, 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 OCII a lien on the Borrower's leasehold interest under the Ground Lease and Borrower's ownership interest in the Project to secure Borrower's performance under this Agreement and the Note, in substantially the form and substance attached hereto as Exhibit J.

"Developer" means, for purposes of distribution of the Developer Fees (as defined herein) Mercy Housing Calwest, a California nonprofit public benefit corporation, or an entity affiliated or under common control with the foregoing.

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

"Development Controls" has the meaning set forth in Recital D.

"Development Expenses" means all costs incurred by Borrower and approved by the OCII Executive Director and MOHCD Director in connection with the development of the Project, including: (a) hard and soft development costs; (b) deposits into required capitalized

reserve accounts; (c) costs of converting Project financing, including bonds, into permanent financing; (d) the expense of a cost audit; and (e) allowed Developer Fees.

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

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

"Disburse", **"Disbursement"** and other derivatives thereof means the disbursement of all or a portion of the Funding Amount by OCII as described in Article 4.

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

"Early Retention Release Contractors" has the meaning set forth in Section 4.4.

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

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

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

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

"Excess Development Proceeds" means Development Proceeds remaining after payment of Development Expenses (but for the sake of clarity does not include erroneous overpayments by Investor Limited Partner, if any).

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

"Final Financial Plan" means the Table of Sources and Uses, the Annual Operating Budget and 20-Year Cash Flow Proforma (including without limitation the Funding Amount, interest rate and distribution of Surplus Cash) (Exhibits B-1, B-2, and B-3), as they may be revised by any Final Financial Plan Confirmation Letter approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date.

"Final Financial Plan Confirmation Letter" means a letter documenting the approved Final Financial Plan including any adjustments thereto made and approved by the MOHCD Director and the OCII Executive Director subsequent to execution of this Agreement but prior to the Loan Closing Date, including without limitation the Funding Amount, interest rate and distribution of Surplus Cash.

"Funding Amount" means an aggregate amount not to exceed [Sixty-One Million Nine Hundred Sixty-One Thousand Eight Hundred Forty-Five Dollars (\$61,961,845)] and shall include any revision to the foregoing amount included in the Final Financial Plan.

"Funds" means the monies Disbursed by OCII under this Agreement.

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

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

"Ground Lease" means a ground lease of the Site (or portion thereof) between Borrower as tenant and OCII as landlord, as approved by the Commission.

"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.

“**HCD**” means the California Department of Housing and Community Development.

“**Horizontal Ground Lease**” has the meaning set forth in Recital O.

“**Horizontal Project**” has the meaning set forth in Recital K.

“**HSH**” means the San Francisco Department of Homelessness and Supportive Housing, or other successor agency.

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

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

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

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

“**JDA**” has the meaning set forth in Recital J.

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

“**Life of the Project**” means the period of time in which the Project continues to operate as a multi-family apartment project substantially similar to its current condition in terms of square footage and number of units, and in the event the Project is substantially damaged or destroyed by fire, the elements, an act of any public authority or other casualty, and is subsequently replaced by a multi-family residential project substantially similar to its current condition in terms of square footage and number of units, the life of such replacement project will be deemed to be a continuation of the Life of the Project.

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

“**Loan Documents**” means those certain loan agreements, notes, deeds of trust, declarations, and any other documents executed and delivered in connection with the predevelopment, construction, and permanent financing for the Project.

“Loan Closing” means the date on which the Deed of Trust and Declaration of Restrictions are recorded as authorized by Borrower and OCII in accordance with the provisions of this Agreement.

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

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

“Local Operating Subsidy” means an operating subsidy provided by the City to Borrower for the operation of the Project, the amount of which is sufficient to permit Borrower to operate the Project in accordance with the terms of this Agreement with Qualified Tenants at income levels specified by MOHCD in writing which are below those set forth in Exhibit A.

“Local Operating Subsidy Program” or **“LOSP”** means the program operated by MOHCD in conjunction with the City’s Department of Homelessness and Supportive Housing to provide operating subsidies to affordable housing units that house people experiencing homelessness who have been referred by the aforementioned City departments.

“LOSP Guidelines” means the San Francisco Local Operating Subsidy Program Policies and Procedures Manual 2022, as amended from time to time.

“LOSP Reserve” has the meaning set forth in Section 12.3.

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

"Managing General Partner" means Transbay 2 Family LLC, a California limited liability company.

"Maturity Date" has the meaning set forth in Section 3.3.

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

“MOHCD Fees Policy” means the MOHCD Multifamily Affordable Housing Operating Fees Policy (effective April 1, 2016), as it may be amended or replaced from time to time.

"Note" means the promissory note executed by Borrower in favor of OCII in the original principal amount of the Funding Amount, the form of which is attached hereto as Exhibit D.

"Notice to Proceed" has the meaning set forth in Section 5.5.

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

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

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

"Official Records" means the Official Records of the City and County of San Francisco.

"One Hundred Percent Occupancy" means the date on which the Borrower can evidence executed leases and occupancy for all one hundred eighty two (182) affordable units in the Project.

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

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

"Payment Date" means the first May 1st following the Completion Date and each succeeding until the Maturity Date.

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

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

"Project" means the development described in Recitals J and O. If indicated by the context, "Project" means the Site and the improvements developed on the Site.

"Project Area" has the meaning set forth in Recital A.

"Project Expenses" means the following costs, all as may be further defined or limited in the Annual Operating Budget: (a) all charges incurred in the operation of the Project for utilities,

real estate taxes and assessments and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages and any other compensation due and payable to the employees or agents of Borrower who maintain, administer, operate or provide services in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) required payments of interest and principal, if any, on any senior financing that has been approved by OCII and is secured, consistent with the Ground Lease, by either the Borrower's leasehold interest in the Ground Lease, the improvements constructed thereon, or both, and used to finance the Project; (d) all other expenses actually incurred by Tenant to cover operating costs of the Project, including supportive services (if any), maintenance and repairs and any property management fee, each as indicated in the Annual Operating Budget; (e) required, or necessary, deposits to the Replacement Reserve Account, Operating Reserve Account and any other reserve account required under this Agreement or required by another lender or regulatory agency, each as approved by OCII and MOHCD pursuant to the Final Financial Plan; (f) annual base rent payments under the Ground Lease in an amount equal to FIFTEEN THOUSAND AND No/100 DOLLARS (\$15,000.00); (g) an annual bond monitoring fee equal to 12.5 basis points of the average outstanding bond amount in the prior year, and \$2,500 for the remainder of the qualified project period after the bonds have been paid off; (h) mandatory interest payment(s) payable to HCD for any loan made by HCD to Borrower for the Project or mandatory interest payment(s) payable to another subordinate lender for any loan made by such lender to Borrower for the Project, each as approved by OCII and MOHCD pursuant to the Final Financial Plan; (i) a bond issuer fee, fiscal agent fee and annual asset management fee indicated in the Annual Operating Budget established in the Final Financial Plan and consistent with the limitations set out in the MOHCD Fees Policy; (j) credit adjuster payments including interest to the Investor Limited Partner; and (k) any extraordinary expenses approved in advance by OCII (other than expenses paid from any reserve account). Project Fees are not Project Expenses.

"Project Fees" means (i) any partnership management fee payable to the Borrower's general partner, as established in the Final Financial Plan and consistent with the limitations set out in the MOHCD Fees Policy; and (ii) a limited partner asset management fee/annual investor services fee payable to Borrower's Investor Limited Partner as approved in the Final Financial Plan and consistent with the limitations established in the MOHCD Fees Policy.

"Project Financing" has the meaning set forth in Section 4.1.1(b)(i).

"Project Income" means all revenue, income, receipts in any form, and other consideration received by Borrower from the operation of the Improvements, including without limitation: all rents, fees, and charges paid by Residential Occupants; Section 8 or other rental subsidy payments received for the dwelling units; supportive services funding; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; accrued interest disbursed from any reserve account required under this Agreement for a purpose other than that for which the reserve account was established; and the proceeds of business interruption or similar insurance. Project Income does not include tenants' security deposits (except forfeited

deposits), loan proceeds, capital contributions or similar advances, condemnation proceeds, insurance proceeds provided for the purpose of reconstructing all or part of the Project, or interest accruing on any portion of the Funding Amount.

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

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

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

"Redevelopment Dissolution Law" has the meaning set forth in Recital E.

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

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

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

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

"Retention" has the meaning set forth in Section 4.4.

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

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

"Site" means the real property described in Exhibit Q of this Agreement, and as OCII and Borrower may collectively agree to expand prior to Loan Closing.

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

"**TCAC**" means the California Tax Credit Allocation Committee.

"**Table of Sources and Uses**" means the 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 be adjusted by the Final Financial Plan Confirmation Letter as approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date, and may not be adjusted without OCII's prior written approval after the Loan Closing Date.

“**Tenant**” means any residential household in the Project.

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

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

“**Total OCII Subsidy**” has the meaning set forth in Recital P.

“**Unit**” means a residential rental unit within the Project.

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

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

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

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

(b) Headings are for convenience only and do not define or limit any terms. References to a specific OCII Document or other document or exhibit mean the document,

together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated.

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

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

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

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

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

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

1.4 Notwithstanding the cancellation of the promissory note issued thereunder, this Agreement incorporates in its entirety the Predevelopment Loan Agreement for the purposes of Disbursements of monies remaining under the Predevelopment Loan Agreement made prior to Loan Closing. In the event of a conflict between the Predevelopment Loan Agreement and this Agreement, the Predevelopment Loan Agreement shall prevail for Disbursements of monies made prior to the Loan Closing, and thereafter this Agreement shall prevail.

ARTICLE 2 FUNDING.

2.1 Funding Amount. OCII agrees to lend to Borrower a maximum principal amount equal to the Funding Amount to finance predevelopment and development costs of the Project, all in accordance with this Agreement. Borrower hereby acknowledges that upon Loan Closing the amount owed under the note for the Predevelopment Loan Amount will be included within the Funding Amount, the Predevelopment Loan note will be terminated, and the Predevelopment Loan Amount, as incorporated into the Funding Amount, shall be subject to the repayment and all other provisions of this Agreement (including Section 1.4 for purposes specified therein) and the OCII Documents.

2.2 Use of Funds. Borrower acknowledges that OCII's agreement to make the Loan is based in part on Borrower's agreement to use the 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 OCII (unless otherwise specified) as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, any interest earned on funds in any Account must be used for the benefit of the Project.

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

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

2.6 Contracting Requirements. Borrower shall comply with OCII's contract compliance requirements for procurement activities as further set forth in Exhibit E of this Agreement.

2.7 Workforce Requirements. Borrower shall comply with OCII workforce requirements pursuant to Exhibits E-2 and E-3, including but not limited to OCII's Labor Standards and the Construction Workforce Agreement, as set forth in Exhibit E for all construction related work.

ARTICLE 3 TERM; FINANCIAL PROVISIONS OF THE LOAN.

3.1 Term. The term of this Agreement shall commence on the Agreement Date, and shall continue until the fifty seventh (57th) anniversary of the date the Deed of Trust is recorded in the Official Records, regardless of any reconveyance of the Deed of Trust (the "**Compliance Term**"). To ensure the Borrower's, or subsequent assignees', continued compliance with such obligations during the Compliance Term, the Deed of Trust shall be recorded in the Official Records upon execution of the Ground Lease.

3.2 Interest. The outstanding principal balance of the Loan will bear simple interest at a rate of three percent (3%) per annum. However, the interest rate may be reduced to a floor of 0% on or prior to the Loan Closing Date upon Borrower's demonstration that a reduction is necessary to meet certain requirements of tax credit financing, such as "true debt", subject to justification from the Borrower, and review and approval by the OCII Executive Director and the MOHCD Director in their sole discretion as part of the Final Financial Plan, if any.

3.3 Loan Repayment Terms. Interest shall accrue, and repayment of principal and interest shall be paid from Surplus Cash in accordance with Section 3.6, below. Notwithstanding the foregoing, the outstanding principal balance and any accrued but unpaid interest of the Loan will be due and payable upon the expiration of the Compliance Term, but in all events not later than December 31 of the year that is 55 years from the Conversion Date (the "**Maturity Date**"), which Maturity Date is expected to be _____, according to the terms set forth in full in the Note. At least sixty (60) days prior to the Maturity Date, the Borrower may apply to the City (via MOHCD or its successor) for an extension of the Maturity Date. If, as of the date of such request, the Borrower continues to be in compliance with the Loan Documents, the City may, in its discretion, agree to extend the Maturity Date pursuant to a written amendment to the Agreement and permit the Borrower to continue to defer repayment of principal and interest, or may require that the Borrower make amortized payments of principal and interest.

3.4 Declaration of Restrictions. Borrower and its assigns must comply with all provisions of the Declaration of Restrictions (and any amended and restated versions of such declaration recorded in the Official Records) for the duration of the Declaration of Restrictions, even if the Loan is repaid or otherwise satisfied, or the Deed of Trust is reconveyed. Notwithstanding anything to the contrary contained herein, Borrower's obligation to comply with the Declaration of Restrictions shall be subject to Borrower's compliance with all applicable laws, statutes and regulations, including, but not limited to Section 42 of the Internal Revenue Code, the California Revenue and Taxation Code, the California Debt Limit Allocation Committee's ("CDLAC") regulations, Tax Credit Allocation Committee's ("TCAC") regulations, and federal law and regulations relating to HUD.

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

3.6 Distribution of Surplus Cash and Repayment of Principal. Within thirty (30) days of OCII approval of the Annual Monitoring Report, and provided Borrower is not then in default (subject to applicable notice and cure periods) under any of the OCII Documents, Borrower shall make the following Distributions in the following order of priority: (a) first, to Base Rent Accrual payments (as defined in the Ground Lease), if any; (b) second, if the Project includes a Deferred Developer Fee and Borrower is in compliance with the OCII Documents and MOHCD policies,

then fifty percent (50%) of Surplus Cash shall be distributed to the Borrower and 50% of Surplus Cash shall be distributed to OCII beginning on the initial Payment Date until and including the earlier of the year (i) of the fifteenth (15th) Payment Date, or (ii) in which all Deferred Developer Fees have been paid to Borrower; and thereafter, one-third (1/3) of Surplus Cash shall be Distributed to the Borrower and the remaining two-thirds (2/3) of Surplus Cash shall be Distributed to OCII (“**OCII’s Portion**”); or (b) if the Project does not include a Deferred Developer Fee, then one-third (1/3) of Surplus Cash shall be paid to Borrower and two-thirds (2/3) of remaining Surplus Cash shall be paid to OCII.

OCII’s Portion will be applied first to repayment of the outstanding OCII Loan until the entire principal and accrued but unpaid interest on the OCII Loan, and then payment of OCII’s portion shall go toward Residual Rent (as defined in the Ground Lease) required under the Ground Lease until paid in full in accordance with the terms of the Ground Lease.

3.7 Repayment of Unused Portion of Principal. In addition to any other payment requirements, at the time of cost certification / 8609 form submittal the Borrower shall promptly repay to OCII any portion of the Loan previously disbursed to Borrower and not used for eligible costs as described in this Agreement. No interest shall accrue on the Loan amount repaid pursuant to this Section 3.7.

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

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

3.10 Additional OCII Approvals. Borrower understands and agrees that OCII is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Borrower understands and agrees that neither entry by OCII into this Agreement nor any approvals given by OCII under this Agreement shall be deemed to imply that Borrower will obtain any required approvals from City departments, boards or commissions

which have jurisdiction over the Project. By entering into this Agreement, OCII is in no way modifying or limiting the obligations of Borrower to develop the Project in accordance with all local laws. Borrower understands that any development of the Site or the Project shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Project, which may include, without limitation, the City Planning Commission and the San Francisco Board of Supervisors. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

3.11 Repayment of Excess Development Proceeds. Borrower shall repay Excess Development Proceeds to OCII at the time of cost certification / 8609 form submittal, unless otherwise stated and approved by MOHCD Director and OCII Executive Director as part of the Final Financial Plan approval prior to the Loan Closing Date. Failure to so repay Excess Development Proceeds shall be a material Default of this Agreement.

3.12 Additional Borrower Covenants. Borrower hereby agrees to the following:

- (a) Borrower acknowledges that the MOHCD Director and OCII Executive Director may, prior to Loan Closing, collectively approve and include as part of this Agreement revisions to the Final Financial Plan for the benefit of the Project, and Borrower shall cooperate with OCII and MOHCD and their financial advisor in identifying such revisions.
- (b) Final construction costs after receipt of bids are subject to OCII review and approval prior to Loan Closing.
- (c) Assuming the Project does not experience significant hard-cost increases as a result of pricing estimates at Construction Documents completion, Construction Documents bid by the General Contractor, final plan check of all addenda, or any significant schedule delay preventing the Project from beginning construction in 2024, remaining design contingencies including the 5% Design Contingency, 5% Bid Contingency, 5% Plan Check Contingency, and the 3.5% Escalation Contingency will be eliminated from the Project budget. OCII's subsidy to the Project will be reduced by the total value of the eliminated subsidies (unless OCII approves allocation of some or all of eliminated subsidies for other costs in the Project budget as part of the Final Financial Plan).

- (d) Borrower shall cooperate with OCII and MOHCD staff to establish a mutually agreed upon year-one operating budget, including the amount of services costs to be funded from operations, if any.
- (e) Borrower agrees to provide notice to OCII in accordance with Section 21.1 of the occurrence of any change or circumstance that: (a) will have a material adverse effect on the physical condition or intended use of the Project; (b) causes the Loan to be out of balance; or (c) will have a material adverse effect on Borrower's operation of the Project or ability to repay the Loan.
- (f) Borrower shall comply with the following loan conditions based on OCII's requirements and the Loan Committee's recommendations in reviewing and approving the Project's Loan Evaluation on August 4, 2023.
 - a. Borrower will work closely with the developer of the Block 2 West Project throughout predevelopment and construction as required by the JDA and will:
 - i. Identify and implement strategies to improve construction efficiencies and optimize logistics between the Project and the Block 2 West Project.
 - ii. Determine and document roles and responsibilities for the shared maintenance of the publicly accessible pedestrian mews and any other shared open space elements, subject to the advance review and approval of OCII.
 - b. Borrower shall continue to refine the commercial capital and operating budgets and, prior to the close of construction financing:
 - i. Subject to OCII review and approval, execute a reciprocal easement agreement or similar document to establish the terms for access to spaces shared between the residential and commercial portions of the Project and the allocation of costs and responsibilities.
 - ii. Community Space Developer shall enter into a commercial space loan agreement and ground lease with OCII.
 - c. Borrower shall continue to refine the income levels for the non-subsidized units and seek to incorporate a portion of units at a 50% AMI tier, with the intention of maximizing opportunities for certificate of preference ("COP") holders, to the extent that it aligns with restrictions from other lenders. Any adjustments to AMI tiering will be balanced to ensure that cash flow remains positive for the first 20 years of operation. Final AMI tiering shall be reflected in the Final Financial Plan.

- d. Borrower shall work with OCII, MOHCD and HSH to finalize the LOSP budget and secure approval for a LOSP grant agreement in accordance with the timeframe and procedure set forth in the LOSP manual. Any proposed deviation(s) from a pro rata cost split between LOSP and the operating budget are subject to review and approval by OCII and MOHCD, and must be justified by the Borrower.
- e. If directed by OCII, MOHCD, and/or HSH, Borrower shall submit an application for Continuum of Care rent and supportive services subsidies for all or a portion of the LOSP units.
- f. Borrower shall continue to refine the supportive services plan and budget for review and approval by OCII and HSH, and shall work with HSH to finalize a supportive services contract for the Project.
- g. Borrower, in cooperation with OCII, shall continue to require the general contractor to exercise good faith efforts to select subcontractors who are either small business enterprises (“SBEs”) or, if they are not SBEs, are willing to create joint ventures or similar partnership opportunities with SBEs. In addition, Borrower will work closely with the general contractor and design team to monitor construction costs and identify opportunities for cost savings and efficiencies.
- h. Borrower shall provide an Early Outreach Plan one month after the start of construction and an initial draft Marketing Plan within 12 months of anticipated temporary certificate of occupancy, outlining the affirmative steps it will take to market the Project to OCII’s preference program participants, including COP holders, displaced tenants, and neighborhood residents (as defined in Section 6.2). In addition, the Marketing Plan will describe how the marketing promotes positive outcomes for African American San Franciscans. Along with the Marketing Plan submittal, Borrower shall provide a lease-up staffing plan for OCII and MOHCD review.
- i. Borrower shall submit to OCII final permanent residential sources and uses budgets and operating budgets, compliant with underwriting standards for OCII review and approval. The final budgets will be incorporated into the Final Financial Plan, subject to approval by OCII and MOHCD. Among other items, the Final Financial Plan may include as appropriate:
 - i. Adjustments to the allocation of funds between the residential and commercial loans; and
 - ii. Unused funds from the site preparation work conducted under a separate agreement with Transbay 2 Family, LLC but authorized by the Loan Committee may be allocated to this Loan or the Community Commercial Loan if needed.

- j. Borrower, in coordination with the Block 2 West Project developer, will conduct outreach to the Transbay community throughout construction to solicit input, address concerns, and educate community members on various aspects of the Project. Outreach should include updates to the Transbay Citizens Advisory Committee and other community organizations including but not limited to the East Cut Community Benefits District at key Project milestones.

ARTICLE 4 CLOSING; DISBURSEMENTS.

4.1 Closing. In the event Borrower does not satisfy all of the conditions to Loan Closing contained in Section 4.1.1 within twenty-four (24) months of the date of this Agreement, OCII may terminate this Agreement and relieve the parties of all obligations that have not arisen prior to termination.

4.1.1 Conditions Precedent to Closing.

(a) OCII will authorize the Loan Closing upon satisfaction of the following preconditions:

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

- ii. Borrower must have delivered to OCII Borrower's Charter Documents.

- iii. Borrower must have delivered to OCII evidence of insurance (including required endorsements), acceptable to OCII, and, if requested by OCII, copies of policies for all insurance required under Exhibit F of this Agreement.

- iv. Borrower will have reviewed the terms of the Loan with its tax counsel to determine if an interest rate less than three percent (3%) simple interest is necessary to satisfy the true debt test.

(b) Borrower will authorize the Loan Closing upon satisfaction of the following preconditions:

- i. Borrower shall have obtained, received or secured the following concerning Project financing, all on terms and in amounts acceptable to Borrower in its sole discretion: (1) a commitment for a loan or loans for Project development costs, made from the proceeds of the sale of tax-exempt bonds allocated to Borrower by the California Debt Limit Allocation Committee; (2) an allocation of four percent (4%) federal low income housing tax credits from TCAC pursuant to Section 42 of the Internal Revenue Code of 1986, as amended; (3) an allocation of California Low Income Housing Tax Credits from TCAC; (4) an equity

investment in Borrower from a tax credit investor; and (5) additional Project financing from any other required lenders (collectively, the “**Project Financing**”);

ii. the lenders and investors associated with the Project Financing are unconditionally prepared to close and fund their financing;

iii. The Ground Lease has been approved by Commission and Borrower and OCII shall have executed the Ground Lease and Borrower (subject to such limitations or reservations as may be referenced in the Ground Lease) has accepted the condition of the Site.

4.1.2 Funding. Following satisfaction of the conditions in Section 4.1.1, OCII will authorize the Escrow Agent to Disburse Funds consistent with OCII 's escrow instructions.

4.2 Disbursements of Funds

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

4.2.2 Disbursement of Predevelopment Funds. Until Loan Closing, OCII will continue to make Disbursements to or for the account of Borrower, in an aggregate sum not to exceed the Predevelopment Loan Amount, in accordance with and subject to the provisions of the Predevelopment Loan Agreement. Thereafter, the Predevelopment Loan Agreement shall be null and void (except as provided in Section 1.4), and the provisions of this Agreement shall apply to the Disbursement of Funds and the Funding Amount.

4.2.3 Disbursement of Funding Amount After Loan Closing. As and when requested and in accordance with this Agreement (including the remainder of Article 4 below) and the approved line-item budget contained in the Table of Sources and Uses, OCII will make Disbursements to or for the account of Borrower in an aggregate sum not to exceed the Funding Amount (less the Predevelopment Loan Amount undisbursed as of the date of this Agreement).

Except reallocations of the Funding Amount from contingency line items to other line items within the Table of Sources and Uses, requests for Disbursement (or Expenditure Requests) that propose to reallocate Funds between the line items shown in the Table of Sources and Uses, or to change the budget limits for a line item shown therein, must be approved as follows: (i) a requested reallocation of Funds in an amount up to ten percent (10%) of the Funding Amount in the aggregate may be made with the express written approval of OCII’s Housing Manager; and (ii) a requested reallocation of Funds in an amount that exceed ten percent (10%) of the Funding Amount may be made only with the express written approval of the OCII Executive Director. Any such approved changes will be considered amendments to the Table of Sources and Uses in the Final Financial Plan.

4.2.4 Conditions to Disbursement of Funding Amount. OCII's obligation to Disburse Funds available under Section 4.2.3 is subject to Borrower's satisfaction of the following conditions precedent:

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

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

(c) Borrower must have delivered to OCII current insurance endorsements and, if requested by OCII, copies of policies for all insurance required under Exhibit F of this Agreement.

(d) Borrower must have delivered to OCII an Expenditure Request in form and substance satisfactory to OCII, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line-item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request.

(e) 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.

(f) With respect to any Expenditure Request for rehabilitation or construction costs in the three-month and six-month construction draw requests, Borrower must have certified to OCII that all construction-related work on the Project complies with the labor standards set forth in Exhibit E, Section 1, if applicable.

(g) OCII shall use best efforts to either approve or disapprove each such Expenditure Request within ten (10) business days of receipt. In the event that OCII disapproves an Expenditure Request, OCII shall provide written notice thereof to Borrower specifying the reason for such disapproval. OCII shall use best efforts to fund all approved Expenditure Requests within ten (10) business days of approval.

4.3 Schedule of Performance. Borrower must perform in accordance with the Schedule of Performance (Exhibit L). The Schedule of Performance may be modified at the request of the Borrower; however, any modification to the Schedule of Performance shall be at the reasonable discretion of the OCII Executive Director. Any requests for modifications to the Schedule of Performance hereunder shall also include a conforming request for the Ground Lease Schedule of Performance.

4.4 Retention. In addition to the other conditions to Disbursements, Borrower acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line-item basis. OCII (or other entity approved in writing by OCII) will retain the remaining ten percent (10%) of hard costs or tenant improvement costs associated with rehabilitation or construction (the "**Retention**"), and no portion of the Retention may be released without OCII's prior written consent. Borrower may request Disbursement of the aggregate amount of the Retention only upon satisfaction of each of the following conditions, unless otherwise approved in writing by OCII: (a) completion of rehabilitation or construction of the Project in accordance with the plans and specifications approved by OCII, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection ("**DBI**"), and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Project.

After fifty percent (50%) of the construction of the Project is complete as determined by the OCII-assigned construction management staff, and upon Borrower's written request, OCII may elect to reduce the amount of Retention withheld to a level of no less than five percent (5%) of the hard costs or tenant improvement costs associated with rehabilitation or construction, provided that the following prerequisites have been met: (a) all work required to be performed by all parties for whom OCII agrees to release the Retention (the "**Early Retention Release Contractors**") has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the City and all applicable Laws; (b) the applicable Early Retention Release Contractors have filed unconditional lien waivers satisfactory to the OCII construction specialist; (c) no liens or stop notices have been filed against the Project that have not been released or bonded for according to construction mechanic's lien laws of the State of California or an appropriate title endorsement has been issued in a form reasonably satisfactory to OCII; (d) no claims against the Project are pending; (e) OCII determines that the contingency is in balance and adequate to complete the Project; and (f) the Project is on schedule.

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

ARTICLE 5 DEMOLITION, REHABILITATION OR CONSTRUCTION.

5.1 Contracting Requirements. In the selection of all contractors and professional consultants for the Project, Borrower must comply with OCII's contract compliance requirements as further set forth in Exhibit E of this Agreement.

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

5.3 Change Orders. Borrower may not approve or permit any change orders to the plans and specifications approved by OCII without OCII's prior written consent. Borrower acknowledges that OCII's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional Funds for the Project unless OCII agrees in its sole discretion to amend the Table of Sources and Uses or provide additional funds for that purpose. OCII shall endeavor to provide written approval or disapproval of each change order and any equivalent amendment to the Table of Sources and Uses within ten (10) business days of receipt for request therefor.

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

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

5.6 Commencement and Completion of Project. Unless otherwise extended in writing by OCII, Borrower must: (a) commence construction of the Project by July 2024; (b) complete construction of the Project by October 2026 in substantial accordance with the Approved Plans and Approved Specifications, as evidenced by a temporary certificate of occupancy or equivalent certification provided by DBI, and an architect's or engineer's certificate of completion (the "**Completion Date**"); and (c) achieve occupancy of ninety five percent (95%) of the residential units by March 2027.

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

ARTICLE 6 MARKETING.

6.1 Marketing Plan and Tenant Selection Plan. No later than thirty (30) days after the start of construction, Borrower must deliver to OCII for OCII's review and approval an outreach plan for initial marketing of the Units (the “**Early Outreach Plan**”) in compliance with the restrictions set forth in Exhibit A and in form and substance acceptable to OCII, as further described in Exhibit T-1. Early outreach pursuant to the Early Outreach Plan must start within three months of construction start. The Borrower may not start the outreach process until OCII provides its approval, which will occur no later than 10 business days after OCII receives the final draft Early Outreach Plan.

Borrower must submit a draft Marketing Plan and Tenant Selection Plan (the “**Marketing and Tenant Selection Plans**”) consistent with the requirements described in Exhibits I, S, T-2, and no later than 12 months prior to the projected Completion Date. Borrower must obtain OCII's approval of reasonable alterations to the Marketing Plan or the Tenant Selection Plan. Borrower must market and rent the Units in the manner set forth in the Marketing Plan and the Tenant Selection Plan both as approved by OCII. Before marketing any Units, Borrower must provide OCII with updated implementation and contact information. The marketing process and timeline is further described in Exhibit T-1.

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

- (a) Preferences for the low-income housing will be leased according to the bullets below. OCII reserves the right to add additional occupancy preferences, which reflect preferences applied by MOHCD in its affordable housing developments, at a later date.
 - Income-eligible persons displaced by redevelopment actions and their descendants, as required under Sections 33413.3 and 34178.8 of the Health and Safety Code, respectively (the Certificate of Preference or COP holders); Displaced Tenant Housing Preference Holders (up to 20% of units);
 - Neighborhood Resident Housing Preference Holders (up to 40% of units);
 - San Francisco Residents or Workers;
 - Members of the General Public.

These preference referrals must meet the Borrower's established screening requirements for the project, and final selection will lie with the Borrower. Any authorized preference shall be permitted only to the extent that such preference: (a) does not have the purpose or effect of delaying or otherwise denying access to a housing development or unit based on race, color, ethnic origin, gender, religion, disability, age, sexual orientation, or other protected characteristic of any member of an applicant household; and (b) is not based on how long an applicant has resided or worked in the area. OCII will work with the Borrower to resolve potential occupancy conflicts and determine additional occupancy preferences and marketing requirements and to ensure adherence to OCII occupancy preferences and marketing requirements. If more applicants apply than the number of units available, the Borrower shall conduct a public lottery.

(b) A reasonable accommodations policy that indicates how Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying, and a policy giving disabled individuals a priority in the occupancy of accessible Units. Specifically, for COP holders, the Borrower shall work with a HUD-approved housing counseling agency to provide assistance throughout the application process, as it may be needed, with the goal of maximizing COP participation to the extent possible. The Borrower shall ensure that COP holders are aware that such assistance is available.

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

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

(e) Notices to San Francisco Housing Authority.

(f) Notices to MOHCD.

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

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

Notwithstanding anything to the contrary contained herein, any provision of the tenant selection criteria contained in **Section 6.2** that is (i) deemed by a court to be a violation of Fair Housing Laws, or (ii) deemed by the Internal Revenue Service or the California Tax Credit Allocation Committee to be a violation of the IRS Tax Credit Rules shall immediately be deemed inapplicable.

(i) Borrower will accept referrals from HSH or its successor agencies.

6.3 Tenant Selection Plan Requirements. Borrower's Tenant Selection Plan shall comply with the requirements of the Tenant Selection Plan Policy as set forth in the attached Exhibit I. The Tenant Selection Plan must be kept on file at the Project at all times. Minimum income requirements shall not be more restrictive than requiring a minimum income that is two times the rent, and must include tenant based rent subsidies as income. Additionally, ability to pay rent based on rental history of paying a similar or higher rent or other demonstrable methods of rent payment such as participation in money management shall be considered mitigating circumstances related to minimum income and must be evaluated prior to denial of housing. Borrower must follow HSH's reduced documentation policy for LOSP applicants to only require applicant documentation in the housing referral process that is required by a funding source, as outlined in the LOSP Guidelines.

6.4 Marketing Records. Borrower must keep records of: (a) activities implementing the affirmative marketing plan; (b) advertisements; and (c) other community outreach efforts.

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

ARTICLE 7 AFFORDABILITY AND OTHER LEASING RESTRICTIONS.

7.1 Term of Leasing Restrictions. Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect as provided in the Declaration of Restrictions attached hereto and recorded on the Loan Closing Date. If applicable, the requirements to comply with the provisions of Internal Revenue Code Section 42, including Section 42(h)(6)(E)(ii), are hereby acknowledged.

7.2 Borrower's Covenants.

(a) Borrower covenants to rent all Units (except two units reserved for the managers of the Project) at all times to households certified as Qualified Tenants at initial occupancy, and to rent forty (40) Units to formerly homeless households during the period in which the City's Local Operating Subsidy Program is in operation and the City provides the Local Operating Subsidy to the Project.

(b) A Tenant who is a Qualified Tenant at initial occupancy may not be required to vacate the Unit due to subsequent rises in household income, except as provided in Section 7.3. After such over-income Tenant vacates the Unit, the vacant Unit must be rented only to Qualified Tenants as provided in Section 7.2.

7.3 Rent Restrictions.

- (a) Except as stated in the 'Note' in Exhibit A, the total amount for rent and utilities charged to a Qualified Tenant may not exceed either:
- (i) thirty percent (30%) of the applicable maximum AMI level set forth in Exhibit A, adjusted for household size; or
 - (ii) the fair market rent established by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

In addition, the maximum amount charged for utilities may not exceed that determined by the San Francisco Housing Authority.

(b) Rent charged to each Qualified Tenant may not exceed the amounts set forth in Exhibit A, *provided that* Rents may be adjusted (i) annually in accordance with any increase in the rents as determined and published annually by MOHCD; (ii) otherwise in accordance with the Declaration of Restrictions; and (iii) subject to the limitations in subsections (b) – (e) below.

(c) Unless prohibited under any applicable Law or the rules and regulations governing any Project funding source, each residential lease must provide for termination of the lease upon 120 days' prior written notice in the event that Borrower's annual income certification indicates that the Tenant's household income exceeds 120 percent of Area Median Income.

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

(e) For any Qualified Tenant participating in a Rent or operating subsidy program where the Rent charged is calculated as a percentage of household income, adjustments to Rent charged may be made according to the rules of the relevant subsidy program, provided that such adjustments remain consistent with Section 7.3(a) except that there shall be no limit on the number of Rent adjustments that can be made in a year under this subsection (e).

(f) For any Qualified Tenant that becomes ineligible to continue participating in a rent or operating subsidy program, Rent may be charged consistent with the maximum Rent permitted under Section 7.3(a).

(g) With OCII's prior written approval and in accordance with maximum rent limitations set forth above and all other applicable restrictions (including those of the Redevelopment Plan), Rent increases for Units exceeding the amounts permitted above and in Exhibit A may be permitted only to the minimum extent required to meet the requirements of Section 42 of the United States Internal Revenue Code or as otherwise determined by OCII, subject to its reasonable discretion, but in any event to include rent levels affordable to households earning no greater than 80% of AMI.

7.4 Certification.

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

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

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

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

7.6 Nondiscrimination. Borrower covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through Borrower, and this Agreement is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any

basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Project nor shall Borrower, or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Project.

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

ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE PROJECT.

8.1 Borrower's Responsibilities.

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

8.2 Contracting with Management Agent.

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

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

immediately and make immediate arrangements for continuous and continuing performance of the functions required in Section 8.1(a), subject to OCII approval.

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

8.4 Resident Services. To the extent applicable and subject to tax credit regulations, Borrower is responsible for ensuring that residents or clients residing in the Units have access to information about available services in the community, assisting tenants to access services through referral and advocacy, and organizing community-building and/or other enrichment activities for tenants (such as holiday events, tenant council, etc.).

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 the Funds for the design, construction, rehabilitation and/or operation of the Project, including the requirements of the CRL, and those Laws set forth in Exhibit E. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to Section 23.1, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

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

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all Funds including all documents evidencing any Project Income and Expenses for a period of four years from the date of the termination of the Agreement; except that records that are the subject of audit findings shall be retained for four years or until such audit findings have been resolved, whichever is later. Borrower must

maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

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

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

10.3 Annual Reporting. Commencing upon the Completion Date, Borrower must file with OCII annual report forms (the "**Annual Monitoring Report**") that include audited financial statements with an income and expense statement for the Project covering the applicable reporting period, a statement of balances, deposits and withdrawals from all Accounts, line item statements of Project Expenses, Project Income, Project Fees (if any), Surplus Cash and any Distributions made, evidence of required insurance, a description of marketing activities and a rent roll, no later than one hundred fifty (150) days after the end of Borrower's fiscal year. The Annual Monitoring Report must be in substantially the form attached as Exhibit H or as later modified during the Compliance Term.

10.4 Capital Needs Assessment. Borrower must deliver to OCII, for review and approval, an updated CNA on or before the tenth (10th) anniversary of the Completion Date, and every five years thereafter. The updated CNA must include an analysis of Borrower's actual expenditures for capital needs compared to the most recently approved CNA, Borrower's 20-Year Proforma and initial Annual Operating Budget and its then-current Annual Operating Budget.

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

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

(b) within one-hundred eighty (180) days after the Completion Date, a report on expenditures to third-party firms, including but not limited to consultants, contractors, and subcontractors, whether such firms are small business enterprises, the type of work and the dollar value of such work;

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

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

10.7 Delivery of Records. At the request of OCII, made through its agents, employees, officers or attorneys, Borrower must provide OCII within a reasonable period of time of no less than sixty (60) days from request therefor with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:

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

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

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

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

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

ARTICLE 11 USE OF INCOME FROM OPERATIONS.

11.1 Project Operating Account.

(a) Borrower must deposit all Project Income promptly after receipt into a segregated depository account (the "**Project Operating Account**") established exclusively for the Project. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget, as it may be revised from time to time with OCII's approval. Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses and Project Fees and payments and distributions of Surplus Cash in accordance with Section 3.6. Withdrawals from the Project Operating Account (including accrued interest) for any other purposes may be made only with OCII's express prior written approval.

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

ARTICLE 12 REQUIRED RESERVES.

12.1 Replacement Reserve Account.

(a) Commencing on the Conversion Date or any other date OCII designates in writing, Borrower shall establish or cause to be established a segregated interest-bearing replacement reserve depository account (the "**Replacement Reserve Account**"). On or before the 15th day of each month following establishment of the Replacement Reserve Account, Borrower must make monthly deposits from Project Income into the Replacement Reserve Account in the amount necessary to meet the requirements of this Section. OCII may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems reasonably necessary.

(b) At a minimum, Borrower shall make annual deposits of \$500 per Unit in the Project in accordance with the Loan Committee approval dated August 4, 2023, or such other amount as approved by MOHCD Director and OCII Executive Director as part of the Final Financial Plan, provided that should such approved amount be greater than \$500 per Unit, such additional sum shall be made from available Surplus Cash.

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

12.2 Operating Reserve Account.

(a) Commencing upon the Conversion Date, Borrower must establish or cause to be established a segregated interest-bearing operating reserve depository account (the "**Operating Reserve Account**") by depositing funds in an amount equal to twenty five percent (25%) of the Annual Operating Budget attached hereto as Exhibit B-2 (subject to modification by the Final Financial Plan).

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

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

12.3 LOSP Subsidy Reserve Account. As required under the LOSP Grant Agreement, any annual LOSP surplus must be deposited in the LOSP Subsidy Reserve Account, which shall be held in a segregated account opened with a bank or savings and loan institution acceptable to MOHCD and insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program, and used only for the purposes specified in the LOSP Grant Agreement ("**LOSP Reserve**"). Borrower shall not use LOSP Reserve funds, or any interest earned thereon, for any purpose other than as provided in the LOSP Grant Agreement.

ARTICLE 13 DISTRIBUTIONS.

13.1 Definition. "**Distributions**" (including variants thereof) refers to cash or other benefits received as Project Income from the operation of the Project and available to be distributed to Borrower, its partners or any party having a beneficial interest in the Project as Surplus Cash, but does not include payments for services approved in the Annual Operating Budget including for property management, asset management, partnership management, and approved deferred Developer Fees.

13.2 Conditions to Distributions. The 20-Year Cash Flow Proforma attached hereto as Exhibit B-3 includes projections of annual Distributions of Surplus Cash. 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) OCII approval of the Annual Monitoring Report submitted for that year; (b) OCII's determination that Borrower is not in default under this Agreement or any other agreement entered into with the City or OCII for the Project; and (c)

OCII's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement, including, but not limited to Section 3.6. OCII will be deemed to have approved Borrower's written request for approval of a proposed Distribution unless OCII delivers its disapproval or request for more information to Borrower within thirty (30) business days after OCII's receipt of the request for approval.

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

- (a) when a written notice of default has been issued to Borrower by any entity with an equitable or beneficial interest in the Project and the default is not cured within the applicable cure periods; or
- (b) when OCII has delivered a written notice of default to Borrower for a failure to comply with this Agreement and such default has not been remedied, or when OCII determines that Borrower's management agent has failed to comply with this Agreement and such failure has not been remedied; or
- (c) if required debt service on all loans secured by the Project and all operating expenses have not been paid current; or
- (d) if the Replacement Reserve Account, Operating Reserve Account or any other reserve account required for the Project is not fully funded under this Agreement; or
- (e) if the Loan is to be repaid from Surplus Cash, Borrower failed to make a payment when due and the sum remains unpaid; or
- (f) during the pendency of an uncured Event of Default (including Borrower's failure to provide its own funds at any time OCII determines the Loan is out of balance under any OCII Document.

13.4 Distributions of Surplus Cash. Distributions of Surplus Cash shall be made in accordance with Section 3.6.

ARTICLE 14 SYNDICATION PROCEEDS AND GENERAL PARTNER EQUITY.

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

14.2 General Partner Equity. In addition to the syndication proceeds, the Borrower's general partners shall be obligated to evaluate the incorporation of General Partner Equity to the Borrower as part of the Final Financial Plan.]

ARTICLE 15 DEVELOPER FEES.

15.1 Amount. OCII has approved the payment of fees to the Developer in an aggregate amount not to exceed Three Million One Hundred Forty Thousand Dollars (\$3,040,000) ("**Developer Fees**"), to be paid in accordance with the Developer Fee Schedule. The Developer Fee includes the following:

(a) an amount not to exceed One Million One Hundred Thousand and No/100 Dollars (\$1,100,000), for the predevelopment and construction periods of the Project (the "**Project Management Fee**"); and,

(b) an additional amount not to exceed One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000) that is at-risk to the extent needed to fund cost overruns if total development costs exceed estimated development costs shown in the Final Financial Plan (the "**At-Risk Fee**").

(c) an additional amount not to exceed Five Hundred Forty Thousand and No/100 Dollars (\$540,000) included as the Deferred Developer Fee.

[General Partner Equity contribution in an amount not to exceed XX and No/100 Dollars]

ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/consent. Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) transfers of a general partnership or manager's interest in Borrower to a nonprofit public benefit corporation approved in advance by OCII; (b) removal and thereafter replacement of a general partner of Borrower in accordance with the terms of Borrower's limited partnership agreement (and if necessary, the temporary replacement thereof with an affiliate of the Investor Limited Partner), provided that within a period of one hundred eighty (180) days after said removal (or other longer duration approved by OCII in its sole discretion), Borrower shall have replaced the general partner with a 501(c)(3) tax-exempt nonprofit corporation (or a wholly-owned subsidiary thereof), subject to OCII's reasonable approval of the replacement general partner; (c) transfers of the limited partner or non-managing member interests in Borrower in accordance with the terms of the Borrower's partnership agreement; (d) leases, subleases or occupancy agreements with occupants of the residential units or any permitted commercial tenants of the Project made in accordance with the Ground Lease; (e) transfers of a general partnership interest between or among affiliates controlled by Mercy; (f) security interests for the benefit of lenders securing loans for the Project as approved by OCII on terms and in amounts as

approved by OCII in its reasonable discretion; or (g) the grant or exercise of an option agreement or a right of first refusal agreement between Borrower and Borrower's general partner(s) or manager of any of their respective affiliates in connection with the tax credit syndication of the Project where such agreement has been previously approved in writing by OCII in its reasonable discretion. Any other transfer, assignment, encumbrance or lease without OCII's prior written consent will be voidable and, at OCII's election, constitute an Event of Default under this Agreement. OCII's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of OCII's rights under this Agreement. If there is a conflict between subsection (c) of this Section 16.1 similar permitted transfer provisions in the Ground Lease, Section 16.1(c) of this Agreement shall prevail.

16.2 Assignment to MOHCD. Under Dissolution Law, the Board of Supervisors of the City and County of San Francisco has designated MOHCD as the Housing Successor to the former Redevelopment Agency. Therefore, upon OCII's issuance of a Certificate of Completion under the Lease, OCII intends to assign its interest in the Project to MOHCD as described in the Memorandum of Understanding for the implementation of Affordable Housing Obligations under San Francisco Successor Agency Ordinance 215-12 between OCII and MOHCD (May 6, 2014). Neither Borrower nor any Lender shall have the right to object to such assignment and shall reasonably cooperate with OCII and MOHCD to facilitate such assignment.

ARTICLE 17 INSURANCE AND BONDS.

17.1 Borrower's Insurance. Subject to approval by OCII's risk manager of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in Exhibit F commencing with Loan Closing and thereafter for the term of the Ground Lease, at no expense to OCII.

ARTICLE 18 GOVERNMENTAL APPROVALS.

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

ARTICLE 19 DEFAULT.

19.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the OCII Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any OCII Document, including without limitation, Section 19.2 hereof, will constitute an "Event of Default," including the following:

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

(b) On or after the Loan Closing Date, any lien is recorded against all or any part of the Site or the Project (including for purposes of this provision Borrower's leasehold interest in the Site) without OCII's prior written consent, whether prior or subordinate to the lien of the Deed of Trust or Declaration of Restrictions, or suffers any levy or attachment, or any material supplier's or mechanic's lien or the attachment of any other unauthorized encumbrance or lien, and the taxes or assessments have not been paid, or the encumbrance or lien removed or bonded over or otherwise discharged to the OCII's satisfaction within any time period provided in the Ground Lease; provided, however, that Borrower has the right to contest any tax or assessment on or before the contested tax or assessment otherwise comes due, or to contest any encumbrance or lien within thirty (30) days following written notice from OCII of the imposition of said, encumbrance or lien, as may be further provided in the Ground Lease; or

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

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

(e) On or after the Loan Closing Date, all or a substantial or material portion of the Project is damaged or destroyed by fire or other casualty, and, if the Borrower has elected to restore as provided in the Ground Lease, such restoration has not been completed as provided in and in accordance with the Ground Lease and Deed of Trust within two (2) years of the receipt of insurance proceeds (or such longer period as may be agreed by Borrower and OCII); or all or a substantial portion of the improvements is condemned, seized or appropriated by any non-City Governmental Agency which prevents the Project from being operated for its intended purpose;

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

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

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

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

(j) On or after the Loan Closing Date, either the Deed of Trust or the Declaration of Restrictions ceases to constitute a valid and indefeasible perfected lien on both or either the Project and/or Borrower's leasehold interest in the Site, subject only to Permitted Exceptions; or

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, Borrower's leasehold interest therein, the Project or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(l) Any material adverse change occurs in the financial condition or operations of Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project; or

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

(n) On or after the Loan Closing Date and before a certificate of occupancy is issued for the Project, Borrower ceases rehabilitation or construction of the Project for a period of fifteen (15) consecutive working days, and the cessation is not excused under Section 19.4; or

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

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

19.2 Notice and Cure Rights of Investor Limited Partner. If an Event of Default occurs, or an event occurs that, with notice or the passage of time, or both, could constitute an Event of Default, OCII shall give Investor Limited Partner the same written notice given to the Borrower as required in this Agreement. Investor Limited Partner shall have the right, but not the obligation, to cure defaults within the time periods provided to Borrower herein (as may be extended by Executive Director to be consistent with time periods provided to Lender or Investor Limited Partner to cure similar defaults under the Ground Lease). With respect to any right of cure provided herein, performance of a cure by Investor Limited Partner shall have the same effect as would like performance by Borrower. Unless OCII is otherwise notified, notices to Investor Limited Partner shall be sent to the address provided in Section 21.1 below.

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

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

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

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

(d) OCII may terminate this Agreement.

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

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

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

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

19.4 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of OCII or Borrower to the extent the event(s) cause delays in the performance of a party's obligations under this Agreement and which delays are beyond the control of the party obligated to perform: 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; pandemics and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse Borrower's performance only in the event that Borrower has provided notice to OCII within thirty (30) days after the occurrence or commencement of the event or events and evidence of the resulting enforced delay(s), and Borrower's performance will be excused for so long as the conditions giving rise to the delay continue to reasonably result in delay to performance hereunder.

ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

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

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

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

(c) To Borrower's knowledge, no action, suit or proceeding is pending or threatened that might affect Borrower or the Project adversely in any material respect.

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

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

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

ARTICLE 21 NOTICES.

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

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

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

To Borrower: Transbay 2 Family, L.P.
c/o Mercy Housing Calwest
1256 Market Street
San Francisco, CA 94102
Attn: President

With a copy to: Gubb & Barshay
235 Montgomery Street, Suite 1110
San Francisco, CA 94104
Attn: Evan Gross

To Investor
Limited Partner:

With a copy to:

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. See Section 3.10.

ARTICLE 22 HAZARDOUS SUBSTANCES.

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

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

ARTICLE 23 INDEMNITY.

23.1 Borrower's Obligations. Borrower shall, to the fullest extent allowable by law, defend, indemnify and protect and hold harmless OCII, the City, and their respective boards, commissions, commissioners, departments, agencies, and other subdivisions, officers, agents and employees (individually or collectively, an "**Indemnatee**") against any and all Losses arising directly or indirectly, in whole or in part out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the OCII Documents (including those covenants set forth in Article 22 above); (b) any failure of any representation by Borrower to be correct when made; (c) injury or death to persons or damage to property or other Loss occurring on the Site or in connection with the Project, whether caused by the negligence or any other act or omission of Borrower or its contractors, agents, permittees or invitees (individually and collectively the "**Borrower Parties**") or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise, but only to the extent such event (x) occurs on or after Loan Closing and (y) arises directly or indirectly from Borrower's or Borrower's Parties' activities related to the Project; (d) any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements performed by Borrower or Borrower Parties; (e) any claim, demand or cause of action, or any action or other proceeding (including without limitation those made by third-parties), whether meritorious or not, brought or asserted against any Indemnatee that relates to or arises out of the OCII Documents, the Loan, Borrower's or Borrower's Parties' activities on the Site or Borrower's or Borrower's Parties' construction of the Project, or any transaction contemplated by, or the relationship between Borrower and OCII or Borrower and the City; (f) the occurrence, after the Loan Closing Date and before the expiration of the term of this Agreement, of any Environmental Activity arising directly or indirectly from Borrower's or Borrower's Parties' activities on the Site or any failure of Borrower or Borrower's Parties to comply with all applicable Environmental Laws relating to Borrower's or Borrower's Parties' activities on the Project or the Site; (g) the occurrence, after the termination of this Agreement, of any Environmental Activity resulting directly or indirectly from any act or failure to act caused or permitted by Borrower or Borrower's Parties occurring from the date of this Agreement until the termination of this Agreement ; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under Sections 9.1, 18.1 and 22.1; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnatee will be entitled to indemnification under this Section for any Environmental Activity existing or occurring as of or prior to the date of this Agreement (unless aggravated or exacerbated by Borrower or Borrower's Parties), any Environmental Activity of a person or entity not caused or permitted by Borrower, or for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnatee 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 Indemnatee at Borrower's sole expense.

Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement. Any indemnification obligation of the Borrower and/or its partners under the OCII Documents shall not extend to repayment of principal or interest in the Loan. The sole recourse of OCII under the OCII Documents for repayment of the Loan shall be the exercise by OCII of its rights against the Project.

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

ARTICLE 24 GENERAL PROVISIONS.

24.1 Subordination. The Deed of Trust and Declaration of Restrictions may be subordinated to other financing secured by and used for development of the Project, but only if OCII determines in its sole discretion that subordination is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project. Following review and approval by OCII and approval as to form by the City Attorney's Office, the Executive Director of OCII or its 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 other than City. Nothing contained in this Agreement, nor any act of OCII, may be interpreted or construed as creating the relationship of third-party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between OCII and Borrower or Borrower's agents, employees or contractors. Notwithstanding the forgoing, OCII and Borrower hereby acknowledge and agree that as the intended assignee of OCII's rights under the OCII Documents, the City is a third-party beneficiary under the OCII Documents and that the Investor Limited Partner is a third-party beneficiary of the provisions in Sections 16.1 and 19.2 hereof.

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

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

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

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

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

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

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

24.10 Joint and Several Liability. If more than one person or entity signs this Agreement as Borrower or if Borrower consists of more than one person or entity, the obligations of such persons and entities shall be joint and several.

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

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

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

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

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

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

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

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

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

24.20 Borrower's Board of Directors. Borrower or its managing general partner (or managing member of its general partner) shall at all times be governed by a legally constituted

and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in its bylaws and other governing documents, and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Said board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Borrower of its obligations under this Agreement.

24.21 Ownership of Results. Any interest of Borrower or any sub-borrower, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or Publications prepared by or on behalf of Borrower or any sub-borrower in connection with this Agreement, the implementation of the Project, the services to be performed under this Agreement, or acquired through the use of any Loan proceeds ("**Work Product**"), is hereby pledged to OCII as security for Borrower's obligations under this Agreement and the Note, pursuant to that certain Assignment of Work Product attached hereto as Exhibit O, and upon an Event of Default, subject to all applicable notice and cure periods, shall become the property of and be promptly transmitted by Borrower to OCII. Notwithstanding the foregoing, Borrower may retain and use copies for reference and as documentation of its experience and capabilities.

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

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

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

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

EXHIBITS

- A Schedules of Income and Rent Restrictions
- B-1 Table of Sources and Uses of Funds
- B-2 Annual Operating Budget
- B-3 20-Year Cash Flow Proforma
- C Form of Tenant Income Certification
- D Form of Promissory Note
- E Contract Compliance Policies
- F Insurance Requirements
- G Lobbying/Debarment Certification Form
- H Form of Annual Monitoring Report
- I Tenant Selection Plan Policy and Tenant Screening Criteria Policy
- J Form Deed of Trust
- K Form of Declaration of Restrictions
- L Schedule of Performance
- M OCII Monthly Project Update Form
- N Developer Fee Schedule
- O Assignment of Work Product
- P Consent to Assignment of Work Product
- Q Legal Description of the Site
- R Final Financial Plan Confirmation Letter
- S Operational Rules for San Francisco Housing Lotteries and Rental Lease-Up Activities
- T-1 Early Outreach Plan Template
- T-2 Marketing Plan Template
- T-3 Form of LOSP Unit Tenant Selection Plan

Signatures begin on following page

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

OCII:

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

By: _____
Thor Kaslofsky
Executive Director

APPROVED AS TO FORM:
James B. Morales
OCII General Counsel

By: _____

Authorized by OCII Resolution No. XX-2024, dated _____, 2024

[signatures continue on following page]

BORROWER:

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family LLC,
a California limited liability company

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

By: _____
Ramie Dare
Vice President

EXHIBIT A

Schedule of Income and Rent Restrictions¹

Unit Type	Number of Units	Avg. Sq. Feet	Max. Rent (at Max. AMI)*	Max. % AMI	Target % AMI	Rent or Operating Subsidy
Studio	17	434	\$1,513	60%	60%	none
1BR	3	542	\$1,153	40%	40%	none
1BR	8	542	\$1,441	50%	30%	LOSP
1BR	41	542	\$1,730	60%	60%	none
1BR	23	542	\$2,306	80%	80%	none
1BR	1	542	Mgr	Mgr	Mgr	none
2BR	2	827	\$1,298	40%	40%	none
2BR	22	827	\$1,621	50%	30%	LOSP
2BR	16	827	\$1,945	60%	60%	none
2BR	13	827	\$2,594	80%	80%	none
2BR	1	825	Mgr	Mgr	Mgr	none
3BR	1	1,120	\$1,441	40%	40%	none
3BR	10	1,120	\$1,801	50%	30%	LOSP
3BR	26	1,120	\$2,161	60%	60%	none
Total Units	184					

** Maximum rent is based on estimates for MOHCD limits for 2023. The maximum rent levels shall be updated upon the commencement of leasing of the Project, and the updated amounts shall be applicable for the first year of the leasing of the Project.*

Note: Any changes to the Schedule of Income and rent Restrictions are subject to approval by the OCII Executive Director and the MOHCD Director through the Final Financial Plan. Except as provided in Section B of the Declaration of Restrictions, the restrictions on any unit shall not exceed 80% of Area Median Income.

¹ This table is in furtherance of and subject to the rent restriction provisions of Article 7. In the event of conflict between this Exhibit A and Article 7 of the Agreement, Article 7 shall prevail.

EXHIBIT B-1

Table of Sources and Uses of Funds

As approved by Loan Committee on August 4, 2023, to be updated in the Final Financial Plan.

Application Date: 7/1/23 # Units: 184
 Project Name: Transbay Block 2 East Family # Bedrooms: 312
 Project Address: 200 Folsom St # Beds:
 Project Sponsor: Mercy Housing California LOSP Project

SOURCES	Total Sources						Comments	
	61,961,845	28,000,000	540,000	98,536,983	-	-		189,038,828
Name of Sources:	MOHCD/OCl	HCD AHSC	Deferred Developer Fee	Tax Credit Equity				

USES

ACQUISITION

Acquisition cost or value									
Legal / Closing costs / Broker's Fee									
Holding Costs									
Transfer Tax									
TOTAL ACQUISITION	0	0	0	0	0	0	0	0	0

CONSTRUCTION (HARD COSTS)

* Unit Construction/Rehab	1,939,402	28,000,000		88,099,096			118,038,498		0
* Commercial Shell Construction									
* Demolition									
Environmental Remediation	1,029,915						1,029,915		
* Onsite Improvements/Landscaping	381,910						381,910		
* Offsite Improvements									
* Infrastructure Improvements	3,814,190						3,814,190		
Parking									
GC Bond Premium/GC Insurance/GC Taxes	7,783,799						7,783,799	Insurance, Bond Premium, B&O & Other Taxes, GC Contingency	5.5%
GC Overhead & Profit	3,368,839						3,368,839		2.4%
CG General Conditions	7,224,271						7,224,271		5.1%
Sub-total Construction Costs	25,542,326	28,000,000	0	88,099,096	0	0	141,647,422		
Design Contingency (remove at DD)				4,249,243			4,249,243	5% up to \$30MM HC, 4% \$30-\$45MM, 3% \$45MM+	3.0%
Bid Contingency (remove at bid)				4,249,243			4,249,243	5% up to \$30MM HC, 4% \$30-\$45MM, 3% \$45MM+	3.0%
Plan Check Contingency (removed/reduce during Plan Revk)	2,832,828						2,832,828	4% up to \$30MM HC, 3% \$30-\$45MM, 2% \$45MM+	2.0%
Hard Cost Construction Contingency	5,121,992			1,939,402			7,061,394	5% new construction / 15% rehab	5.0%
Sub-total Construction Contingencies	7,954,821	0	0	10,437,887	0	0	18,392,708		
TOTAL CONSTRUCTION COSTS	33,497,147	28,000,000	0	98,536,983	0	0	160,034,130		

SOFT COSTS

Architecture & Design

Architect design fees	2,500,000						2,500,000	See MOHCD A&E Fee Guidelines: http://sfmohcd.org/documents-reports-and-forms	
Design Subconsultants to the Architect (incl. Fees)	1,400,000						1,400,000	Landscape architect, structural design, code consultant, fire consultant, architectural design consultant, MEPF consultant, elevator consultant.	
Architect Construction Admin									
Reimbursables									
Additional Services									
Sub-total Architect Contract	3,900,000	0	0	0	0	0	3,900,000		
Other Third Party design consultants (not included under Architect contract)								Shadow design, civil engineer, trash design, joint trench, infiltration pit, smoke control consultant, transit consultant, security consultant, corrosion consultant, acoustics consultant, exterior building maintenance consultant.	
	550,000						550,000		
Total Architecture & Design	4,450,000	0	0	0	0	0	4,450,000		

Engineering & Environmental Studies

Survey	11,000						11,000		
Geotechnical studies	158,300						158,300		
Phase I & II Reports	50,000						50,000		
CEQA / Environmental Review consultants	71,982						71,982	Lead and asbestos study, sustainability and green point rated consulting, SFPDPH site mitigation review, trash management, review of phase 1 and 2.	
NEPA / 105 Review									
CNA/PNA (rehab only)									
Other environmental consultants	78,018						78,018	Archaeology	
Total Engineering & Environmental Studies	369,300	0	0	0	0	0	369,300		

Financing Costs

Construction Financing Costs

Construction Loan Origination Fee	760,672						760,672		
Construction Loan Interest	10,574,178						10,574,178		
Title & Recording	120,000						120,000		
CDLAC & CDIAAC fees	38,716						38,716		
Bond Issuer Fees	671,393						671,393		
Other Bond Cost of Issuance	50,000						50,000		
Trustee Fee During Construction	12,000						12,000		
Sub-total Const. Financing Costs	12,226,959	0	0	0	0	0	12,226,959		
Permanent Loan Origination Fee									
Credit Enhance. & Appl. Fee									
Title & Recording									
Sub-total Perm. Financing Costs	0	0	0	0	0	0	0		
Total Financing Costs	12,226,959	0	0	0	0	0	12,226,959		

Legal Costs

Borrower Legal fees	150,000						150,000		
Land Use / CEQA Attorney fees									
Tax Credit Counsel									
Bond Counsel	10,000						10,000		
Construction Lender Counsel	138,000						138,000		
Permanent Lender Counsel									
HCD Closing Title policy									
Total Legal Costs	298,000	0	0	0	0	0	298,000		

Other Development Costs

Appraisal	15,000						15,000		
Market Study	25,000						25,000		
Insurance	2,000,000						2,000,000		
Property Taxes									
Accounting / Audit	40,000						40,000		
Organizational Costs	820						820		
Entitlement / Permit Fees	1,204,000						1,204,000	LLC tax and entity fee, LP tax and entity fee, SFPDPH hazardous waste fees, SFPDP permit fees, site permit fees, building permit fees, SF planning fees.	
Marketing / Rent-up	540,171						540,171	Shared with OCII Development Specialist.	
Furnishings	639,000						639,000	\$2,000/unit. See MOHCD U/W Guidelines on: http://sfmohcd.org/documents-reports-and-forms	
PG&E / Utility Fees	450,000						450,000		
TCAC Appl. Alloc. / Monitor Fees	167,591						167,591		
Financial Consultant fees	85,000						85,000		
Construction Management fees / Owner's Rep	213,600						213,600		
Security during Construction	100,000						100,000		
Relocation									
Other (specify)									
Other (specify)									
Other (specify)									
Total Other Development Costs	5,480,182	0	0	0	0	0	5,480,182		

Soft Cost Contingency

Contingency (Arch, Eng, Fin, Legal & Other Dev)	2,282,444						2,282,444	Should be either 10% or 5% of total soft costs.	10.0%
TOTAL SOFT COSTS	25,106,885	0	0	0	0	0	25,106,885		

RESERVES

* Operating Reserves	857,813						857,813	3 months	
* Replacement Reserves									
* Tenant Improvements Reserves									
* Other (specify)									
* Other (specify)									
* Other (specify)									
TOTAL RESERVES	857,813	0	0	0	0	0	857,813		

DEVELOPER COSTS

Developer Fee - Cash-out Paid at Milestones	1,100,000						1,100,000		
Developer Fee - Cash-out At Risk	1,400,000						1,400,000		
Commercial Developer Fee								Per new commercial guidelines	
Developer Fee - GP Equity (also show as source)									
Developer Fee - Deferred (also show as source)			540,000				540,000		
Development Consultant Fees								Need MOHCD approval for this cost, N/A for most projects	
Other (please specify)									
TOTAL DEVELOPER COSTS	2,500,000	0	540,000	0	0	0	3,040,000		

TOTAL DEVELOPMENT COST

Development Cost/Unit by Source	336,749	152,174	2,935	535,527	0	0	1,027,385		
Development Cost/Unit as % of TDC by Source	32.8%	14.8%	0.3%	52.1%	0.0%	0.0%	100.0%		

Acquisition Cost/Unit by Source

	0	0	0	0	0	0	0		
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Construction Cost (inc Const Contingency)/Unit By Source

	182,050	152,174	0	535,527	0	0	869,751		
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Construction Cost (inc Const Contingency)/SF

	166.90	139.51	0.00	490.95	0.00	0.00	797.35		
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*Possible non-eligible GO Bond/COP Amount:

City Subsidy/Unit	336,749
Tax Credit Equity Pricing:	0.980
Construction Bond Amount:	98,621,620
Construction Loan Term (in months):	30 months
Construction Loan Interest Rate (as %):	7.48%

EXHIBIT B-2

Annual Operating Budget

As approved by Loan Committee on August 4, 2023, to be updated in the Final Financial Plan.

Application Date: 7/1/2023
 Total # Units: 184
 First Year of Operations (provide data assuming that Year 1 is a full year, i.e. 12 months of operations): 2026

Project Name: Transbay Block 2 East Family
 Project Address: 200 Folsom St
 Project Sponsor: Mercy Housing California

Non-LOSP Units	
LOSP Units	Non-LOSP Units
40	144
LOSP/non-LOSP Allocation	
22%	78%

Correct errors noted in Col N!

INCOME	LOSP	non-LOSP	Total	Comments	
Residential - Tenant Rents	108,000	2,928,876	3,036,876	Links from 'New Proj - Rent & Unit Mix' Worksheet	Alternative LOSP Split
Residential - Tenant Assistance Payments (Non-LOSP)	0	0	0	Links from 'New Proj - Rent & Unit Mix' Worksheet	Residential - Tenant Assistance Payments (N
Residential - LOSP - Tenant Assistance Payments	689,555		689,555		
Commercial Space				from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	
Residential Parking	0	0	0	Links from 'Utilities & Other Income' Worksheet	
Miscellaneous Rent Income	412	1,460	1,872	Links from 'Utilities & Other Income' Worksheet	Alternative LOSP Split
Supportive Services Income	0	0	0		Supportive Services Income
Interest Income - Project Operations	0	0	0	Links from 'Utilities & Other Income' Worksheet	
Laundry and Vending	2,603	9,227	11,830	Links from 'Utilities & Other Income' Worksheet	Projected LOSP Split
Tenant Charges	0	0	0	Links from 'Utilities & Other Income' Worksheet	Tenant Charges
Miscellaneous Residential Income	0	0	0	Links from 'Utilities & Other Income' Worksheet	
Other Commercial Income	0	0	0	from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	Alternative LOSP Split
Withdrawal from Capitalized Reserve (deposit to operating account)	0	0	0		Withdrawal from Capitalized Reserve (depos
Gross Potential Income	800,569	2,939,564	3,740,133		
Vacancy Loss - Residential - Tenant Rents	(5,400)	(146,444)	(151,844)	Vacancy loss is 5% of Tenant Rents.	
Vacancy Loss - Residential - Tenant Assistance Payments	0	0	0	#DIV/0!	
Vacancy Loss - Commercial	0	0	0	from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	
EFFECTIVE GROSS INCOME	795,169	2,793,120	3,588,289	PUPA: 19,502	

OPERATING EXPENSES					
Management					
Management Fee	34,214	121,306	155,520	\$72 PUPM	Alternative LOSP Split
Asset Management Fee	5,922	20,998	26,920		Management Fee
					Asset Management Fee
Sub-total Management Expenses	40,137	142,303	182,440	PUPA: 992	

Salaries/Benefits					
Office Salaries	29,817	105,716	135,533	2 FTE APM	Alternative LOSP Split
Manager's Salary	26,887	95,327	122,214	1 FTE SPM	Office Salaries
Health Insurance and Other Benefits	48,896	173,360	222,256	0.32	Manager's Salary
Other Salaries/Benefits	154,440	51,480	205,920	4.5 FTE Desk Clerk	Health Insurance and Other Benefits
Administrative Rent-Free Unit	0	0	0		Other Salaries/Benefits
					Administrative Rent-Free Unit
Sub-total Salaries/Benefits	260,041	425,882	685,923	PUPA: 3,728	

Administration					
Advertising and Marketing	1,135	4,025	5,160		
Office Expenses	4,400	15,600	20,000		
Office Rent	0	0	0		Projected LOSP Split
Legal Expense - Property	3,300	11,700	15,000		Legal Expense - Property
Audit Expense	2,814	10,330	13,244		
Bookkeeping/Accounting Services	5,676	20,124	25,800		Projected LOSP Split
Bad Debts	0	0	0		Bad Debts
Miscellaneous	5,752	20,392	26,144	Telecom	
Sub-total Administration Expenses	23,177	82,171	105,348	PUPA: 573	

Utilities					
Electricity	44,000	156,000	200,000		Projected LOSP Split
Water	33,000	117,000	150,000	NGC and 10th and Mission comparisons	Electricity
Gas	0	0	0		
Sewer	33,000	117,000	150,000		
Sub-total Utilities	110,000	390,000	500,000	PUPA: 2,717	

Taxes and Licenses					
Real Estate Taxes	1,892	6,708	8,600		Alternative LOSP Split
Payroll Taxes	0	0	0		Real Estate Taxes
Miscellaneous Taxes, Licenses and Permits	3,399	12,053	15,452	Local fees	Payroll Taxes
Sub-total Taxes and Licenses	5,291	18,761	24,052	PUPA: 131	

Insurance					
Property and Liability Insurance	126,500	448,500	575,000	Based on NGC	
Fidelity Bond Insurance	0	0	0		Alternative LOSP Split
Worker's Compensation	8,243	29,224	37,466		Worker's Compensation
Director's & Officers' Liability Insurance	0	0	0		
Sub-total Insurance	134,743	477,724	612,466	PUPA: 3,329	

Maintenance & Repair					
Payroll	51,707	183,323	235,030		Alternative LOSP Split
Supplies	6,244	22,136	28,380		Payroll
Contracts	43,327	153,613	196,940	HVAC, elevator, EBM, fire alarm, fire sprinkler, etc...	Supplies
Garbage and Trash Removal	33,110	117,390	150,500		Contracts
Security Payroll/Contract	27,000	9,000	36,000		Alternative LOSP Split
HVAC Repairs and Maintenance	0	0	0		Security Payroll/Contract
Vehicle and Maintenance Equipment Operation and Repairs	0	0	0		
Miscellaneous Operating and Maintenance Expenses	3,960	14,040	18,000	Grounds	
Sub-total Maintenance & Repair Expenses	165,347	499,503	664,850	PUPA: 3,613	

Supportive Services	0	216,137	216,137	Resident Services	Alternative LOSP Split
Commercial Expenses			0	from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	Supportive Services

TOTAL OPERATING EXPENSES 738,735 2,252,481 2,991,216 PUPA: 16,257

Reserves/Ground Lease Base Rent/Bond Fees					
Ground Lease Base Rent	3,300	11,700	15,000	Ground lease with MOHCD	
Bond Monitoring Fee	0	0	0		Alternative LOSP Split
Replacement Reserve Deposit	20,240	71,760	92,000	\$500 PUPA	Replacement Reserve Deposit
Operating Reserve Deposit	0	0	0		Operating Reserve Deposit
Other Required Reserve 1 Deposit	0	0	0		Other Required Reserve 1 Deposit
Other Required Reserve 2 Deposit	0	0	0		
Required Reserve Deposits, Commercial	0	0	0	from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	
Sub-total Reserves/Ground Lease Base Rent/Bond Fees	23,540	83,460	107,000	PUPA: 582	

TOTAL OPERATING EXPENSES (w/ Reserves/GL Base Rent/ Bond Fees)	762,275	2,335,941	3,098,216	PUPA: 16,838	
NET OPERATING INCOME (INCOME minus OP EXPENSES)	32,894	457,178	490,073	PUPA: 2,663	

DEBT SERVICE/MUST PAY PAYMENTS (hard debt/amortized loans)					
Hard Debt - First Lender	0	0	0		Alternative LOSP Split
Hard Debt - Second Lender (HCD Program 0.42% pymt, or other 2nd Len	25,872	91,728	117,600	HCD AHSC	Hard Debt - First Lender
Hard Debt - Third Lender (Other HCD Program, or other 3rd Lender)	0	0	0		Hard Debt - Second Lender (HCD Program 0.
Hard Debt - Fourth Lender	0	0	0		Hard Debt - Third Lender (Other HCD Program
Commercial Hard Debt Service	0	0	0	from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	Hard Debt - Fourth Lender
TOTAL HARD DEBT SERVICE	25,872	91,728	117,600	PUPA: 639	

CASH FLOW (NOI minus DEBT SERVICE)	7,022	365,450	372,473		
Commercial Only Cash Flow			0		
Allocation of Commercial Surplus to LOSP/non-LOSP (residual income)	0	0	0		Allocation of Commercial Surplus to LOSP/
AVAILABLE CASH FLOW	7,022	365,450	372,473	4.17	

USES THAT PRECEDE MOHCD DEBT SERVICE IN WATERFALL					
"Below-the-line" Asset Mgt fee (uncommon in new projects, see policy)	0	0	0		
Partnership Management Fee (see policy for limits)	5,922	20,998	26,920		
Investor Service Fee (aka "LP Asset Mgt Fee") (see policy for limits)	1,100	3,900	5,000		Alternative LOSP Split
Other Payments	0	0	0		Other Payments
Non-amortizing Loan Pmnt - Lender 1 (select lender in comments field)	0	0	0		Non-amortizing Loan Pmnt - Lender 1 (select
Non-amortizing Loan Pmnt - Lender 2 (select lender in comments field)	0	0	0		Provide additional comments here, if needed.
Deferred Developer Fee (Enter amt =< Max Fee from cell I130)	0	182,669	182,669	Def. Develop. Fee split: 54%	Provide additional comments here, if needed.
				Deferred Developer Fee (Enter amt =< Max F	
TOTAL PAYMENTS PRECEDING MOHCD	7,022	207,567	214,589	PUPA: 1,166	

RESIDUAL RECEIPTS (CASH FLOW minus PAYMENTS PRECEDING MOHCD)	(0)	157,884	157,884		
---------------------------------------------------------------------	------------	----------------	----------------	--	--

Residual Receipts Calculation
 Does Project have a MOHCD Residual Receipt Obligation? **Yes** Project has MOHCD ground lease? **Yes**
 Will Project Defer Developer Fee? **Yes**
 Max Deferred Developer Fee/Borrower % of Residual Receipts in Yr 1: **50%** Max Deferred Developer Fee Amt (Use for data entry above. Do not link.): **170,276** Sum of DD F from LOSP and non-LOSP: Ratio of Sum of DDF and calculated 50%:
 % of Residual Receipts available for distribution to soft debt lenders in **50%**

Soft Debt Lenders with Residual Receipts Obligations	(Select lender name/program from drop down)	Total Principal Amt	Distrib. of Soft Debt Loans
MOHCD/OCII - Soft Debt Loans	All MOHCD/OCII Loans payable from res. recs	\$61,961,845	68.76%
MOHCD/OCII - Ground Lease Value or Land Acq Cost	Ground Lease Value	\$150,000	0.17%
HCD (soft debt loan) - Lender 3	HCD AHSC	\$28,000,000	31.07%
Other Soft Debt Lender - Lender 4			0.00%
Other Soft Debt Lender - Lender 5			0.00%

MOHCD RESIDUAL RECEIPTS DEBT SERVICE					
MOHCD Residual Receipts Amount Due	108,825	108,825	50% of residual receipts, multiplied by 68.93% - MOHCD's pro rata share of all soft debt		
Proposed MOHCD Residual Receipts Amount to Loan Repayment	63,301	63,301	Enter/override amount of residual receipts proposed for loan repayment.		
Proposed MOHCD Residual Receipts Amount to Residual Ground Lease	0	0	If applicable, MOHCD residual receipts amt due LESS amt proposed for loan repaymt.		

REMAINING BALANCE AFTER MOHCD RESIDUAL RECEIPTS DEBT SERVICE 49,058 Total Resid Receipts due not allocated, please revise F142

NON-MOHCD RESIDUAL RECEIPTS DEBT SERVICE					
HCD Residual Receipts Amount Due		49,058	50% of residual receipts, multiplied by 31.07% - HCD AHSC's pro rata share of all soft debt		
Lender 4 Residual Receipts Due		0			
Lender 5 Residual Receipts Due		0			
Total Non-MOHCD Residual Receipts Debt Service		49,058			

REMAINDER (Should be zero unless there are distributions below)					
Owner Distributions/Incentive Management Fee		0			
Other Distributions/Uses		0			
Final Balance (should be zero)		0			

Application Date: 7/1/2023
 Total # Units: 184
 First Year of Operations (provide data assuming that Year 1 is a full year, i.e. 12 months of operations): 2026

INCOME			
Residential - Tenant Rents		non-LOSP	Approved By (reqd)
Residential - Tenant Assistance Payments (Non-LOSP)	non-LOSP		
Residential - LOSP Tenant Assistance Payments			
Commercial Space			
Residential Parking			
Miscellaneous Rent Income	LOSP	non-LOSP	Approved By (reqd)
Supportive Services Income			
Interest Income - Project Operations			
Laundry and Vending	LOSP	non-LOSP	(only acceptable if LOSP-specific expenses are being tracked at entry level in the project's accounting system)
Tenant Charges			
Miscellaneous Residential Income			
Other Commercial Income	LOSP	non-LOSP	Approved By (reqd)
Withdrawal from Capitalized Reserve (deposit to operating account)	to operating account		
Gross Potential Income			
Vacancy Loss - Residential - Tenant Rents			
Vacancy Loss - Residential - Tenant Assistance Payments			
Vacancy Loss - Commercial			
EFFECTIVE GROSS INCOME			

OPERATING EXPENSES			
Management			
Management Fee	LOSP	non-LOSP	Approved By (reqd)
Asset Management Fee			
Sub-total Management Expenses			
Salaries/Benefits			
Office Salaries	LOSP	non-LOSP	Approved By (reqd)
Manager's Salary			
Health Insurance and Other Benefits			
Other Salaries/Benefits	75.00%	25.00%	
Administrative Rent-Free Unit			
Sub-total Salaries/Benefits			

Administration			
Advertising and Marketing			
Office Expenses			
Office Rent	LOSP	non-LOSP	(only acceptable if LOSP-specific expenses are being tracked at entry level in the project's accounting system)
Legal Expense - Property	22.00%	78.00%	
Audit Expense			
Bookkeeping/Accounting Services	LOSP	non-LOSP	(only acceptable if LOSP-specific expenses are being tracked at entry level in the project's accounting system)
Bad Debts			
Miscellaneous			
Sub-total Administration Expenses			

Utilities			
Electricity	LOSP	non-LOSP	(only acceptable if LOSP-specific expenses are being tracked at entry level in the project's accounting system)
Water	22.00%	78.00%	
Gas			
Sewer			
Sub-total Utilities			

Taxes and Licenses			
Real Estate Taxes	LOSP	non-LOSP	Approved By (reqd)
Payroll Taxes			
Miscellaneous Taxes, Licenses and Permits			
Sub-total Taxes and Licenses			

Insurance			
Property and Liability Insurance			
Fidelity Bond Insurance	LOSP	non-LOSP	Approved By (reqd)
Worker's Compensation			
Director's & Officers' Liability Insurance			
Sub-total Insurance			

Maintenance & Repair			
Payroll	LOSP	non-LOSP	Approved By (reqd)
Supplies	22.00%	78.00%	(LOSP-specific expenses must be tracked at entry level in project's)
Contracts	22.00%	78.00%	
Garbage and Trash Removal	LOSP	non-LOSP	Approved By (reqd)
Security Payroll/Contract	75.00%	25.00%	
HVAC Repairs and Maintenance			
Vehicle and Maintenance Equipment Operation and Repairs			
Miscellaneous Operating and Maintenance Expenses			
Sub-total Maintenance & Repair Expenses			

Supportive Services	LOSP	0.00%	non-LOSP	100.00%	Approved By (reqd)
Commercial Expenses					

TOTAL OPERATING EXPENSES

Reserves/Ground Lease Base Rent/Bond Fees			
Ground Lease Base Rent			
Bond Monitoring Fee	LOSP	non-LOSP	Approved By (reqd)
Replacement Reserve Deposit			
Operating Reserve Deposit			
Other Required Reserve 1 Deposit			
Other Required Reserve 2 Deposit			
Required Reserve Deposits, Commercial			
Sub-total Reserves/Ground Lease Base Rent/Bond Fees			

TOTAL OPERATING EXPENSES (w/ Reserves/GL Base Rent/ Bond Fees)

NET OPERATING INCOME (INCOME minus OP EXPENSES)

DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized loans)					
Hard Debt - First Lender	LOSP	0.00%	non-LOSP	100.00%	Approved By (reqd)
Hard Debt - Second Lender (HCD Program 0.42% pymt. or other 2nd Lender)	2%	pymt. or other 2nd Lender			
Hard Debt - Third Lender (Other HCD Program, or other 3rd Lender)					
Hard Debt - Fourth Lender					
Commercial Hard Debt Service					
TOTAL HARD DEBT SERVICE					

CASH FLOW (NOI minus DEBT SERVICE)

Commercial Only Cash Flow			
Allocation of Commercial Surplus to LOPS/non-LOSP (residual income)	non-LOSP (residual income)		

AVAILABLE CASH FLOW

USES OF CASH FLOW BELOW (This row also shows DSCR.)

USES THAT PRECEDE MOHCD DEBT SERVICE IN WATERFALL

"Below-the-line" Asset Mgt fee (uncommon in new projects, see policy)			
Partnership Management Fee (see policy for limits)			
Investor Service Fee (aka "LP Asset Mgt Fee") (see policy for limits)	LOSP	non-LOSP	Approved By (reqd)
Other Payments			
Non-amortizing Loan Pmt - Lender 1 (select lender in comments field)			lender in comments field
Non-amortizing Loan Pmt - Lender 2 (select lender in comments field)			
Deferred Developer Fee (Enter amt <= Max Fee from cell I130)	0.00%		100.00%
TOTAL PAYMENTS PRECEDING MOHCD			

RESIDUAL RECEIPTS (CASH FLOW minus PAYMENTS PRECEDING MOHCD)

Residual Receipts Calculation

Does Project have a MOHCD Residual Receipt Obligation?

Will Project Defer Developer Fee?

Max Deferred Developer Fee/Borrower % of Residual Receipts in Yr 1: 182,669
 % of Residual Receipts available for distribution to soft debt lenders in 0.932158413

Soft Debt Lenders with Residual Receipts Obligations

MOHCD/OCII - Soft Debt Loans
MOHCD/OCII - Ground Lease Value or Land Acq Cost
HCD (soft debt loan) - Lender 3
Other Soft Debt Lender - Lender 4
Other Soft Debt Lender - Lender 5

MOHCD RESIDUAL RECEIPTS DEBT SERVICE

MOHCD Residual Receipts Amount Due
Proposed MOHCD Residual Receipts Amount to Loan Repayment
Proposed MOHCD Residual Receipts Amount to Residual Ground Lease

REMAINING BALANCE AFTER MOHCD RESIDUAL RECEIPTS DEBT SERVICE

NON-MOHCD RESIDUAL RECEIPTS DEBT SERVICE

HCD Residual Receipts Amount Due
Lender 4 Residual Receipts Due
Lender 5 Residual Receipts Due
Total Non-MOHCD Residual Receipts Debt Service

REMAINDER (Should be zero unless there are distributions below)

Owner Distributions/Incentive Management Fee
Other Distributions/Uses
Final Balance (should be zero)

EXHIBIT B-3

20-Year Cash Flow Proforma

As approved by Loan Committee on August 4, 2023, to be updated in the Final Financial Plan.

Transbay Block 2 East Family

Table with multiple columns: Total # Units (LOSP, Non-LOSP), Year 13 2038, Year 14 2039, Year 15 2040. Rows include INCOME (Residential - Tenant Rents, Commercial Space, etc.), OPERATING EXPENSES (Management, Salaries/Benefits, Administration, etc.), TAXES AND LICENSES, INSURANCE, MAINTENANCE & REPAIR EXPENSES, SUPPORTIVE SERVICES, COMMERCIAL EXPENSES, TOTAL OPERATING EXPENSES, DEBT SERVICE, CASH FLOW, RESIDUAL RECEIPTS, and REMAINDER. Includes detailed sub-totals and final balance calculations.

EXHIBIT C

Tenant Income Certification Form

TENANT INCOME CERTIFICATION

Initial Certification
 Recertification
 Other _____

Effective Date: _____
Move-in Date: _____
(MM/DD/YYYY)

PART I - DEVELOPMENT DATA

Property Name: _____ County: _____ BIN #: _____
 Address: _____ Unit Number: _____ # Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						
7						

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$ _____	\$ _____	\$ _____	\$ _____

Add totals from (A) through (D), above

TOTAL INCOME (E):

\$	
----	--

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$ _____	\$ _____

Enter Column (H) Total If over \$5000 \$ _____ X Passbook Rate 2.00% = (J) Imputed Income \$ _____

Enter the greater of the total of column I, or J: imputed income **TOTAL INCOME FROM ASSETS (K)** \$ _____

\$	
----	--

(L) Total Annual Household Income from all Sources [Add (E) + (K)]

\$	
----	--

--	--

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature
(Date)

(Date)

Signature

Signature
(Date)

(Date)

Signature

PART V. DETERMINATION OF INCOME ELIGIBILITY

RECERTIFICATION ONLY:

TOTAL ANNUAL HOUSEHOLD INCOME
FROM ALL SOURCES:
From item (L) on page 1

\$

Household Meets
Income Restriction
at:

- 60% 50%
 40% 30%
 ____%

Current Income Limit x 140%:

\$ _____
Household Income exceeds 140% at
recertification:
 Yes No

Current Income Limit per Family Size: \$ _____

Household Income at Move-in: \$ _____

Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent \$ _____
Utility Allowance \$ _____

Rent Assistance: \$ _____
Other non-optional charges: \$ _____

GROSS RENT FOR UNIT:
(Tenant paid rent plus Utility Allowance &
other non-optional charges)

\$

Unit Meets Rent Restriction at:

- 60% 50% 40% 30% ____%

Maximum Rent Limit for this unit: \$ _____

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS?

- yes no

If yes, Enter student explanation*
(also attach documentation)

Enter
1-4

*Student Explanation:

- 1 TANF assistance
- 2 Job Training Program
- Single parent/dependent child
- Married/joint return

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit

See Part V above.

b. HOME

Income Status

- ≤ 50% AMGI
 ≤ 60% AMGI
 ≤ 80% AMGI
 OI**

c. Tax Exempt

Income Status

- 50% AMGI
 60% AMGI
 80% AMGI
 OI**

d. AHDP

Income Status

- 50% AMGI
 80% AMGI
 OI**

e. _____

(Name of Program)

Income Status

- _____

 OI**

** Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE

DATE

EXHIBIT D
Form of Promissory Note

PROMISSORY NOTE

Principal Amount: \$ _____

San Francisco, CA

Date: _____

FOR VALUE RECEIVED, the undersigned, Transbay 2 Family, L.P., a California limited partnership ("**Maker**"), hereby promises to pay to the order of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California (commonly referred to as the Office of Community Investment and Infrastructure ("**OCII**" or "**Holder**"), the principal sum of [Fifty-Eight Million Four Hundred Sixty-One Thousand Eight Hundred Forty Five Dollars (\$58,461,845)] (the "**Funding Amount**"), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement described in Section 1 below, together with interest thereon, as provided in this Note.

1. Agreement. This Secured Promissory Note ("**Note**") is given under the terms of a Loan Agreement by and between Maker and Holder (the "**Agreement**") dated as of the date set forth above, which Agreement is incorporated herein by reference. Unless otherwise specified herein, definitions and rules of interpretation set forth in the Agreement apply to this Note. In the event of any inconsistency between the Agreement and this Note, this Note will control. A previous note by Borrower for OCII dated August 15, 2023 in the amount of Eight Million Dollars (\$8,000,000 (the "**Original Note**") has been cancelled and returned to Borrower, and this Note replaces the Original Note in its entirety.

2. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of [three percent (3%)] per annum, simple interest, from the date of disbursement of funds by OCII through the date of full payment of all amounts owing under the OCII Documents. Prior to the Loan Closing Date, the OCII Executive Director and MOHCD Director collectively may decrease the interest rate to any interest rate between 3% and 0%. Any rate change will be documented through an amended and restated note. Interest on the principal disbursed under the Original Note that has accrued as of the date of this Note is _____ Dollars (\$ _____).

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

4. Repayment of Funding Amount. Maker must repay all amounts owing under the OCII Documents in accordance with Section 3.1 of the Agreement.

All payments will be applied in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The unpaid principal balance of the Loan, together with all accrued and unpaid interest and unpaid costs and fees incurred, will be due and payable on the Maturity Date. Any Payment Date, including the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

5. Security. Maker's obligations under this Note are secured by (i) prior to the Maker's obtaining a leasehold interest in the Site, the pledge of Work Product given in the Assignment of Work Product, or (ii) on the date that the Maker obtains a leasehold interest in the Site, by the Deed of Trust.

6. Terms of Payment.

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

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

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

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

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

6.6 This Note may be prepaid in whole or in part at any time, and from time to time, without penalty provided that notice is given to Holder no later than sixty (60) days prior to prepayment.

7. Default.

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

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

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

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

8. Waivers.

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

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

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

9. Miscellaneous Provisions.

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

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

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

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

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

9.6 Assignment to MOHCD. Under Dissolution Law, the Board of Supervisors of the City and County of San Francisco has designated MOHCD as the Housing

Successor to the former Redevelopment Agency. Therefore, upon OCII's issuance of a Certificate of Completion under the Lease, OCII intends to assign its interest in the Agreement, this Note, the Site and the Project to MOHCD as described in the Memorandum of Understanding for the implementation of Affordable Housing Obligations under San Francisco Successor Agency Ordinance 215-12 between OCII and MOHCD (May 6, 2014). Neither Maker nor any Lender shall have the right to object to such assignment and shall reasonably cooperate with OCII and MOHCD to facilitate such assignment.

"MAKER"

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family, LLC,
a California limited liability company

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

By: _____
Ramie Dare
Vice President

EXHIBIT E
Contract Compliance Policies

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

- (i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 7-2022, March 22, 2022)
- (ii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985);
- (iii) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997);
- (iv) Health Care Accountability Policy (adopted by Resolution No. 168-2001); and
- (v) Minimum Compensation Policy (adopted by Resolution No. 168-2001).

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

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

3. Conflict of Interest.

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

(b) Borrower represents that it is familiar with the provisions of Sections 1090 through 1097 and 87100 et seq. of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Borrower certifies that

it knows of no facts that constitute a violation of any of these provisions and agrees to notify OCII immediately if Borrower at any time obtains knowledge of facts constituting a violation.

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

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

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

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

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

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

(b) **Non-Discrimination in Benefits.** Borrower does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for OCII or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with

a Governmental Agency under state or local law authorizing such registration, subject to the conditions set forth in the Agency's Nondiscrimination in Contracts Policy, adopted by Agency Resolution 175-97, as amended from time to time.

8. Public Disclosure.

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

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

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

EXHIBIT E-1

SMALL BUSINESS ENTERPRISE AGREEMENT

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

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

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

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

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

IV. TRAINEE HIRING GOAL. In addition to the goals set forth above in Section III, there is a trainee hiring goal for all design professionals (architects, engineers, planners, and environmental consultants) on contracts or subcontracts over \$100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional’s contract as follows:

<u>V. Trainees</u>	<u>Design Professional Fees</u>
0	\$ 0 – \$99,000
1	\$ 100,000 – \$249,999
2	\$ 250,000 – \$499,999
3	\$ 500,000 – \$999,999
4	\$1,000,000 – \$1,499,999
5	\$1,500,000 – \$1,999,999
6	\$2,000,000 - \$4,999,999
7	\$5,000,000 - \$7,999,999
8	\$8,000,000 – or more

A. Procedures For Trainee Hires

1. Compliance with the Trainee Hiring Goal

Design professionals will be deemed in compliance with this Agreement by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. Execution and Incorporation of this Agreement to Sub-agreements

The Agency-Assisted Contractor shall execute this Agreement and shall incorporate by reference or attach this Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of this Agreement. The Agency-Assisted Contractor and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. Contact Educational Institutions

Each design professional shall call the City and County of San Francisco Office of Economic and Workforce Development (OEWD) or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution or OEWD to make the referral. The minimum duration of assignment is part-time for one semester. However, design professionals are strongly encouraged to offer longer trainee employment periods to allow a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) or OEWD may require the design professionals to send a confirming letter or complete its form(s). Each design professional is required to timely provide all of the information requested by the OEWD or educational institution(s) in order to get the referrals.

4. Response from Educational Institutions

Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

5. Action by Design Professionals When Referrals Available

The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency strongly encourages the design professional to hire a qualified San Francisco resident referred by the educational institution(s). The design professional shall notify the educational institution in writing of the hiring decision.

6. Action by Design Professionals When Referrals Unavailable

If after contacting two or more educational institutions the design professional is informed that no San Francisco residents are currently available, then the design professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco residents are currently available for hire as trainees. If no qualified San Francisco residents are currently available after the second request, then the design professional has fulfilled its obligation under this Agreement, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with this Section IV and submit a copy of its file to the Agency Compliance Officer upon request.

7. **Action by Design Professional When No Response From Educational Institutions**

If a design professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals, then the design professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the design professional within five (5) business days of the Agency Compliance Officer being notified. If the design professional still has not received a response from the educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section IV, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with this Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

8. **Termination of Trainee for Cause**

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Agreement and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth above.

B. Reporting Requirements For Trainee Hires

1. **Reporting**

Upon completion of the Term of the Agreement or the term of the design professional's contract with the Agency-Assisted Contractor, whichever is less, the design professional (i.e. Employer) shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. **Report on Terminations**

In the event a San Francisco resident hired pursuant to this Agreement is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); and (4) whether the design professional replaced the trainee(s).

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

VII. FIRST CONSIDERATION. First consideration will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: (1) Project Area SBEs, (2) San Francisco-based SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-San Francisco-based SBEs. Non-San Francisco-based SBEs should be used to satisfy participation

goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-San Francisco-based SBEs.

VIII. ASSOCIATIONS AND JOINT VENTURES (JV). OCII will recognize JVs and Associations between non-SBE firms and SBE firms where the SBE partner performs at least 35% of the work defined in the JV or Association agreement, and receives at least 35% (or a proportionate share, whichever is higher) of the dollars to be earned by the JV or Association. Under this arrangement, OCII will deem the JV or Association to be an SBE for the purposes of meeting the SBE goal. Due to the technical nature of the disciplines and the various standards of each industry, OCII will not require a standardized agreement. However, each JV and Association agreement must be in writing and contain, at a minimum, the following terms:

- Define the management of the agreement between the parties;
- Define the technical and managerial responsibilities of each party;
- Define the scope of work to be performed by each party, and where possible identify the percentage and break-down of scope of work for each party;
- Identify any additional subcontractors or consultants that will perform the work under the agreement;
- Define the schedule, duration, and deliverable of the agreement;
- Detail the fee schedule, fee breakdown, or division of compensation;
- Specify insurance requirements and/or if each party shall maintain its own insurance;
- Specify how additional work or changes in scope shall be negotiated or determined and which party shall be responsible for notifying OCII of the changes;
- Specify how claims and disputes will be resolved.

A copy of the JV or Association agreement must be provided to OCII for approval in order for the JV or Association to be recognized.

IX. CERTIFICATION. The Agency no longer certifies SBEs but instead relies on the information provided in other public entities' business certifications to establish eligibility for the Agency's program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency's SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the SBE Policy.

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

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

Affiliates means an affiliation with another business concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indicators of affiliation. Power to control exists when a party or parties have 50 percent or more ownership. It may also exist with

considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Affiliated business concerns need not be in the same line of business.

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

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

Agency Contract means personal services contracts, purchase requisitions, and other similar contracts and operations agreements that the Agency executes with for-profit or non-profit entities.

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

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

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

Association means an agreement between two parties established for the purpose of completing a specific task or project. The associate agreement shall provide the SBE associate a significant project management role and the SBE associate shall be recognized in marketing and collateral material. The Association shall be distinguished from traditional subcontracting arrangements via a written Association agreement that defines the management of the agreement, technical and managerial responsibilities of the parties, and defined scopes and percentages of work to be performed by each party with its own resources and labor force. Unlike the more formal Joint Venture, an Association does not require formation of a new business enterprise between the parties. The Associate agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

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

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

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

Joint Venture means an entity established between two parties for the purposes of completing a venture or project. The Joint Venture agreement typically creates a separate business entity and requires acquisition of additional insurance for the newly created joint business entity. The Joint Venture agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

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

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

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

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

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

Small Business Enterprise (SBE) means an economically disadvantaged business that is certified by another public entity (either municipal, State, or federal agency) that considers the certification criteria stipulated in this Policy. In general, such criteria shall include a determination by the public entity as to whether an economically disadvantaged business is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; and has average gross annual receipts in at least the three years (and no more than five years, if practiced by the public entity) immediately preceding its application for certification as a SBE that do not exceed the following limits:

Industry	OCII SBE Size Standard
Construction Contractors	\$24,000,000
Specialty Construction Contractors	\$14,000,000
Suppliers (goods/materials/ equipment and general services)	\$12,000,000
Professional Services	\$5,000,000
Trucking	\$5,000,000

In addition, an economically disadvantaged business shall meet the other certification criteria described in Exhibit I of the SBE Policy in order to be considered an SBE by the Agency.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations) to calculate the firm's average annual gross receipts. In addition, the calculation of a firm's size shall include the receipts of all affiliates.

Once a business reaches the average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

Specialty Construction Contractor means a contractor licensed by the Contractors State License Board under the "C" classification license pursuant to California Business and Professions Code Section 7058.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XIII. ADDITIONAL PROVISIONS

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

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

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

“Amounts for work performed by a subcontractor shall be paid within seven (7) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq.* Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity.”

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

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

XIV. PROCEDURES

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

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

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

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

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

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

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

business enterprises.

4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.
5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.
6. A description of the assistance provided to SBEs with respect to bonding, lines of credit, etc.
7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.
8. A description of any divisions of work undertaken to facilitate SBE participation.
9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.
10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.
11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

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

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

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

G. Agency Investigation. Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or

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

XV. ARBITRATION OF DISPUTES.

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

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

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

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

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

F. Setting of Arbitration Hearing. A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date,

time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

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

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

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

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

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

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

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

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

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

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

Party.

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

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

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

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

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

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

ARBITRATION PROVISION IS VOLUNTARY.

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

Agency

Agency-Assisted Contractor

XVI. AGREEMENT EXECUTION

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

Signature

Date

Print Your Name

Title

Company Name and Phone Number

EXHIBIT E-2

CONSTRUCTION WORK FORCE AGREEMENT

I. **PURPOSE.** This Agreement is entered into between the Borrower (“Borrower or “Owner”) and the Office of Community Investment and Infrastructure (“OCII” or “Agency”), as successor agency to the San Francisco Redevelopment Agency for the purposes of ensuring participation of San Francisco residents and equal employment opportunities in the construction work force involved in constructing any of the phases upon the Site covered by the underlying agreement to which this Agreement is attached hereto.

II. **DEFINITIONS.**

The following definitions apply to this Agreement.

- A. “CityBuild” means the construction employment program of the Workforce Development Division of the San Francisco Office of Economic and Workforce Development (OEWD).
- B. "Contract" means any agreement in excess of \$10,000 between the Owner, its Contractors and a person to provide or procure labor, materials or services for the construction of the Owner Improvements, including a purchase order that requires installation of materials.
- C. "Contractor" means the Owner's general contractor, all prime contractors and all subcontractors (regardless of tier) having a Contract or subcontract in excess of \$10,000 and who employ persons in a Trade for construction of the Owner Improvements.
- D. "Owner Improvements" means improvements constructed by the Owner.
- E. “Project Area Resident” means a San Francisco Resident who resides in the Transbay Project Area or within the 94105 ZIP code.
- F. "San Francisco Resident" in the case of a new hire shall mean an individual who has lived in San Francisco for at least one week prior to submitting his/her initial application for employment to work on the Owner Improvements. In the case of a person employed by the Owner or its Contractor or Consultant prior to assignment to the Owner Improvements, this term shall mean a person who has lived in San Francisco for at least six months prior to the date he/she applied for a transfer to a position at the Owner Improvements or the date he/she was assigned to work on the Owner Improvements, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that he/she lived in San Francisco prior to applying for or being considered for a position with the Owner, Contractor or Consultant.

III. **WORK FORCE GOALS.**

The Owner agrees and will require each Contractor and all subcontractors to use good faith efforts to employ 50 percent of its construction workforce hires by trade and by hours from qualified San Francisco Residents with first consideration given to Project Area Residents. Owner and Contractors will be deemed in compliance with this Agreement and the Policy by meeting or exceeding the goal or by demonstrating good faith efforts toward compliance.

IV. GOOD FAITH EFFORTS.

A. Submission of Labor Force Projections and Other Data

The Contractor shall submit, to the extent available, labor force projections to the OCII Compliance Officer, or its agent, within two (2) weeks of contract award.

B. Submit Subcontractor Information Form

The Contractor shall submit to the Compliance Officer, or its agent, the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Compliance Officer upon request.

C. Preconstruction Meeting

The Contractor shall hold a preconstruction meeting which shall be attended by the Compliance Officer, CityBuild, all prime contractor(s) and all subcontractor(s). The preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this Agreement and to explore any anticipated problems in complying with the Agreement. All questions regarding how this Agreement applies to the Owner, Contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of the Policy and this Agreement that may result in the Agency ordering a suspension of work until the breach has been cured. Suspension under this provision is not subject to arbitration.

D. Submit Construction Worker Request Form

For the Term of the Agreement, each time the Owner or Contractor seeks to hire workers for the construction or rehabilitation of improvements, they must first submit, by fax, email or hand delivery, an executed construction worker request form to CityBuild. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The construction worker request form is available from the Compliance Officer upon request.

E. Response from CityBuild

CityBuild shall respond, in writing, via fax, email or hand delivery to each request

for construction workers. The response shall state that CityBuild was able to satisfy the request in full, in part or was unable to satisfy the request. CityBuild shall look to their own referral lists, as well as confer with CBOs in an attempt to find qualified Project Area Residents and San Francisco Residents. If CityBuild is able to satisfy the request in full or in part, it shall direct the qualified Project Area Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If CityBuild is unable to satisfy the request, then CityBuild shall send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

F. Action by Contractor When Referrals Available

The Owner or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the Project Area Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified Project Area Residents or San Francisco Residents referred by CityBuild. However, if the Contractor finds the Project Area Residents or San Francisco Residents are not qualified, then the Contractor shall send the Project Area Residents or San Francisco Residents back to CityBuild. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to CityBuild stating in detail the reason(s) the Project Area Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the Project Area Residents or San Francisco Residents. CityBuild shall, within one (1) business day of receipt of the fax or email, send new qualified Project Area Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

G. Action by Contractor When Referrals Unavailable

If a Contractor receives a response from CityBuild stating that no qualified Project Area Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request.

H. Action by Contractor When No Response From CityBuild

If a Contractor has not received a response to its construction worker request from CityBuild within two (2) business days, then the Contractor should immediately advise the Compliance Officer by phone, fax or email. The Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from

CityBuild within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request. This Policy is intended to provide qualified Project Area and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

I. Action by Contractor When No Response From Union

The Contractor should immediately advise the Compliance Officer by phone, fax or email when the Contractor has sent a qualified Project Area Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified Project Area or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this Policy. Nothing in this Policy shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements.

J. Hiring Apprentices

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

K. Termination and Replacement of Referrals

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Policy, the Contractor shall notify CityBuild in writing via fax or email and submit a report of termination pursuant to Section (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Policy beginning at Section (A)(6).

V. REPORTING REQUIREMENTS.

A. Submission of Certified Payroll Reports

Each Contractor subject to this Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Owner is ultimately responsible for the submission of these reports by the Contractors. The

certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses an online Project Reporting System (PRS) for submission of certified payroll reports. This system is available at no cost to the Contractor. Training and educational materials for PRS are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using PRS. However, a waiver may be granted to any Contractors who do not have a computer or online access.

B. Additional Information

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Policy and may be addressed as set forth in the arbitration provisions included in Agency contracts.

C. Report on Terminations

In the event a Project Area Resident or San Francisco Resident hired pursuant to this Policy is terminated for cause, the responsible Contractor shall within two (2) days fax or email a termination report to CityBuild with a copy to the Compliance Officer stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) were Project Area Resident(s) or San Francisco Resident(s).

D. Inspection of Records

The Owner and each Contractor shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency and its designated Compliance Officer, and shall permit such representatives to interview construction workers and apprentices during working hours on the job.

E. Failure to Submit Reports

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Agreement and the Policy, and may be addressed under arbitration provisions pursuant to Article VII (Arbitration of Disputes) of this Agreement.

F. Submission of Good Faith Effort Documentation

If the Owner's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency or its designated Compliance Officer with the documentation of its efforts to comply with this Policy and the Agreement. The Owner or Contractor must maintain a current file of the names, addresses and telephone numbers of each Project Area Resident or San Francisco Resident applicant referral (whether a self-referral or a referral from a union, CBO or CityBuild referral) and what action was taken with respect to each such individual.

G. Coding Certified Payrolls

Each Contractor shall include, on the weekly payroll submissions, the proper job classification (as approved by the California Department of Industrial Relations), apprentice's craft (if applicable), skill level, protected class status, and domicile of each construction worker.

VI. RECORDKEEPING REQUIREMENTS.

Contractor shall comply with the requirements of California Labor Code Section 1776, as amended, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its subcontractors of all tiers.

In addition, each Contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of Owner Improvements, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Owner Improvements. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident or disadvantaged worker, and the referral source or method through which the Contractor hired or retained that worker for work on the Owner Improvements (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method). Contractor may verify that a worker is a local resident through the worker's possession of a valid SF City ID Card or other government-issued identification. OCII may require additional records to be kept with regard to Contractor's compliance with this Agreement. All records described in this section shall at all times be open to inspection and examination by the duly authorized officers and agents of OCII, including representatives of the OEWD.

VII. ARBITRATION OF DISPUTES.

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

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

contained in the Notice of Non-Compliance.

- C. **Parties' Participation.** The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Owner made an initial timely Demand for Arbitration pursuant to Section VII.B. above.
- D. **Agency Request to AAA.** Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.
- E. **Selection of Arbitrator.** One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.
- F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.
- G. **Discovery.** In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.
- H. **Burden of Proof.** The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.
- I. **California Law Applies.** Except where expressly stated to the contrary in this Construction Work Force Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.
- J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:
 - 1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any

non-compliant Arbitration Party into compliance.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.
 3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.
 4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Construction Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.
 5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.
- K. **Arbitrator's Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.
- L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

- M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.
- N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.
- O. **Exculpatory Clause.** Owner expressly waives any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Construction Work Force Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.
- P. **Severability.** The provisions of this Construction Work Force Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Construction Work Force Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Construction Work Force Agreement or the validity of their application to other persons or circumstances.
- Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE

AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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

_____ Agency

_____ Owner

I, hereby certify that I have authority to execute this Construction Work Force Agreement on behalf of the Owner listed below and that Owner agrees to diligently exercise good faith efforts to comply with this Agreement to meet or exceed the construction work force participation goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

_____ Signature

_____ Date

_____ Print Your Name

_____ Title

_____ Company Name

_____ Phone Number

_____ Signature

_____ Date

_____ Print Your Name

_____ Title

_____ Company Name

_____ Phone Number

EXHIBIT E-3
PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

1. **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as “Labor Standards”) apply to any and all construction of the Project Improvements as defined in the underlying agreement between the Borrower and the Office of Community Investment and Infrastructure (OCII) of which this Exhibit E and these Labor Standards are a part.

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

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

3. **Definitions.** The following definitions shall apply for purposes of this Exhibit E:
 - a. “Contractor” is the Borrower if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Project.

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

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

4. **Prevailing Wage.**
 - a. All Laborers and Mechanics employed in the construction of the Project will be

paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of escrow closing the Agency shall provide the Borrower with a copy of the applicable Wage Determination.

- b. All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- d. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Borrower that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §8. The Executive Director of the Agency may require the Borrower to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.
- e. Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

5. **Permissible Payroll Deductions.** The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.
- a. Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
 - b. Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
 - c. Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
 - d. Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - (i) The deduction is not otherwise prohibited by law; and
 - (ii) It is either:
 - 1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - 2) Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
 - (iii) No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
 - (iv) The deduction shall serve the convenience and interest of the employee.
 - e. Any authorized purchase of United States Savings Bonds for the employee.
 - f. Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit

union statutes.

- g. Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
 - h. Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.
6. **Apprentices and Trainees.** Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.
7. **Overtime.** No Contractor contracting for any part of the construction of the Project which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.
8. **Payrolls and Basic Records.**
- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Project and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Project. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits

under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

- b. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Project was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Borrower acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.
 - c. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.
 - d. The Contractor shall make the records required under this §8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.
9. **Occupational Safety and Health.** No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.
10. **Equal Opportunity Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in Exhibit E of the Agreement including Schedules A and B. Any conflicts between the language contained in these Labor Standards and Exhibit I shall be resolved in favor of the language set forth in Exhibit I, except that in no event shall less than the prevailing wage be paid.
11. **Nondiscrimination Against Employees for Complaints.** No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any

proceeding under or relating to these Labor Standards.

12. **Posting of Notice to Employees.** A copy of the Wage Determination referred to in subsection (a) of §4 together with a copy of a “Notice to Employees,” in the form appearing on the last page of these Labor Standards, shall be given to the Borrower at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Project before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

13. **Violation and Remedies.**

- a. **Liability to Employee for Unpaid Wages.** The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
- b. **Stop Work--Contract Terms, Records and Payrolls.** If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Project to contain the Labor Standards as required by §2 (“Non-Conforming Contract”); or by reason of any failure to submit the payrolls or make records available as required by §8 (“Non-Complying Contractor”), the Executive Director of the Agency may, after written notice to the Borrower with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.
- c. **Stop Work and Other Violations.** For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Contractor, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Contractor shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Contractor, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Contractor fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.
- d. Upon receipt of the Notice of Dispute and withhold advice, any stop work which

the Executive Director has ordered shall be lifted, but the Contractor shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14. Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Borrower shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14.

- e. Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the Project provided for in this agreement, for any violations of these Labor Standards until such violation has been cured.
- f. General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

14. Arbitration of Disputes.

- a. Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office (“AAA”) in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.
- b. The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- c. The arbitration shall take place in the City and County of San Francisco.
- d. Arbitration may be demanded by the Agency, the Borrower or the Contractor.
- e. With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Borrower, or as appropriate to one or the other if the Borrower or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §4) and copies of all notices sent or received by the Agency pursuant to §13. Such material shall be made part of the arbitration record.
- f. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the

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

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

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

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

***EQUAL
OPPORTUNITY
NON-DISCRIMI-
NATION***

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

***PREVAILING
WAGE***

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

OVERTIME

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

APPRENTICES

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

PROPER PAY

If you do not receive proper pay, write the Office of Community Investment and Infrastructure, OCII
1 South Van Ness Ave. 5th Floor
San Francisco, CA 94103
or call **(415) 749-2546** and ask for
Mr. George Bridges
Contract Compliance Specialist

EXHIBIT E-4
Nondiscrimination in Contracts and Benefits

	<p>OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (OCII) (SUCCESSOR TO THE SAN FRANCISCO REDEVELOPMENT AGENCY) DECLARATION FORM Nondiscrimination in Contracts and Benefits</p>
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Section A

Is your company/organization currently certified by the City and County of San Francisco in compliance with Administrative Code 12B Equal Benefits Ordinance and will your company/organization ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts? If yes, please indicate below, skip Section B, and execute the Declaration in Section C. If no, please skip Section A and complete Sections B and C.

- My company/organization is certified and compliant with the 12B Equal Benefits Ordinance of the City and County of San Francisco and there has been no change in our 12B Declaration since certification. My company/organization agrees to ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts. (Please check box to affirm, if applicable)

Section B

1. Nondiscrimination—Protected Classes

a. Is it your company/organization’s policy that you will not discriminate against your employees, applicants for employment, employees of the Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency) (Agency), or City and County of San Francisco (City), or members of the public for the following reasons:

- | | | |
|---------------------------|------------------------------|-----------------------------|
| • Race | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • color | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Creed | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Religion | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • ancestry | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • national origin | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Age | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sex | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sexual orientation | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • gender identity | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • marital status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • domestic partner status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Disability | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • AIDS or HIV status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?
 Yes No

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

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?
 Yes No

b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?
 Yes No

If you answered "no" to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered "yes" to Question 2a or 2b, continue to 2c.

c. If "yes," please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Pension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee assistance programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation and travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company discounts, facilities, events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d. If you answered "yes" to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

- (1) Have you taken all reasonable measures? Yes No
- (2) Do you provide a cash equivalent? Yes No

3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered "yes" to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated "yes" in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered "yes" to Question 2d(1) complete and attach form SFRA/CC-103, "Nondiscrimination in Benefits—Reasonable Measures Affidavit," which is available from the Agency. You need not document your "yes" answer to Question 1a or Question 1b.

Section C

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 20____, at _____, _____.
(City) (State)

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

Remittance Address (if different from above): _____

Name of Signatory: _____ Title: _____
(Please Print)

Signature: _____

Phone Number: _____ Federal Tax Identification Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____
(if known)

- Check here if your address has changed.
- Check here if your organization is a non-profit.
- Check here if your organization is a governmental entity.

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

Please return this form to: Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency), One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103

EXHIBIT E-5
MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (Successor Agency to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy (“MCP”), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to pay Covered Employees a minimum hourly wage and to provide 12 compensated and 10 uncompensated days off per year. The Minimum Compensation rate adjusts automatically to match the wage rate required by the City and County of San Francisco’s Minimum Compensation Ordinance. Contractor is obligated to keep informed of the then-current requirements, which are published at <https://sfgov.org/olse/minimum-compensation-ordinance-mco>.

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

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

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

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same.

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

For more information, please see the complete text of the MCP, available from the OCII Contract Compliance Department at (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

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

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

Signature

Date

Print Name

Company Name

Phone

EXHIBIT E-6
HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (as Successor Agency to the Redevelopment Agency) adopted the San Francisco Health Care Accountability Policy (the “HCAP”), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to offer health plan benefits to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits established by the San Francisco Department of Public Health (“SFPDH”), as approved by the OCII Commission; (2) pay OCII an amount equivalent to the current fee established by the SFPDH for each hour the employee works on the covered contract or subcontract or on property covered by a lease and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured; or (3) participate in a health benefits program developed and offered by SFPDH. The minimum health plan standards and fees established by SFPDH are published at <https://sfgov.org/olse/health-care-accountability-ordinance-hcao>.

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

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

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

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII’s contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same.

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

For more information, please see the complete text of the HCAP, available from the OCII’s Contract Compliance Department at: (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contact Compliance Department, Office of Community Investment and Infrastructure, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

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

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

Signature

Date

Print Name

Company Name

Phone

EXHIBIT F

Insurance Requirements

Subject to approval by the OCII Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth in this Exhibit F throughout the Compliance Term of this Agreement, or in accordance with the timeframes stated herein, at no expense to OCII.

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

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Commercial General Liability (see Section B.1)	\$1,000,000 per occurrence/ \$2,000,000 aggregate*	Borrower's design and professional contractors; and Borrower (prior to start of construction)	Additional insured (see Section G)
	\$10,000,000 per occurrence/ \$10,000,000 aggregate*	Borrower (upon construction start), general contractor, and subcontractors to the general contractor	Completed Operations Coverage endorsement (on construction stage policy) (see Section G)
Automobile Liability (see Section B.2)	\$1,000,000 per accident*	Borrower and Borrower's contractors	Additional insured (see Section G)
	\$10,000,000 per accident*	Upon construction start – general contractor and subcontractors to the general contractor	
Worker's Compensation and Employer's Liability (see Section B.3)	As per statute for Workers Comp; \$1,000,000 per accident; \$1,000,000 per employee; and in aggregate for bodily injury by disease as respects Employers Liability*	Borrower and Borrower's contractors	Waiver of subrogation
Professional Liability (see Section B.4)	\$2,000,000 per claim/ \$2,000,000 aggregate	Borrower if engaged in any eligible design-related activities; and Borrower's design and professional contractors	None
Crime/Dishonesty (see Section B.5)	\$1,000,000 per loss	Borrower	Loss payee endorsement

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Pollution Liability/Asbestos – During Construction (see Section B.6)	\$1,000,000 per claim/ \$2,000,000 aggregate	Borrower or Borrower’s construction contractor(s)	Additional insured (see Section G)
Builder’s Risk – During Construction (see Section B.7a)	100% of replacement value	Borrower	Loss payee endorsement
Property Insurance – After Construction Completion (see Section B.7b)	100% of replacement value	Borrower or Borrower’s property manager	Loss payee endorsement
Performance and Payment Bonds (see Section B.8)	100% of contract value (excluding the Modular Work)	Borrower’s construction contractors	OCII and Borrower named as dual obligees
Modular Factory Performance Insurance (see Section B.9)	100% of Supply Agreement value	Modular manufacturer	General contractor named as loss payee

** Umbrella, excess liability policy, contractor controlled insurance program (CCIP), or owner controlled insurance program (OCIP) may be used to meet limits (see Section D)*

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

1) Commercial General Liability coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by OCII, with additional insured endorsement (form CG 20 10 or equivalent) (see Section G). Limits set forth below. Coverage must be included for contractual liability; explosion, collapse and underground (XCU); products and completed operations. Umbrella, Excess Liability, or an Owner Controlled Insurance Policy may be used to meet the terms of this section.

a. Before the start of demolition/construction if the Site is unoccupied, Borrower and Borrower’s Contractors will maintain coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit. These limit requirements apply to Borrower’s design and professional contractors throughout the required coverage period;

b. During demolition/construction and occupancy of the Site and ongoing operations of the Project, Borrower and its Construction Contractors and/or Property Manager will maintain coverage of not less than Ten Million Dollars (\$10,000,000) combined single limit per occurrence and Ten Million Dollars (\$10,000,000) general aggregate limit. For subcontractors to the Construction General Contractor and the Property Manager, the Borrower, in consultation with the Construction General Contractor and the Property Manager, as appropriate, is required to assess the risks associated with such contractors and

determine, authorize, and verify the appropriate level of coverage provided by the subcontractor or consultant;

c. The construction period general liability policy must include completed operations coverage for a minimum of ten (10) years. Borrower must provide a completed operations coverage endorsement (form CG 20 37 or equivalent) and OCII must be named as an additional insured pursuant Section G below.

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

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

- 5) Crime Policy or Fidelity Bond (Employee Dishonesty Coverage) covering Borrower and Developer's officers and employees against employee dishonesty, forgery & alteration, theft of

money & securities, and theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees with respect to the Funding Amount. One Million Dollars (\$1,000,000) each loss, with any deductible not to exceed Fifty Thousand Dollars (\$50,000). Borrower must provide an endorsement naming OCII as an additional obligee or loss payee.

Application of Crime Insurance Proceeds. Borrower shall promptly notify OCII of any claim under the required Crime Insurance Policy. OCII may retain from the proceeds of the required Crime Insurance Policy, a sufficient amount of the proceeds to pay the Funding Amount, if any, and shall pay the balance to Borrower. For the avoidance of doubt, OCII shall have no right or claim to the proceeds of the required Crime Insurance Policy in excess of the Funding Amount.

- 6) Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) aggregate per policy aggregate, this coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Borrower's construction contractor to maintain these minimum limits for no less than three (3) years beyond completion of the Project.
- 7) Property Insurance
 - a. Builder's Risk Insurance during the course of any construction, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and OCII property in the care, custody and control of Borrower or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss, including OCII as loss payee. Builder's Risk must be maintained by the Borrower or the Borrower must cause its general contractor to maintain this insurance.
 - b. Property Insurance after completion of construction, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, and including boiler and machinery insurance, for one hundred percent (100%) of the replacement value of all furnishings, fixtures, equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Twenty Five Thousand Dollars (\$25,000) each loss, including OCII as a loss payee. A waiver of subrogation naming OCII is required (also known as "transfer of rights of recovery against others to us").
- 8) Performance and Payment Bonds for eligible construction contractors during construction and/or rehabilitation, each in the amount of one hundred percent (100%) of contract amounts (excluding the Modular Work), naming OCII and Borrower as dual obligees, or other completion security approved by OCII in its sole discretion. OCII has approved issuance of a Completion Guaranty by an affiliate of Borrower to Borrower's institutional lender as completion security. This requirement shall not apply to modular manufacturer.
- 9) Performance Insurance. Borrower shall require its general contractor to obtain performance insurance that insures against delay in delivery of modules, up to the amount of Borrower's or Borrower's general contractor's contract amount for the delivery of modules for the construction of the Project. Borrower shall limit general contractor's use of proceeds from the

performance insurance policy to be used to solely to reduce cost overruns in the construction of the Project related to or caused by delay in the delivery of modules, and Borrower shall, and shall require general contractor, to obtain OCII's approval prior to expending such proceeds.

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

- 6) OCII and its officers, agents and employees will not be liable for any required premium under any policy maintained by Borrower.
- 7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

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

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

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

EXHIBIT G

Lobbying/Debarment Certification Form

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

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

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

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

Transbay 2 Family, L.P., a California limited partnership

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT H

Form of Annual Monitoring Report

**Owner Compliance Certification and Insurance & Tax Certification Form
2020 Annual Monitoring Report
San Francisco Mayor’s Office of Housing and Community Development**

***** This form must be completed by Project Owner or authorized agent. *****

Complete this form, sign and date it, scan it along with current liability and property insurance certificates into a single PDF file, then email the file along with AMR_RY2020 – project name.xlsx, audited financial statements, and current waiting list to moh.amr@sfgov.org.

Project Name: _____

Project Street Address: _____

Reporting Period – Start Date: _____ End Date: _____

Owner Compliance Certification

The undersigned owner, having received housing development funds pursuant to a housing development program funding agreement/s entered into with the City and County of San Francisco (“CCSF”) for the purpose of purchasing, constructing and/or improving low-income housing, does hereby certify as follows:

*Initial all statements below, and supply data to make the statement complete where needed (look for underlined blanks; e.g.: ____). **For any statements that are not true or require additional clarification, you must supply a detailed explanation on the Annual Monitoring Report Narrative Worksheet.** The failure to provide a conforming response to all statements below will render incomplete the entire Annual Monitoring Report (“AMR”) submission for this project, which may result in a default condition under the funding agreement/s, and also subject the owner to scoring penalties in future efforts to obtain funding from MOHCD for this project and any other project.*

	True	False	
1			The CCSF Mayor’s Office of Housing and Community Development (“MOHCD”) has been alerted by the owner prior to any actions taken by the owner that affect the value of the property associated with this project, including but not limited to the establishment of any liens or encumbrances on the property; and, where required, the owner has obtained written authorization from MOHCD prior to taking any such actions.
2			The undersigned is not in default of the terms of any Agreements with CCSF for this project, nor has it been in default on any other loans, contracts or obligations on this property during the reporting period.
3			The undersigned has not been the subject of any actions relating to any other loans, contracts or obligations on this property which might have a material adverse financial impact on the property.

	True	False	
4			The owner has not lost or failed to renew funding for supportive services for the project during the reporting period and has made available (or caused to be made available through another party) all supportive services that are required by existing, applicable funding and regulatory agreements.
5			The owner has not lost or failed to renew funding for operating subsidy/ies for the project during the reporting period.
6			For any existing operating subsidies supporting the project, during the reporting period, the owner submitted a request for the maximum increase possible.
7			The owner has paid all taxes due for the reporting period and prior reporting periods.
8			The undersigned has marketed the units in the manner set forth in the marketing and resident selection provisions of the funding agreement/s entered into with CCSF.
9			The project has met affordability and other leasing provisions set forth in the funding agreement/s entered into with CCSF during the entire reporting period. As of the end date of the reporting period, _____ units (<i>supply exact number</i>) were occupied or held vacant and available for rental by low-income tenants meeting the income qualifications pursuant to the funding agreement/s entered into with CCSF.
10			The undersigned has obtained a tenant income certification and/or third party documentation to support that certification from each tenant household occupying a unit restricted to occupancy by income-qualified tenants. All income certifications are maintained onsite with respect to each qualified tenant who resides in a unit or resided therein during the immediately preceding business year.
11			The total charges for rent and a utility allowance to each income-qualified tenant in a restricted unit do not exceed the maximum rent specified in the funding agreement/s entered into with CCSF as adjusted by the most recent HUD income and rent figures, which have been taken from the figures that are supplied by MOHCD on its website.
12			All withdrawals from the replacement and operating reserve accounts have been made in accordance with the MOHCD funding agreement/s, unless approved in writing by MOHCD.
13			Security deposits required of tenants of the project are in accordance with applicable laws and the funding agreement/s entered into with CCSF.
14			The undersigned has obtained and will maintain insurance policies in accordance with requirements of the funding agreement/s entered into with CCSF as may be reasonably updated from time to time, and has supplied with this AMR certificates of insurance that are current through the end of the reporting period.
15			The undersigned has maintained the units and common areas in a decent, safe and sanitary manner in accordance with all local health, building, and housing codes and in accordance with the HUD Housing Quality Standards.
16			The data submitted in Section 1A – Property & Residents of the Annual Monitoring Report regarding any violation/s of any health, building, or housing codes is complete and accurate; all required copies of violations/citations that were not resolved by the end of the reporting periods are also included with this AMR submission.

	True	False	
17			The undersigned has made best efforts to: (a) keep the units in good repair and available for occupancy; (b) keep the Project fully rented and occupied; and (c) maximize rental revenue at the Project by increasing tenant rents, and if applicable, contract rents and commercial rents, the maximum amount permitted under all current regulatory agreements, contracts, regulations and leases, without causing undue rent burden on residential tenants.
18			All questions in the Annual Monitoring Report submitted for this reporting period have been answered fully and truthfully; answers have been supplied for all of questions requiring detailed responses on the Annual Monitoring Narrative Worksheet and any related documents have been submitted as attachments.
19			The project has received additional equity proceeds in the amount of \$ _____ (<i>supply amount</i>) from low-income housing tax credit investors during the reporting period.
20			Accurate information has been provided in Worksheet 2 - Fiscal Activity about any Federal Program Income earned by this project during the reporting period.
21			Any amounts charged as Asset Management Fees are reflected accurately under Income & Expenses in Worksheet 2 - Fiscal Activity of the Annual Monitoring Report, and all such amounts have been used exclusively toward asset management of this project. Asset Management Fees taken beyond pre-approved levels have been documented as required in response to question 7 in Section 4 - Narrative.
22			The calculation of cash flow in Worksheet 2 - Fiscal Activity accurately reflects all expenses incurred and income earned, and the proposed distribution of any Residual Receipts would be in accordance with all relevant agreements and policies.
23			The Waiting List that has been submitted with the 2020 Annual Monitoring Report is an accurate and correct record as of the last day of the reporting period of the households who have applied to live at the Project, including the name of the head-of-household (or a suitable alternative), date of application, number of people in the household, stated household income and desired unit size.

Property and Liability Insurance

Enter the information requested below, and attach a current copy (each) of the Property and Liability Insurance Certificates. SCAN the documents and send them as an attachment along with the complete AMR to MOHCD via e-mail to: moh.amr@sfgov.org.

Property Insurance		
	Property Street Address:	
	Policy Number:	
	Policy Effective Date:	
	Policy Expiration Date:	
Liability Insurance		
	Property Street Address:	
	Policy Number:	
	Policy Effective Date:	
	Policy Expiration Date:	

Tax Certification

Enter the information requested below. You do **NOT** need to submit copies of the invoice or checks used to pay the tax.

Property Tax	
	Tax Year:
	Amount of Tax Paid:
	Date Paid:
	Amount outstanding from taxes due for Reporting Period:
	Amount outstanding from taxes due prior to Reporting Period:

***** This form must be completed by Project Owner or authorized agent. *****

The undersigned, acting under authority of the ownership of this project, executes this Certification, subject to the pains and penalties of perjury, and certifies that the foregoing is true and correct in all respects.

Signature: _____ Date: _____

Name: _____ Title: _____

EXHIBIT I

Tenant Selection Plan Policy and Tenant Screening Criteria Policy

Tenant Selection Plan Policy

This policy is in addition to the obligations to comply with applicable federal, state and local civil rights laws, including laws pertaining to reasonable accommodation and limited English proficiency (LEP),² **and the applicable provision of the Violence Against Women Act, Pub. Law 109-62 (January 5, 2006), as amended.**

Application Process

- **Application Materials.** The housing provider's written and/or electronic application materials should:
 - outline the screening criteria that the housing provider will use;
 - be in compliance with San Francisco Police Code Article 49 or the Fair Chance Ordinance,
 - outline how an applicant may request a modification of the admission process and/or a change in admission policies or practices as a reasonable accommodation;
 - be written in language that is clear and readily understandable,
- **First Interview.** In accordance with the housing provider policies, an initial interview is required to assess each applicant's minimum eligibility requirements for housing units. All applicants shall be offered the opportunity for an interview in lottery rank order.
- **Second Interview.** Before issuing a denial, the housing provider should consider offering a second interview to resolve issues and inconsistencies, gather additional information, and assist as much as possible with a determination to admit the applicant.
- **Confidentiality.** All information provided will be kept confidential and be used only by the housing provider, the referring agency and the funding agency for the purpose of assisting and evaluating the applicant in the admission process. All applicant information shall be retained for 12 months after the final applicant interview.
- **Delays in the Process.** If delays have occurred or are likely to occur in the application and screening process or the process exceeds the housing provider's normal timeline for application and screening, the housing provider must immediately inform the referring agency and the funding agency, of the status of the application, the reason for the delay and the anticipated time it will take to complete the application process.
- **Problems with the Referring Agency.** If at any point the housing provider has difficulty reaching or getting a response from the applicant and referring agency, the housing provider must immediately contact the referring agency, if possible, and the funding agency, DPH or HSA.

²See for e.g., Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), 42 U.S.C. §§ 3601, et seq.; 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7; Executive Order 13,166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000); Department of Housing and Urban Development Limited English Proficiency Guidance, 72 Fed. Reg. 2732 (Jan. 22, 2007); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 24 C.F.R. Parts 8 and 9; Title II of the Americans with Disabilities Act of 1990, as amended; California Fair Employment and Housing Act, Gov't Code §§ **12,955-12,956.2**; **Unruh Civil Rights Act, Civil Code § 51**; **California Disabled Persons Act, Civil Code § 51.4**; Dymally-Alatorre Bilingual Services Act, Gov't Code §**7290-7299.8**; **San Francisco Language Access Ordinance, No. 202-09 (April 14, 2009) 485.241/585987**

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

Reasonable Accommodation and Modification Policy

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

Reasonable Modification: Applicant may request a reasonable modification if he or she has a disability and as a result of the disability needs:

- a physical change to the room or housing unit that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site;
- a physical change in some other part of the housing site that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site.

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

The housing provider shall grant the request if the provider determines that:

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

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

Notice of Denial and Appeal Process

- The housing provider shall:
 - Hold a comparable unit for the household during the entire appeal process.
 - promptly send a written and electronic notice (to the addresses provided) to each applicant denied admission with a written and/or electronic copy to the referring agency and the funding agency. The notice should:

- list all the reasons for the rejection, including the particular conviction or convictions that led to the decision in cases where past criminal offenses were a reason for rejection;
 - explain how the applicant can request an in person appeal to contest the decision;
 - state that an applicant with a disability is entitled to request a reasonable accommodation to participate in the appeal;
 - inform the applicant that he or she is entitled to bring an advocate or attorney to the in person appeal;
 - provide referral information for local legal services and housing rights organizations;
 - describe the evidence that the applicant can present at the appeal;
 - give applicants denied admission a date within which to file the appeal, which shall be at least ten (10) business days from the date of the notice;
 - unless an extension is agreed to by the applicant and the housing provider, hold the appeal within ten (10) business days of the request for the appeal;
 - confine the subject of the appeal to the reason for denial listed in the notice;
 - give the applicant a chance to present documents and/or witnesses showing that he or she will be a suitable tenant;
 - have an impartial supervisor or manager from the housing provider, but who is not the person who made the initial decision or a subordinate of the person who made the initial decision, conduct the appeal;
 - within 5 business days of the in person appeal, provide the applicant with a written decision that states the reason for the decision and the evidence relied upon. A copy of the written decision must be sent (electronically or otherwise) to the referring agency and the funding agency.
- If the rejection is based on a criminal background check obtained from a tenant screening agency, the Fair Chance Ordinance imposes additional notice requirements.

Tenant Screening Criteria Policy

The screening criteria and considerations outlined below encourage providers to “screen in” rather than “screen out” applicants. These requirements are also designed to satisfy the requirements of San Francisco Police Code Article 49, Sections 4901-4920 or the Fair Chance Ordinance. This policy describes a minimum level of leniency; providers are encouraged to adopt less restrictive policies and processes whenever appropriate. For example, providers may opt not to review or consider applicant criminal records at all.

Screening Criteria

- Housing providers shall not automatically bar applicants who have a criminal record² in recognition of the fact that past offenses do not necessarily predict future behavior, and many applicants with a criminal record are unlikely to re-offend.
- Housing providers shall not consider:
 - arrests that did not result in convictions, except for an open arrest warrant;
 - convictions that have been expunged or dismissed under Cal. Penal Code § 1203.4 or 1203.4a;³

- juvenile adjudications.
- Housing providers shall consider:
 - the individual circumstances of each applicant; and
 - the relationship between the offense, and
 - (1) the safety and security of other tenants, staff and/or the property; and
 - (2) mitigating circumstances such as those listed below.
 - only those offenses that occurred in the prior 7 years, except in exceptional situations, which must be documented and justified, such as where the housing provider staff is aware that the applicant engaged in violent criminal activity against staff, residents or community members and/or that the applicant intentionally submitted an application with materially false information regarding criminal activity.
 - mitigating factors, including, but not limited to:
 - (1) the seriousness of the offense;
 - (2) the age and/or circumstances of the applicant at the time of the offense;
 - (3) evidence of rehabilitation, such as employment, participation in a job training program, continuing education, participation in a drug or alcohol treatment program, or letters of support from a parole or probation officer, employer, teacher, social worker, medical professional, or community leader;
 - (4) if the offense is related to acts of domestic violence committed against the applicant;
 - (5) if the offense was related to a person's disability.

² The policy recognizes that some housing may be subject to mandatory laws that require the exclusion of an applicant based upon certain types of criminal activity.

³ The purpose of the statute is allow a petitioner to request a dismissal of the criminal accusations, a change in plea or setting aside of a verdict and to seek to have certain criminal records sealed or expunged and a release "from all and disabilities resulting from the offense."

EXHIBIT J

Form of Deed of Trust

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §27383 & 27388.1 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

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

Space above for Recorder

(Assessor's Block 3739, Lots 017)

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

(Transbay Block 2 East)

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of _____, by Transbay 2 Family, L.P., a California limited partnership ("**Trustor**"), whose address is _____, to _____ ("**Trustee**"), whose address is _____, for the benefit of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California ("**Beneficiary**"). This Deed of Trust is executed pursuant to an Amended and Restated Loan Agreement by and between Trustor and Beneficiary dated as of _____, as it may be amended from time to time (the "**Agreement**"), the provisions of which are incorporated herein by reference. Unless otherwise specified, definitions and rules of interpretation set forth in the Agreement apply to this Deed of Trust.

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

a. Its leasehold interest in that real property situated in the City and County of San Francisco, State of California, described in **Exhibit A** attached hereto and

incorporated herein by reference (the "**Land**"), on which Trustor intends to construct an affordable housing project with 151 residential units thereon, the "**Project**"; and

b. all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "**Improvements**"); and

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

d. all of Trustor's interest in and under that certain Ground Lease dated as of _____, by and between Beneficiary, as lessor, and Trustor, as lessee, including any options of any nature whatsoever; and

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

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

g. all undisbursed Loan funds, and all funds now or in the future on deposit in the Replacement Reserve Account, the Operating Reserve Account and any other account required or authorized for the Project; and

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

i. all books and records pertaining to any and all of the property described above, including records relating to tenants under any Leases, the qualifications of any tenants and any certificates, vouchers and other documents in any way related thereto and records

relating to the application and allocation of any federal, state or local tax credits or benefits;
and

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

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

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

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

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

b. payment of the indebtedness evidenced by the Agreement and the Note in the original principal amount of _____ DOLLARS (\$ _____), according to the terms of the Agreement and the Note; and

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

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

a. to perform the Secured Obligations in accordance with their respective terms;

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

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

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

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

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

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

4. Insurance and Condemnation Proceeds.

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

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

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

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

5. Further Agreements. Trustor further acknowledges and agrees as follows:

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

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

Upon: (i) written request of Beneficiary stating that all obligations secured hereby have been paid or performed; (ii) Beneficiary's surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose; and (iii) payment of its fees, if any, Trustee shall reconvey the Property then held hereunder without covenant or warranty.

As additional security, and subject to the rights of senior lenders, Trustor hereby irrevocably, absolutely and unconditionally assigns to Beneficiary all Rents, whether now due, past due or to become due, subject to Beneficiary's grant to Trustor of a license to collect and retain Rents as they become due and payable so long as Trustor has not defaulted in performance of the Secured Obligations.

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

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

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

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

6. Beneficiary's Rights Following Default. Upon any default by Trustor in performance of the Secured Obligations following expiration of any applicable notice and cure periods including such notice and cure periods provided to the Investor Limited Partner ("**Event of Default**"):

- a. Trustor's license to collect and retain Rents will terminate automatically.
- b. Trustor consents to Beneficiary's entry upon and taking possession of the Property or any part thereof, at any time after the occurrence of an Event of Default without notice, either in person, by agent or by a receiver to be appointed by a court without regard to

the adequacy of any security for the indebtedness hereby secured to sue for or otherwise collect and apply Rents, less costs and expenses of operation and collection, including those of the Property, in its own name or in the name of Trustor. Beneficiary's collection and application of Rents shall not cure or waive any Event of Default or Notice of Default or invalidate any act done pursuant to any notice.

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

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

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

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

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

"TRUSTOR:"

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family LLC,
a California limited liability company

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

By: _____
Ramie Dare
Vice President

[ALL SIGNATURES MUST BE NOTARIZED.]

EXHIBIT A
(Legal Description of the Property)

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

EXHIBIT K

FORM DECLARATION OF RESTRICTIONS

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §27383 & 27388.1 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

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

Space above for Recorder

(Assessor’s Block 3739, Lot 017)

DECLARATION OF RESTRICTIONS

Transbay Block 2 East

THIS DECLARATION OF RESTRICTIONS ("Declaration") is made as of _____, 2024, by Transbay 2 Family, L.P., a California limited partnership ("Declarant") owner of a leasehold interest in the land described in Exhibit A attached hereto (the "Property"), in favor of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California, commonly referred to as the Office of Community Investment and Infrastructure ("OCII", including any successors or assigns). The restrictions and covenants stated herein shall bind Declarant and its successors and assigns and shall be enforceable by OCII and its successors and assigns.

RECITALS

A. OCII and Declarant have entered into that certain Ground Lease dated _____ (the "Ground Lease") and an Amended and Restated Loan Agreement dated as of _____, 2024 (as it may be amended from time to time, the "**Loan Agreement**"). The Ground Lease and Loan Agreement obligate Declarant to develop the Property as low-income housing (the "Project"). Definitions and rules of interpretation set forth in the Loan Agreement apply to this Declaration, unless otherwise noted.

OCII and Declarant entered into the Loan Agreement to finance costs associated with the development of the Project). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

B. Pursuant to the Ground Lease and the Loan Agreement, Declarant has agreed to comply with certain affordability and other use and occupancy restrictions contained herein commencing on the date on which a certificate of occupancy is issued for the Project, and continuing for the Life of the Project (the "**Compliance Term**"), even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed.

AGREEMENT

Now, therefore, in consideration of OCII's agreement to fund in accordance with the OCII Documents, Declarant agrees as follows:

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

1. With the exception of one manager's unit, Declarant covenants that all residential units in the Project will at all times be occupied, or held vacant and available, for rental only to households who qualify as Qualified Tenants at initial occupancy, specifically:

Unit Size	No. of Units	Maximum Income Level
Studio	17	60% of AMI*
1 bdrm	3	40% of AMI
1 bdrm	8	50% of AMI
1 bdrm	41	60% of AMI
1 bdrm	23	80% of AMI
1 bdrm	1	Manager Unit (unrestricted)
2 bdrm	2	40% of AMI
2 bdrm	22	50% of AMI
2 bdrm	16	60% of AMI
2 bdrm	13	80% of AMI
2 bdrm	1	Manager Unit (unrestricted)
3 bdrm	1	40% of AMI
3 bdrm	10	50% of AMI
3 bdrm	26	60% of AMI
Total	184	

* AMI has the meaning established in the body of the Loan Agreement.

2. In addition to a tenant's qualification as a Qualified Tenant, the total amount for rent and utilities charged to a Qualified Tenant may not exceed either:

i. thirty percent (30%) of the Maximum Income Level specified in the foregoing table; or

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

iii. Maximum income levels, as adjusted pursuant to Articles 6, 7, and 9 of Ground Lease

B. Survival of Restrictions.

(1) The affordability restrictions and covenants herein shall remain in effect for the Life of the Project and shall survive the termination of the Loan Agreement, even if the loan under the Loan Agreement is repaid or otherwise satisfied or the Deed of Trust is reconveyed. Subject to the provisions of subsection (2) below, these affordability restrictions and covenants shall remain in first position and shall not be subordinated to the lien of any deed of trust or other financing, unless OCII determines, in its sole discretion, that subordination is necessary to secure adequate financing to ensure the viability of the Project.

(2) Unless otherwise prohibited by the Redevelopment Plan, the occupancy and rent restrictions of Section A herein may be altered only to the minimum extent required to meet the requirements of Section 42 of the United States Internal Revenue Code or as otherwise determined by OCII, each in its reasonable discretion, but in any event to include rent levels affordable to households earning no greater than 60% of AMI. The relief provided by the foregoing shall not be construed as authorizing Declarant to exceed any income or rent restriction imposed on the Project by CDLAC, TCAC or any other applicable agreement, and Declarant warrants that it shall have obtained any necessary approvals or relief from any other applicable income and rent limitations prior to implementing the relief provided by this Section. In addition, upon foreclosure (or acceptance of a deed in lieu thereof) under any security interest in the Project (including the Ground Lease) to which OCII has subordinated its own security interest therein, and notwithstanding anything to the contrary contained in either (i) this Declaration (including Section A); or (ii) the Ground Lease, the sole limitation on rental and occupancy of Units in the Project shall be that all residential units (except the manager's unit) shall at all times be occupied by Qualified Tenants and the monthly rent paid by such Qualified Tenants shall not exceed: (a) 50% of the Maximum Income Level (adjusted to 60% of AMI as permitted in this Section), (b) less utility allowance.

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

D. This Declaration may be amended only with the prior written approval of OCII, and any attempt to otherwise amend this Declaration shall be void or voidable at OCII's sole discretion.

E. This Declaration and the Regulatory Obligations constitute covenants running with the land, including the leasehold interest and bind successors and assigns of Declarant and any non-borrower owner and lessee of the Property. In the event that Declarant fails to comply with the covenants and restrictions of this Declaration, including without limitation the Regulatory Obligations, to OCII's satisfaction, in its sole discretion, within thirty (30) days of Declarant's receipt of written notice from OCII to so comply, if Declarant has not diligently begun efforts to

comply, OCII at its option may exercise any rights available at equity or in law, including, without limitation, institute an action for specific performance. Declarant shall pay OCII's costs in connection with OCII's enforcement of the terms of this Declaration, including, without limitation, OCII's reasonable attorneys' fees and costs.

(document continues on following page)

Declarant has executed this Declaration as of the date first written above.

DECLARANT:

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family LLC,
a California limited liability company,
its managing general partner

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

By: _____
Ramie Dare
Vice President

EXHIBIT A

(Legal Description of the Property)

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

EXHIBIT L

SCHEDULE OF PERFORMANCE

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
1.	Acquisition/Predev Financing Commitment	June 2021	Complete
2.	Site Acquisition (Ground Lease)	May 2024	July 2024
3.	Development Team Selection		
a.	Architect	November 2020	Complete
b.	General Contractor	June 2021	Complete
c.	Owner's Representative	April 2021	Complete
d.	Property Manager	November 2020	Complete
e.	Service Provider	November 2020	Complete
4.	Design		
a.	Submittal of Schematic Design & Cost Estimate	November 2022	Complete
b.	Submittal of Design Development & Cost Estimate	August 2023	Complete
c.	Submittal of 50% CD Set & Cost Estimate	November 2023	Complete
d.	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	February 2024	March 2024
5.	Commercial Space		
a.	Commercial Space Plan submission (preliminary)	May 2023	Complete
b.	Commercial Space Plan submission (updated)	February 2024	March 2024
c.	LOIs executed (target)	May 2024	N/A
6.	Environ Review/Land-Use Entitlements		
a.	CEQA Environ Review Submission	October 2022	Complete
7.	PG&E		
a.	Temp Power Application Submission	March 2023	Complete
b.	Perm Power Application Submission	November 2022	Complete
8.	Permits		
a.	Building/Site Permit Application Submitted	November 2022	Complete
b.	Foundation Addendum Submitted	December 2023	February 2024
c.	Superstructure Addendum Submitted	December 2023	February 2024
9.	Request for Bids Issued	February 2024	April 2024

10.	Service Plan Submission		
a.	Preliminary	May 2023	Complete
b.	Final	March 2024	July 2024
11.	Additional City Financing		
a.	Gap Financing Application	June 2023	Complete
12.	Other Financing		
a.	HCD IIG Application	July 2023	Complete
b.	Construction Financing RFP	November 2023	Complete
c.	AHP Application	March 2024 or March 2025	March 2025
d.	CDLAC/TCAC Application	September 2023	Complete
e.	LOSP Funding Request	November 2024	February 2025
13.	Closing		
a.	Construction Loan Closing	May 2024	July 2024
b.	Conversion of Construction Loan to Permanent Financing	December 2026	April 2027
14.	Construction		
a.	Notice to Proceed	May 2024	July 2024
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	May 2026	October 2026
15.	Marketing/Rent-up		
a.	Early Outreach Plan Submission	June 2024	September 2024
b.	Marketing Plan Submission	November 2024	May 2025
c.	Commence Marketing	December 2025	March 2026
d.	95% Occupancy	December 2026	March 2027
16.	Cost Certification/8609	December 2027	March 2028
17.	Close Out MOH/OCII Loan(s)	December 2027	March 2028

EXHIBIT M

OCII MONTHLY PROJECT UPDATE FORM

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

THE PURPOSE OF THESE UPDATES IS TO TRACK PROJECT PROGRESS

1. *during pre-construction*
2. *on non-construction issues during construction, and*
3. *after regular monthly construction meetings have ended*

Project Summary Information

Project:	
Sponsor:	
# Units:	
Target Population:	

Monthly Update

Month Covered:	Date of Report:
Completed by:	
Estimated Construction Start Date (if changed from previous update, please explain):	
Estimated Total Development Cost (if changed from previous update, please explain):	
Projected OCII gap commitment (excluding MOH funding committed to date): Expected date when OCII gap funding needed: Month _____ Year _____	
Procurement and bidding (architect, consultants and contractors)	
Entitlements, permits and utilities (OCII, Planning Dept., DBI, SFFD, DPW, SFWD, MOD, PG&E and DRE)	
Major issues OCII needs to be aware of, including anything that may require OCII's involvement	

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

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

FOR OCII STAFF USE ONLY

Major issues, delays, etc.

Items for discussion with Director

EXHIBIT N

Developer Fee Schedule

Total Developer Fee:	\$3,040,000	
Project management fee paid to date:	\$550,000	50%
Amount of remaining project management fee:	\$550,000	50%
Amount of fee at risk (the "At Risk Fee"):	\$1,400,000	
Amount of deferred fee:	\$540,000	
Milestones for disbursement of that portion of Developer Fee remaining and payable for Project Management	Amount Paid at Milestone	Percentage Project Management Fee
During predevelopment	\$96,250	50%
Close of construction financing	\$220,000	20%
Construction completion	\$220,000	20%
Project close-out	\$110,000	10%
Milestones for Disbursement of that portion of Developer Fee defined as At Risk Fee		Percentage At Risk Fee
100% lease up and draft cost certification	\$280,000	20%
Permanent conversion	\$700,000	50%
Project close-out	\$420,000	30%

EXHIBIT O

Assignment of Work Product

FOR VALUE RECEIVED, Transbay 2 Family, L.P., a California limited partnership (“Borrower”) does hereby sell, assign, pledge, transfer and set over to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, (“Agency”) all of its rights, title and interest in and to that certain architect’s agreement (“Agreement”) entered into by and between Borrower and Kennerly Architecture and Planning and any other contracts entered into between Borrower and any licensed design profession or engineer (“Architect” or “Engineer”), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto (“Plans”) prepared by the Architects and Engineers for the account of Borrower in connection with the development of approximately 184 units of affordable rental housing at Transbay Block 2 East (“Project”). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amount of [\$58,461,845.00].

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

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

Borrower hereby represents and warrants to Agency that no previous assignment of its interest in the Agreement and the Plans has been made, and Borrower agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Agreement and the Plans so long as this Assignment is in effect.

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

(document continues on following page)

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed on _____, 2024.

BORROWER:

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family, LLC,
a California limited liability company

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

By: _____
Ramie Dare
Vice President

EXHIBIT P

Consent to Assignment

FOR VALUE RECEIVED, **Transbay 2 Family, L.P.**, a California limited partnership, (“Borrower”) does hereby sell, assign, pledge, transfer and set over to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, (“Agency”) all of its rights, title and interest in and to that certain architect’s agreement (“Agreement”) entered into by and between Borrower and Kennerly Architecture and Planning (“Architect”) and any other contracts entered into between Borrower and any licensed design professional or engineer ("Architect" or Engineer"), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto (“Plans”) prepared by the Architect(s), Engineer(s) and others for the account of Borrower in connection with the development of approximately 184 units of affordable rental housing at Transbay Block 2 East (“Project”). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amounts of \$58,461,845.00.

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

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

Dated: _____, 2024

ARCHITECT:

Kennerly Architecture & Planning

By: _____

Name: _____

Title: _____

(signatures continue on following page)

ENGINEER:

By: _____

Name: _____

Title: _____

(signatures continue on following page)

ENGINEER:

By: _____

Name: _____

Title: _____

EXHIBIT Q

Legal Description of the Site

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

EXHIBIT R

Final Financial Plan Confirmation Letter

To be attached on or before the Loan Closing Date

EXHIBIT S

Operational Rules for San Francisco Housing Lotteries and Rental Lease-Up Activities

The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities may be found in the current version of the Housing Preferences and Lottery Procedures Manual which is incorporated herein by this reference and may be downloaded from the Mayor's Office of Housing and Community Development website at the following link:

[https://sfmohcd.org/sites/default/files/Documents/MOH/Lottery Preferences/Lottery Preferences Manual.pdf](https://sfmohcd.org/sites/default/files/Documents/MOH/Lottery%20Preferences/Lottery%20Preferences%20Manual.pdf)

EXHIBIT T-1

Early Outreach Plan Template

**Form of Early Outreach Plan for Initial Lease Up or Sale of Units (2016 edition)
Projects Approved by the Office of Community Investment and Infrastructure (OCII)**

*City and County of San Francisco
Mayor's Office of Housing and Community Development (MOHCD)
Working as OCII's agent*

This plan is subject to OCII and/or its agent's (MOHCD's) review within 10 business days from the date it is received and complete. **Please set all dates in this plan so that no date commences sooner than 30 working days before the date of your plan submission.**

Please complete and return this form in computer "Microsoft Word" document format so that our office may track changes directly onto the document. The approval process typically involves a back-and-forth process between OCII and/or its agent, and the developer's representative. Please do not submit incomplete plans. This plan may be updated from time to time at the discretion of OCII and/or its agent. Thank you.

Special Note: Projects initially approved by OCII will be transferred to MOHCD for long-term marketing and asset management after project completion.

I. General Information *(Suggestion: Cut and paste sections I - VIII from this form into your marketing plan. This is the exact information required to be included.)*

I/We agree that ("Developer's Name") goal is to ensure that all applicants are screened using consistently applied, fair criteria, to provide a desirable, well-maintained and affordable place to live for an economically, racially, and ethnically integrated resident population, while complying with the provisions of any federal, state, or local law prohibiting discrimination in housing on the basis of race, religion, sex, color, family status, disability status, national origin, marital status, ancestry, gender identity or sexual orientation, source of income, or HIV/AIDS status.

In order to inform the public, owners, and prospective tenants/buyers about federal fair housing laws and affirmative fair marketing procedures per the (insert relevant contractual document with OCII), ("Developer's Name") will include the Equal Housing Opportunity logotype and/or slogan, and a logotype indicating accessibility to the disabled, in all press releases, solicitations, and program information materials.

Today's Date	
Proposed Outreach Launch Date (Must be no sooner than 30 days from the date of first submission)	
Name of Building	

Property Address (Street address used for marketing and mailing to new renters / buyers)	
Property Address as Stated in Planning Approval	
Planning Motion Number	
Notice of Special Restrictions Document #, Disposition and Development or Owner Participation Agreement # or Loan Agreement #	
Other Relevant Document(s)	
Name of City and Co. of SF Planner	

The following developer contact information for is for internal use only.

Name of Developer	
Developer Address	
Developer Phone	
Developer Email	

Name of Marketing Company	
Marketing Agent	
Marketing Agent Address	
Marketing Agent Phone	
Marketing Agent Email	

Date of Building Permit Issuance	
Expected Issuance Date of Temporary	

Certificate of Occupancy	
Expected Issuance Date of Final Certificate of Occupancy	
Date on Which You Expect Affordable Units to Begin Occupancy	
Date on Which You Expect All Affordable Units to Complete Occupancy	

The section below applies to rental projects only.

List all Sources of Government Financing for the Project (e.g. CDLAC, TCAC, HUD Loan, Infill Grant, etc.)	
If there is a source of government financing, how long and at what % Area Median Income must your units be restricted as rental units under this financing?	
Are your units condo mapped (i.e. subdivided) through the Department of Real Estate?	
Do you intend to convert to ownership units in the future? Please explain.	

II. Overall Building Composition

Total # Units in Building (including affordable)	
Number of Residential Floors in the Building	

III. Market Rate Units (if applicable)

Unit Type	Total #
SRO	

Studio	
Jr. 1 Bedroom	
1 Bedroom	
1+ Bedroom	
2 Bedroom	
2+ Bedroom	
3 Bedroom	
3+ Bedroom	
4 Bedroom	
Other	

- IV. Affordable Units

Total # affordable (only) Units in Building	
---------------------------------------------	--

- AFFORDABLE UNITS BY BEDROOM SIZE

Unit Type	Total #	Minimum Household Occupancy Size	*Maximum Household Occupancy Size
SRO			
Studio			
Jr. 1 Bedroom			
1 Bedroom			
1+ Bedroom			
2 Bedroom			
2+ Bedroom			
3 Bedroom			
3+ Bedroom			
4 Bedroom			
Other			

*Please note that children under 6 years do not count toward household size.

- DETAILED DESCRIPTION OF AFFORDABLE UNITS BY BEDROOM SIZE

Refer to Area Median Income Levels Set by MOHCD/ OCII for Table Below.

Unit #	Bedroom Count	Bath Count	Square Feet	Please Indicate if Unit Accessible or Adaptable (including Visually or Hearing Impaired)	% Area Median Income Limit	For rent units: Min. Monthly Household Income Required (ex: 2 or 2.5 times rent)	For sale units: Min. Down payment Required (BMR program requires only 5%)

V. Renter / Buyer Outreach

I/We understand that it is our responsibility to read and understand the rules of the regulatory agreement(s) for this development as well as the marketing and outreach policies set forth by OCII.

At least 18 months, and 8 months prior to initiation of the affirmative marketing obligations or other public advertising and marketing of the Affordable Housing Units, (as the term is defined in the relevant development agreement(s)), the Developer shall provide occupancy preference, prioritized by the applicant category (based on a list developed by Developer and OCII and/or its agent) below.

Advanced notice (the “Advance Notice”); however, must be provided through a series of three postcards to Certificate of Preference Holders (COP). Two of the three total postcards shall alert COP preference holders during (the “Advance Notice Period”) of affordable and/or market rate housing opportunities in the Project that will become available:

1. COP Postcard Template 1, shall also encourage those interested to seek a housing counseling agency to assist with advanced preparation for qualifying.
2. COP Postcard Template 2, shall market workshops specific to qualifying for the Project in conjunction with your chosen housing counseling agency, and may include a description of the housing, and income qualifications for tenancy or ownership.
3. The third and final postcard shall align with the open marketing period and include notification about the information session, lottery, and how to apply (see marketing plan).

Once postcards are approved by the COP Coordinator, the Developer/ Marketing Agent shall deliver the postcards in a quantity specified by the COP Coordinator corresponding with current number of Active COP holders. Postcard mailings shall coincide with marketing intervals as described in section VII. Application/Selection Process and Timeline. The Developer/ Marketing Agent will be invoiced for associated costs such as labels, and postage after each mailing. The Return Address side of the postcard must have matt finish to allow for postage metering.

The outreach materials will include the following information, as applicable:

1) Occupancy Preferences (Verify with OCII and/or its agent)

Preference will be given to:

Preference	Applicant Category
1	Persons Displaced by Project Activity
2	Certificate of Preference Holders: a. Western Addition b. Hunters Point
3	Displaced Tenant Housing Preference
	Neighborhood Resident Housing Preference
4	San Francisco Residents or Workers
3	All Others

2) POST CARD TEMPLATE 1 & 2

1. Anticipated occupancy date
2. A description of the total number of Affordable Units in the Project;
2. List Housing Counseling Agency and/or workshop dates to assist prospective applicants.

Side One:



**Coming Summer, Spring, Fall,
Winter YEAR!
Affordable Homes for Rent or Sale
in San Francisco**

**Two-bedroom and three-bedroom rental or ownership
units at Lakeside Village in the XX Neighborhood
coming soon!**

For more information about the COP Program, please call 415-701-5526.

Side Two:

Return Address:

San Francisco Mayor's Office of Housing and Community Development
1 South Van Ness, 5th Floor San Francisco, CA 94103

Beautiful new Lakeside Village apartments or homes with modern design + amenities coming XXXXXXXX! Affordable apartments or homes available to households at an affordable price.

Get prepared now! For help with credit repair, building savings for your deposit, maintaining financial documentation and any housing need that requires time, effort and care contact:

XXXX Housing Counselor
(415) 701-1022 or www.sfxxx.org
Lakeside Village specific workshops coming February 2019.



Reserve for COP mailing label



COP Postcard Template 2

Side One:



**Coming Summer, Spring, Fall,
Winter YEAR!
Affordable Homes for Rent or Sale
in San Francisco**

**2 two-bedroom + 3 three-bedroom rental or ownership units
available at
Lakeside Village, in the XX neighborhood at
1125 Laurel Court, San Francisco, CA 94124 coming soon!**

For more information about the COP Program, please call 415-701-5526.

Side Two:

Return Address:

San Francisco Mayor's Office of Housing and Community Development
1 South Van Ness, 5th Floor San Francisco, CA 94103

Beautiful new Lakeside Village apartments or homes with modern design + amenities coming XXXXXXXX! Affordable apartments or homes available to households at an affordable price.

Get prepared! Free workshops to help you qualify:

XXX Housing Counselor
(415) 701 – 1022 or www.sfxxx.org
"Rental Readiness" Tuesday 3/20 5-7pm

XXX Housing Services
(415) 701 – 5353 or www.hsxxx.org
"How to make 1125 Laurel Court home" Thursday 3/15 6-8pm



Reserve for COP mailing label



• **VI. Marketing Strategy**

- a) Beginning in the early outreach period and through the **lease up** of BMR units, the Developer is required to work with a Housing Counseling Agency to assist with counseling. The Developer must identify a Housing Counseling Agency in the list below. Please note the top two Housing Counseling Agencies listed have an ongoing relationship with the current population of Certificate of Preference holders:

San Francisco Housing Development Corporation (SFHDC)
Contact: Sheri Powers (415) 822-1022

Bayview Senior Services (BVSS)
Contact: Cathy Davis (415) 647-5353

SF LGBT Community Center (415) 865-5555
Veteran's Equity Center (415) 255-2347
Mission Economic Development Agency (415) 282-3334
Consumer Credit Counseling of San Francisco (800) 777-7526
Asian, Inc. (415) 928-5910

The scope of work should include the services below:

Rental Scope of Work:

To provide comprehensive outreach and marketing services integrating with education, individualized support, group workshops, and peer-support counseling to ensure COP holders have the opportunity to be prospective residents in your development..

List of services include:

- Outreach and affirmative marketing with an emphasis on Certificate of Preference holders
- Housing placement
- Budgeting and Asset Building
- Credit counseling which should address any credit issues
- Housing education
- One on one follow ups
- Tenant counseling
- Financial education including credit building techniques
- Rental application assistance and preparation
- Eviction prevention
- Workshops for application process, income eligibility, down payment requirements, credit checks, etc.
- Workshop for COP holders
- Housing rights
- Fair housing rights
- Landlord/ tenant relations and issues

Please provide any additional scope or recommendations you may have to help COP holders to be prospective residents in your development.

- b) Beginning in the early outreach period and through the **sale** of BMR units, the Developer is required to work with a Housing Counseling Agency to assist with counseling. The Developer must identify a MOHCD-approved Housing Counseling Agency in the list below. Please contact HomeownershipSF Shannon Way at (415) 202-5464 for assistance. Please note the top Housing Counseling Agency listed has an ongoing relationship with the current population of Certificate of Preference holders:

San Francisco Housing Development Corporation (SFHDC)
Contact: Sheri Powers (415) 822-1022

Bayview Hunters Point Multipurpose Senior Services, Inc. (415) 822-1444
SF LGBT Community Center (415) 865-5555
Mission Economic Development Agency (415) 282-3334
Balance (800) 777-7526
Asian, Inc. (415) 928-5910

Please also refer to www.homeownershipsf.org for more information about HomeownershipSF Housing Counseling Agencies.

Ownership Scope of Work:

To provide comprehensive outreach and marketing services integrating with education, individualized support, group workshops, and peer-support counseling to ensure COP holders have the opportunity to apply to and secure housing in your development.

List of services include:

- Outreach and affirmative marketing with an emphasis on Certificate of Preference holders
- Individual pre-purchase counseling housing workshops
- One on one follow ups
- Budgeting and Asset Building
- Financial education including credit building techniques
- Credit counseling which should address any credit issues
- Homebuyer application assistance and preparation
- Workshops for application process, income eligibility, down payment requirements, credit checks, etc.
- Housing rights
- Fair housing rights

Please provide any additional scope or recommendations that will help find and prepare prospective residents.

Outreach Materials (i.e. post cards)

I/We understand that our project must provide a post card **as a part of this submission** for the AFFORDABLE units available that includes the following information. (Please refer to sample template in section V. Renter / Buyer Outreach)

- Certificate of Preference and Displaced Tenant Housing Preference indication (if applicable)
- Exterior and interior photo of the development
- Information on workshops
- Fair Housing logo
- Equal Opportunity logo

Please attach the Memorandum of Understanding you have negotiated with the Housing Counseling Agency.

Outreach to Certificate of Preference Holders

- I/We understand that we are responsible for marketing our Affordable Rental or Homeownership units to Certificate of Preference holders. Certificate of Preference holders are primarily households displaced in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action. For more information, applicants may contact 415-701-5526.

I/We understand that I/we shall provide post cards for the mailing of an affordable housing announcement to all Certificate of Preference holders. We are responsible for printing the post cards, once approved by the COP Outreach Coordinator. OCII and/or its agent shall coordinate

the mailing and invoice the developer for the full cost of the first class mailing, including postage and labels.

-
- **VII. Application/Selection Process and Timeline**

I have read the City and County of San Francisco’s Operational Rules for San Francisco Housing Lotteries and Rental Lease-up Activities (Exhibit S) and understand the application, selection, preparation and review and Lottery process.

[Please complete the following timeline as part of your Plan]

Timeline of Entire Process (add info as needed)

TASK	TIME FRAME	DATE
OCII provides developer with: <ul style="list-style-type: none"> • Early Outreach Plan and Marketing Plan (which includes Tenant Selection Criteria) (“Plans”) template • Fair Chance Ordinance link on HRC website • Operational Rules for Lotteries & Lease Up (another exhibit of the DDA or Loan Agreement or other relevant document) • Link to list of rental readiness service providers who can assist potential applicants or Homeownership SF if for-sale project 	Developer will have template prior to or by construction commencement. Developer must submit <i>draft</i> Early Outreach and Marketing Plans 30 days after construction commencement.	
Developer provides OCII and/or its agent (MOHCD) with the Early Outreach Plan	At least 1 month after construction commencement	
OCII and/or its agent reviews Outreach Plan for accurate project information, partnering with a community outreach organization, and consistency with template.	OCII will provide approval no later than 10 business days after final draft is received.	
OCII and/or its agent reviews and approves Outreach Plan	Approval is provided within 5 business days.	
Early Outreach begins: <ul style="list-style-type: none"> • OCII and/or its agent monitors developer’s progress on Early Outreach timeline and activities 		
Developer provides OCII and/or its agent with Early Outreach marketing materials and OCII and/or its agent does 1 st of 3 COP mailings <ul style="list-style-type: none"> • Notice of Workshop dates to come, • encouragement to contact housing counseling agency • help with credit repair • asset building • maintaining financial documentation etc. 	3 months after construction commencement or 18 to 12-months prior to the anticipated Temporary Certificate of Occupancy (“TCO”).	
Developer submits refined draft Marketing Plan. Upon receipt of draft Marketing Plan, OCII notifies its agent, if any, that the tenant selection and marketing plans are forthcoming. (If no agent represents OCII proceed to next task below.)	18-months prior to the anticipated Temporary Certificate of Occupancy (“TCO”).	

OCII reviews Plan for consistency with development agreements (loan agreements, VDDAs, DDAs, OPA/DDAs), including appropriate rent ranges, AMIs and occupancy preferences, engages with developer if any discrepancies, and confirms with its agent, if any, first draft of plan is consistent with applicable agreement, and sends to its agent, if any.	Within 30 days of receipt of plan (no later than 45 days after receipt of draft plan) OCII sends to plan to MOHCD	
OCII and/or its agent meet with leasing agent and Access to Housing Partner to go over all marketing, lease-up & lottery processes	After draft Marketing Plan (with the Tenant Selection Criteria) are approved and before marketing plan is finalized and approved	
OCII and/or its agent approves revised draft Plans & transmits Marketing Plan approval to developer	Within 60 days after the receipt of the Marketing Plan	
Developer provides OCII and/or its agent with marketing materials and OCII and/or its agent does 2 nd of 3 COP mailings <ul style="list-style-type: none"> • Notice of project specific Workshop dates • Get prepared, free workshops to help with qualification • Unit specific, # of units etc. 	5-8 months before TCO	
OCII and/or its agent requests any/all Plan updates from developer with finalized dates and actual pricing	7 months before lease up/sales	
Developer submits final plan and COP postcard to OCII and/or its agent <ul style="list-style-type: none"> • OCII and/or its agent does 3rd of 3 COP mailings • Notice of open Marketing period • Unit specific, rent, # of units etc. • Information sessions • Open house dates • lottery 	30-day period, 6 months sales	
For projects where lease-up begin between Jan-May: If a new AMI has been published since the first draft of the Marketing Plan was created, then OCII will determine if the new AMI & Rent limits should be used in the final version of the marketing Plan. Alert OCII and/or its agent if the AMI numbers are revised.	Same 30-day period as above	
Developer sends advertisements to OCII and/or its agent for review and approval	Same 30-day period as above	
OCII and/or its agent considers final Marketing Plan with advertisements for approval <ul style="list-style-type: none"> • Final postcard to be delivered week prior to open marketing period. 	Same 30-day period as above	
Marketing Period begins. OCII and/or its agent does COP mailing and posts to website, housing alert system; Front Desk	90 days before sales	
Marketing period	28 days (rent) / 45 days (homeownership)	
OCII and/or its agent confirms DTHP & COP	Prior to applicant interviews	

OCII attends a specialized rental readiness workshop session for COP holders)	When scheduled	
OCII fields consumer complaints and works with leasing agent to address pre-lottery issues	As needed	
Lottery –OCII and/or its agent assists developer	Three weeks after marketing period ends	
Developer follows MOHCD’s post-lottery instructions which includes but are not limited to, reaching out to applicants in lottery rank order.		
Lease-up / Sales begin <ul style="list-style-type: none"> The appeals process needs to be included on the application, next to the signature line and in every denial letter sent to applicants 		
If applicant files an appeal: <ul style="list-style-type: none"> Developer tracks the appeal on weekly lease-up/sales list Developer hears the appeal Before 2nd denial is sent OCII and/or its agent needs to review file 		
OCII and/or its agent reviews all denials and confirms Developer is correct in calculations and following marketing procedures		
OCII’s agent, if any, alerts OCII to problems/concerns with lease-up. (If no agent represents OCII proceed to next step below.)		
OCII addresses lease-up / sales issues with Developer		
OCII addresses lease-up / sales issues with consumers and hears denial appeals after initial review by OCII and/or its agent		
Developer provides OCII and/or its agent with a clean copy of the Final Waitlist		

VIII. Document Review

I/We certify that I/we and all agents involved in the process of renting affordable units have read applicable documents.

Representative (sign) _____

Representative (print) _____

Title (print) _____

Company (print) _____

Date (print) _____

EXHIBIT T-2

Marketing Plan Template and Tenant Selection Plan Template
City and County of San Francisco
Mayor’s Office of Housing and Community Development (MOHCD)

Marketing and Tenant Selection Plan for Initial Rental Units

This marketing and tenant selection plan is subject to City review within 15 business days from the date it is received and complete. **Please set all advertising dates in this plan so that no date commences sooner than 45 calendar days from the date of your plan submission.**

Please complete and return this form as a “Word” document so that our office may track changes directly onto the document. The approval process typically involves a back-and-forth process between MOHCD and the developer’s representative. Please do not submit incomplete plans. This marketing and tenant selection plan may be updated from time to time at the discretion of MOHCD.

I. General Information

Our goal is to ensure that all applicants are screened using consistently applied, fair criteria, to provide a desirable, well-maintained and affordable place to live for an economically, racially, and ethnically integrated resident population, while complying with the provisions of any federal, state, or local law prohibiting discrimination in housing on the basis of race, religion, sex, color, family status, disability status, national origin, marital status, ancestry, gender identity or sexual orientation, source of income, or HIV/AIDS status.

In order to inform the public, owners, and prospective tenants about federal fair housing laws and affirmative fair marketing procedures per the MOHCD Loan Agreement, we will include the Equal Housing Opportunity logotype and/or slogan, and a logotype indicating accessibility to the disabled, in all press releases, solicitations, and program information materials.

Today’s Date	
Proposed Marketing Launch Date (Must be no sooner than 45 days from the date of first marketing plan submission)	
Name of Building	
Property Address (Street address used for marketing and mailing to new renters)	

Property Address as Stated in Planning Approval	
Planning Motion Number	
Loan Agreement Name & Date	If multiple MOHCD/OCII loan agreements, list all agreement names and dates.
Name of City and Co. of SF Planner	

The following developer contact information for is for internal use only.

Name of Developer	
Developer Address	
Developer Phone	
Developer Email	

Name of Marketing Company	
Marketing Agent	
Marketing Agent Address	
Marketing Agent Phone	
Marketing Agent Email	

Date of Building Permit Issuance	
Expected Construction Completion Date	
Expected Issuance Date of Temporary Certificate of Occupancy	
Expected Issuance Date of Final Certificate of Occupancy	
Actual Issuance Date of Temporary Certificate of Occupancy	

Actual Issuance Date of Final Certificate of Occupancy	
Date on which you expect units can be occupied	

List all Sources of Government Financing for the Project (e.g. CDLAC, TCAC, HUD Loan, Infill Grant, etc.)	
If there is a source of government financing, how long and at what % Area Median Income must your units be restricted as rental units under this financing?	Please include: Funder name, % AMI restriction(s), Number of units at each income level, and Date when restrictions end

II. Overall Building Composition

Total # Units in Building (including affordable)	
Number of Residential Floors in the Building	
Number of Commercial Floors in the Building	

III. Market Rate Units *(if applicable)*

Unit Type	Total #	Rent Range of Market Rate Units
SRO		
Studio		
Jr. 1 Bedroom		
1 Bedroom		
1+ Bedroom		
2 Bedroom		
2+ Bedroom		
3 Bedroom		
3+ Bedroom		
4 Bedroom		
Other		

- **IV. Affordable Units**

Total # of affordable units in building	
Total # of manager/staff units <i>(if applicable)</i>	

- *Attach the excel template named "DAHLIA-Unit Table" containing detailed information about the units*

V. Renter Qualifications

We understand that it is our responsibility to read and understand the rules of the Regulatory Agreement(s) for this development as well as the marketing and outreach policies set forth by the City and County of San Francisco Mayor's Office of Housing and Community Development.

You must attach a resident selection criteria document for our review in addition to completing the section below. The resident selection criteria must also specify any preferences or program-specific resident selection criteria applicable to the project, such as lottery preferences, and/or Access Point referrals from the Human Services Agency or Department of Public Health for Local Operating Subsidy Program units, etc. The resident selection criteria must also incorporate references to the Fair Chance Ordinance and how criminal background checks will not be used until after all other qualifications have been reviewed. The resident selection criteria should also include the following information as applicable:

3) Applicant Eligibility Criteria

All applicants must qualify based upon:

- Commitment to use the unit as the principal residence.
- Commitment to participate in rental restrictions and compliance recertification.
- Insert project specific eligibility information (household size, income, age, etc.)

4) Occupancy Preferences

Insert, project-specific preference chart, per the project's OCII Loan Documents and/or Ground Lease:

SAMPLE:

Preference	Applicant Category
1	Persons Displaced by Project Activity
2	Certificate of Preference Holders: c. Western Addition d. Hunters Point
3	Displaced Tenant Housing Preference (20% Set Aside)
4	Neighborhood Resident Housing Preference (40% Set Aside)
5	Live or Work in San Francisco Preference
6	All Others

For more information about the lottery process and housing preferences, please refer to the MOHCD Housing Preferences and Lottery Procedures Manual.

5) Local Operating Subsidy Program

If your project is receiving Local Operating Subsidy Program ("LOSP") funds from Department of Homelessness and Supportive Housing for designated LOSP units, then describe the total number of units and number of units receiving the LOSP subsidy along with the referral process for those units. Please insert the following language:

“Certificate of Preference Holders who meet eligibility for HSH’s LOSP units will have priority status over other LOSP applicants. Certificate holders will be required to apply for the LOSP units by going through the HSH designated Access Sites/Points for LOSP eligibility screening.”

6) Basis of Disqualification for Lottery Winners

Please list the reasons for which a household could be disqualified. Please note that you must abide by Article 49 of the San Francisco Police Code (Fair Chance Ordinance): <http://sf-hrc.org/fair-chance-ordinance>.

Please complete with each ground for disqualification. Be specific.

Ability to pay rent standard –
Credit Standard (credit may only be ran after income qualification)–
Rental History Standard –
Criminal History Standard –
Maximum Household Size Standard –
Other -

7) Mitigating Circumstances

Please describe your mitigating circumstances policy and procedures.

8) Reasonable Accommodations

Please include instructions on filing a Request for a Reasonable Accommodation; guidelines for considering and evaluating a Request for Reasonable Accommodation, and the appeal process.

9) Grievance Policy

Your Grievance Policy must be available to all applicants. Please review the sample language and list your Grievance Policy below:

SAMPLE GRIEVANCE POLICY:

“If, at any time during the application process, you feel that your rights, duties, welfare, or status are or may have been adversely affected by (“Developer’s Name and/or Service Provider’s”) action or failure to act, you may submit your grievance for informal or formal review. You may call (insert phone #) and leave a voicemail if necessary, and your call will be returned as soon as possible, but no later than 3 business days after your call date. If your grievance is not resolved at that point, you may request an informal hearing, which is a meeting with the (“Developer’s Name and/or Service Provider”) Staff and Director. The goal of the informal hearing is to settle the problem without the need for a formal hearing. In the event the problem is not settled, you are entitled to request a formal hearing. A formal hearing is between you and (“Developer’s Name and/or Service Provider”), and a designated member of MOHCD. To request a formal hearing, you must already have attempted to resolve the issue with the

(“Developer’s Name and/or Service Provider”) and through an informal hearing described above. All requests for informal or formal meetings must be in writing, and must contain specific grounds for complaint. Hearing requests should be mailed to: (insert “Developer’s Name and/or Service Provider” & contact info).

If you have a grievance with any entity related to the project, including MOHCD, please contact the (“Developer’s Name and/or Service Provider”) to advise you on pursuing the appropriate next steps.”

10) Appeal Process

Please describe your appeal process.

- **VI. Marketing Strategy**

- Advertising

We understand that our affordable units must be advertised over a period of at least three (3) weeks in five (5) local newspapers that outreach to minority and low and moderate-income communities in San Francisco. The marketing must occur during the first 2 weeks of the 28 day required marketing period. Ads must appear in the “housing,” “real estate” and/or “community” sections of the publications. I understand that we must save copies of our ads and make them available to MOHCD at the culmination of our marketing period.

- *We will post in the following five (5) local venues throughout a 3-week period at least one time each week:*

Newspaper or publication	Exact Advertisements Dates
<i>Suggestion: Bayview or Sun Reporter (African American audience)</i>	
<i>Suggestion: El Tecalote (Spanish speaking audience)</i>	
<i>Suggestion: Philippine News or Asian Journal (Filipino audience)</i>	
<i>Suggestion: Asian Weekly or Singtao Daily (Chinese audience)</i>	
<i>Suggestion: Bay Area Reporter or SF Bay Times</i>	
<i>Suggestion for Other: Choose a paper that is local to the building</i>	

- *We will announce the affordable housing opportunity in at least 5 of the following non-print electronic media outlets throughout the marketing period.*

Social Media and Online Publications	Exact Advertisement Dates
<i>Suggestion: Facebook, Twitter, Nextdoor, etc.</i>	
<i>Suggestion: SF Gate</i>	
<i>Suggestion: agency website</i>	
<i>Suggestion: Craig’s List</i>	
<i>Other:</i>	

- **Optional** - *We will post in one of the following City-wide Paper for at least 1 weekend on a Saturday or Sunday:*

Newspaper or publication	Exact Advertisements Dates
<i>Suggestion: SF Examiner</i>	
<i>Suggestion: SF Chronicle</i>	

All newspaper ads and postings will state income maximums by household size; renter qualifications; project team contact information as the primary contact information; and identify MOHCD as the monitor of the affordable rental program. Ads may refer applicants to the MOHCD website at www.sfmohcd.org but will not list MOHCD telephone numbers or email addresses. A copy of the wording to be used in all advertising will be sent to MOHCD for initial review and copies of all placed ads will be sent to MOHCD upon the completion of the marketing period. All postings will display an “Equal Housing Opportunity” symbol on all marketing materials, advertisements and notices at the rental office:



SAMPLE AD LANGUAGE:

2 one-bedroom Affordable Rental Units available at 333 Birch Street. Rents range from \$800-950 per month. Households must earn no more than the maximum income levels below:

55% of Area Median Income

One person - \$45, 600; 2 persons - \$52,100; 3 persons - \$58,600; 4 persons - \$65,100 etc.

Application information found on the SF Housing Portal - DAHLIA at housing.sfgov.org
Applications due by 5pm on DATE. Please contact the Green Company for building information at (415) xxx-xxxx or 333birchaffordable@green.com.

Units available through the San Francisco Mayor’s Office of Housing and Community Development and are subject to monitoring and other restrictions. Visit www.sfmohcd.org for program information.



We will use the following ad language when advertising the affordable rental units:

Building Signage

I will prominently display MOHCD prescribed and approved signage on the construction site of this project. The signage/banner should be no smaller than 5’ by 5’ and state Affordable Rental

Units Available Soon and include a web address and/or telephone number for interested applicants to learn more.

We will use the following building signage language when advertising the affordable rental units:

MOHCD will provide template

Website

I will create a website for the affordable units or create a link for the units on our existing website at _____.

Board of Supervisors

- I will announce the affordable housing opportunity at least twice to the Board of Supervisors District Office where the project is located by providing a copy of the flyer I will be available to discuss any possible issues related to this project with the District Supervisor, district residents, and the public at large.

Board of Supervisor's Name	Notification Dates, Name of Staff Member Responsible for the Communication and How the Communication Will be Made

Outreach Materials

We understand that our project must provide (1) a flyer and (2) a COP postcard **as a part of this submission** for the affordable rental units available that includes the following information. (Please see sample COP postcard and flyer at the end of this document).

- Reference to the MOHCD Affordable Rental Program
- Reference to the non-profit developer/project sponsor
- All applicable lottery preferences (must appear on flyer only, not COP postcard)
- Maximum and minimum income qualifications
- Rent levels
- Description of units
- Exterior and interior (if available) photo of the development
- Information Session date, time and location
- Information on how to obtain an application
- Open house dates and times (if applicable)
- Lottery date, time and location
- Fair housing logo
- Equal Opportunity Logo
- Your website

Outreach to Certificate of Preference Holders

- We understand that we are responsible for marketing our BMR units to Certificate of Preference (COP) holders. Certificate of Preference holders are primarily households

displaced in Redevelopment Project Areas during the 1960's and 1970's, but may also include other persons displaced by Agency action. For more information, applicants may contact 415-701-5613.

We understand that we shall provide **5 x7** postcards for the mailing of an affordable housing announcement to all Certificate of Preference holders. MOHCD shall coordinate the printing, mailing and invoice us for the full cost of the printing, first class mailing, including postage and labels.

- Outreach to Organizations Who Serve People with Disabilities

We will include organizations that serve people with disabilities on our Marketing Outreach List to market our accessible units.

- Strategy for Marketing to Residents of the Immediate Neighborhood

We understand we must present a strategy for reaching out to the local community surrounding the building. Suggestions include posting flyers in local community meeting places, posting the units in local papers, and reaching out to local community groups. This strategy is above and beyond your ad placements in local or citywide newspapers. At a minimum, list 10 local venues in which you will post your flyer or otherwise distribute your flyer.

- *Your Strategy for Marketing to Residents of the Immediate Neighborhood Here:*

-

- Strategy for Language Access

I/We understand we must be able to provide assistance to applicants who may not speak English. More information about the Language Access Ordinance can be found here: <http://sfgov.org/oceia/language-access-services>. Please list the languages spoken by your staff. Describe how language assistance in Cantonese, Filipino and Spanish will be provided and include your strategy for reviewing applications submitted in these languages (i.e., translation service used, in house assistance available, etc.).

Throughout the marketing period, you must have copies of the SF Housing Resource Guide available in all four languages for applicants who require additional assistance or referrals to housing counseling. The SF Housing Resource Guide is available on our website here: <http://sfmohcd.org/san-francisco-housing-resource-guide>

Furthermore, assistance in these languages must be provided at the lottery. Please indicate whether you have the capacity to provide this service.

- *Your Strategy for Providing Language Access:*

-

--

-
- **VII. Application/Selection Process and Timeline**

Please complete the following timeline as part of your Marketing Plan.

Timeline of Entire Process

Task Name	Date
Submittal of Marketing Plan to MOHCD	
Marketing period (28 days)	
Copy of Advertisements to required newspapers	<i>One week before marketing start period</i>
Informational Workshop	<i>One week after marketing start date</i>
Additional Community Outreach	<i>Marketing start date</i>
Application Deadline	<i>28 days from marketing start date</i>
Paper applications entered in Salesforce	<i>One week after marketing deadline</i>
Flags reviewed in Salesforce	<i>One week after marketing deadline</i>
Email removed applicants	<i>Two weeks after marketing deadline</i>
Lottery	<i>Three weeks after marketing deadline</i>
Application Review / Approval Process- start date	<i>One week after lottery</i>
Lease-up process / timeline	
Initial approvals	
First Occupancy	
Project Closing- projected date	

VII. Review of Program Documents

We certify that we and all agents involved in the process of renting affordable units have read and reviewed the following documents:

- MOHCD Housing Preferences and Lottery Procedures Manual
<https://sfmohcd.org/lottery-preference-programs>
- Rental program application housing.sfgov.org
- City and County of San Francisco Fair Chance Ordinance (FCO)
<https://sfgov.org/olse/fair-chance-ordinance-fco>

I have included the following documents with my request: (Please check)

- ___ Multifamily Marketing Plan – DAHLIA - Unit Table (Excel Document)
- ___ Marketing Flyer
- ___ COP Postcard

- ___ Marketing Outreach list
- ___ A copy of Building’s Lease Agreement, including any and all addendums
- ___ A copy of Building’s Acceptance Letter
- ___ A copy of Building’s Denial Letter
- ___ A copy of Building’s Landlord Verification
- ___ A copy of Resident Selection Criteria
- ___ A copy of Building’s Post-Lottery Rental Application
- ___ A copy of the Tenant Income Certification Worksheet (Excel Document)

Representative (sign) _____

Representative (print) _____

Title (print) _____

Company (print) _____

Date (print) _____

-
-
-

- **DAHLIA Web Posting**

We understand that Affordable units must be posted on SF Housing Portal – DAHLIA for at least 28 calendar days prior to the application deadline. The following template will be posted on DAHLIA during the marketing period.

Please complete this template thoroughly. Please remove red sections and italicized descriptions once complete.

Posting Date	<i>Must be at least 45 days from the date of the submission of this marketing plan to MOHCD.</i>
Type of Unit(s)	<i>For example: Senior Housing</i>
Building Name	<i>If different than development name</i>
Project ID	<i>MOHCD will add</i>
Photo URL	<i>URL of a high-resolution photo of the outside of your building</i>
Year Built	
Website	
Neighborhood	
Waitlist	<i>Final Waitlist Size</i>
Application Contact Person and Address	
Phone Office Hours	
Email	

Application deadline	<p style="color: red;">Set the application deadline 21 calendar days from the posting date.</p> <p>_____, 5pm</p> <p>Applications must be <u>received</u> in paper form (no faxes or emails) by 5pm on the date of the deadline. Postmarks will not be accepted. Applications received after the deadline will not be accepted.</p>
Open House Dates (if applicable)	<p>Date: Time:</p> <p>Date: Time:</p> <p>Date: Time:</p>
Information Session	<p><i>Project Sponsor will present floor plans, timeline for the project, amenities of the building and neighborhood and any specific eligibility requirements.</i></p> <p>Date: Time (beginning no earlier than 5pm): Location:</p>
Lottery	<p>Date: Time: Location:</p>
Building Accessibility	<p><i>Accessibility features in common areas like lobby – wheelchair ramps, wheelchair accessible bathrooms and elevators. Please indicate what specific ADA accessible features the units have or can be modified to have.</i></p>
Building Amenities	<p><i>Example: Laundry room, parking, gym, etc.</i></p>
Parking	<p><i>How many spaces available for renters. Limit one parking space per household. Parking is offered to households in lottery rank order.</i></p>
Application Fee	<p><i>Application fees are only to be collected post-lottery once a household is contacted by your building.</i></p>
Other fees & utilities paid by the renter (Costs Not Included)	<p><i>Please list any fees for renter’s insurance, utilities paid by the renter etc. here.</i></p>
Credit History Eligibility Rule	
Rental History Eligibility Rule	
Smoking Policy	
Pet Policy	<p><i>Please include any fees for pet rent, pet deposit, etc. Please specify that service and companion animals are welcome and pet fees do not apply.</i></p>

Utility Allowance	Utility	Studio	1 Bedroom	2 Bedroom
	<i>Add Utility</i>			
	<i>Add Utility</i>			
	TOTAL ALLOWANCE			
Special Notes				

COP Postcard Template

(Postcards must be at 5x7 and have a matte finish on Side Two)

Side One:

Affordable Homes for Rent in San Francisco

Exterior Photo	Interior Photo
----------------	----------------

VENMOA, 333 Garfield Street, San Francisco, CA 94103

5 studio rental units available at \$991 per month

20 one-bedroom rental units available at \$1,133 per month

15 two-bedroom rental units available at \$1,264 per month

Households must have a minimum monthly income of two times the rent.

Households' income must fall within the maximum range below:

Household Size	1 Person	2 Persons	3 Persons	4 Persons	5 Persons
Maximum monthly income	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12



Please contact 415-701-5626 for more information about the COP program.

Side Two: (Please Make Room For Address Label and Postage)

Applications must be received by 5PM on Thursday, January 12, 2018

Apply online to ensure your application is received on time at <http://housing.sfgov.org> or mail a self-addressed stamped envelope to: VENMOA BMR, P.O. Box 420847, San Francisco, CA 94142. Postmarks are not considered.

Return Address:

Mayor's Office of Housing and
Community Development

Reserved for

For assistance with your application contact:
<http://housing.sfgov.org/housing-counselors>

For more information contact VENMOA leasing:
(415) 555-1212 or bmr@venmoa.com

Information Session

12/20 at 3PM at:
SF Main Public Library – Latino-Hispanic Room
100 Larkin Street, San Francisco, CA 94102

Open House Dates

12/19, 5-7PM; 12/29, 12-2PM; 12, 5-7PM
333 Garfield Street, San Francisco, CA 94103

Lottery (attendance is optional)

2/2 at 3PM at:
SF Main Public Library – Koret Auditorium
100 Larkin Street, San Francisco, CA 94102

SPACE RESERVED FOR USPS

Flyer Template

Front Page:

Affordable Homes for Rent in San Francisco

Exterior Photo	Interior Photo
----------------	----------------

VENMOA, 333 Garfield Street, San Francisco, CA 94103

5 studio rental units available at \$991 per month

20 one-bedroom rental units available at \$1,133 per month

15 two-bedroom rental units available at \$1,264 per month

- New Units with Modern Design + Amenities
- Households must have a minimum monthly income of two times the rent
- Households must earn no more than the monthly income levels listed below:

Household Size	1 Person	2 Persons	3 Persons	4 Persons	5 Persons
Maximum monthly income	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12	Divide max AMI by 12

Applications must be received by 5PM on Thursday, January 12, 2018. Postmarks will not be considered. *Apply online to ensure your application is received on time.*

Applications must either be submitted online at <http://housing.sfgov.org> or mailed in with a self-addressed stamped envelope to: VENMOA BMR, P.O. Box 420847, San Francisco, CA 94142

Applications versions can be downloaded from <http://housing.sfgov.org> or picked up from one of the housing counseling agencies listed at <http://housing.sfgov.org/housing-counselors>

Information Session

12/20 at 3PM at:

SF Main Public Library – Latino-Hispanic Room
100 Larkin Street, San Francisco, CA 94102

Open House Dates

12/19, 5-7PM; 12/29, 12-2PM; 12, 5-7PM
333 Garfield Street, San Francisco, CA 94103

Lottery (attendance is optional)

2/2 at 3PM at:
SF Main Public Library – Koret Auditorium
100 Larkin Street, San Francisco, CA 94102

For more information contact VENMOA leasing at (415) 555-1212 or bmr@venmoa.com

All applicants are encouraged to apply. Please see the project posting at <http://housing.sfgov.org> for applicable lottery preferences. Units are monitored through the San Francisco Mayor’s Office of Housing and Community Development and are subject to monitoring and other restrictions.



EXHIBIT T-3

Form of LOSP Unit Tenant Selection Plan

GROUND LEASE AGREEMENT

TRANSBAY BLOCK 2 EAST RESIDENTIAL AIR SPACE PARCEL

by and between

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND

COUNTY OF SAN FRANCISCO

and

TRANSBAY 2 FAMILY, L.P,

a California limited partnership

for

TRANSBAY BLOCK 2 EAST AFFORDABLE RESIDENTIAL DEVELOPMENT

[ADDRESS]

San Francisco, CA 94105

DATED AND EXECUTED AS OF [], 2024

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GROUND LEASE AGREEMENT

TRANSBAY BLOCK 2 EAST
RESIDENTIAL AIR SPACE PARCEL

This Ground Lease (“**Lease**”) is dated as of _____, 2024, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California (commonly known as the Office of Community Investment and Infrastructure and referred to herein as “**OCII**” or “**Landlord**”), and Transbay 2 Family, L.P., a California limited partnership, as tenant (“**Tenant**”).

RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California (“**CRL**”), the former Redevelopment Agency of the City and County of San Francisco (the “**Former Agency**”) undertook programs to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area (“**Project Area**”).

B. In 2003, the Transbay Joint Powers Authority (“**TJPA**”), the City and County of San Francisco (“**City**”) and the State of California (“**State**”) entered into a Cooperative Agreement setting forth the process for the transfer of certain State-owned parcels in the Project Area to the City and the TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1, which requires that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households (“**Transbay Affordable Housing Obligation**”). In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“**Implementation Agreement**”) which incorporates the affordable housing requirements of AB 812 and requires the Former Agency (now OCII) to prepare and sell certain formerly State-owned parcels, to construct and fund new infrastructure improvements, and to meet affordable housing obligations.

C. The Board of Supervisors of the City and County of San Francisco (“**Board of Supervisors**”) approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006, filed in the Office of the Recorder of the City and County of San Francisco (“**Official Records**”) as Document No. 2006-I224836, as amended by Ordinance No. 84-15 (June 16, 2015) as Document No. 2015-K135871, as amended by Ordinance No. 62-16 (April 26, 2016) as Document No. 2016-K333253, and as amended by Ordinance No. 09-23 (January 24, 2023) as Document No. 2023041529, and as it may be amended from time to time (“**Redevelopment Plan**”).

D. The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the land use controls of the Redevelopment Plan and the Development Controls and

Design Guidelines for the Transbay Redevelopment Project (2005) (and as currently amended “**Development Controls**”) are applicable and are to be administered by the Former Agency (now OCII), and Zone Two in which the San Francisco Planning Code applies and is administered by the City Planning Department.

E. On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency, by operation of law pursuant to California Health and Safety Code Section 34170 et seq. (“**Redevelopment Dissolution Law**”). Under the authority of the Redevelopment Dissolution Law and San Francisco Ordinance No. 215-12 (October 4, 2012) (establishing the Successor Agency Commission (“**Commission**”) and delegating to it state authority under the Redevelopment Dissolution Law), OCII is administering the enforceable obligations of the Former Agency. The Redevelopment Plan, Development Controls, Transbay Affordable Housing Obligation, Implementation Agreement and other relevant Project Area documents remain in effect and OCII retains all affordable housing obligations in the Project Area.

F. Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5(a). On April 15, 2013, the California Department of Finance (“**DOF**”) finally and conclusively determined that the Implementation Agreement is a continuing enforceable obligation of OCII under the Redevelopment Dissolution Law. DOF has confirmed that “any sale, transfer, or conveyance of property related to [the Transbay Final and Conclusive Determination] is authorized.” Email from Justyn Howard, Assistant Program Budget Manager, DOF, to Tiffany Bohee, Executive Director, OCII (September 10, 2013, 09:17 am).

G. In accordance with its obligations under the Redevelopment Plan and the Implementation Agreement, OCII intends to fund the development of two affordable housing developments on Block 2 as said block is depicted in the Redevelopment Plan (“**Block 2**”), by subdividing Block 2 into two vertical subdivisions (“**Block 2 West**” and “**Block 2 East**”), providing a subsidy for development and operation of affordable housing developments with ground-floor community commercial spaces on Block 2 West and Block 2 East, and entering into ground lease agreements with affordable housing developers to cause the construction and operation of the two developments. OCII anticipates that its subsidy will facilitate additional public and private financing necessary to make the development and operation of the Block 2 financially feasible.

H. On April 6, 2021, the Commission authorized, by Resolution No. 09-2021, an exclusive negotiations agreement with the development team for Block 2, including Mercy Housing California (“**Mercy**”, the sole member of Tenant’s general partner) and co-developer Chinatown Community Development Center (“**CCDC**”). In accordance with Mercy and CCDC’s development proposal and their Joint Development Agreement dated as of March 30, 2021 (“**JDA**”), which defines the roles and responsibilities of Mercy and CCDC in developing Block 2, Mercy participates as developer, property manager, and resident services provider for a mixed-use rental housing project with ground floor community commercial spaces serving low-income families and formerly homeless families on Block 2 East, and co-developer CCDC as developer, property manager, and services provider for a mixed-use rental housing project with ground floor

community commercial spaces serving low-income seniors and formerly homeless seniors on Block 2 West. The exclusive negotiations agreement (the “**ENA**”) with Tenant enabled Tenant to pursue predevelopment activities for the construction and management of the development of Block 2 East.

I. Also on April 6, 2021, by Resolution No. 10-2021, Commission authorized the OCII Executive Director to enter into a “**Predevelopment Loan Agreement**” for a loan to the Tenant in the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000) for development of Block 2 East (the “**Predevelopment Loan Amount**”) to fund costs of the Tenant’s predevelopment activities.

J. The ENA establishes a series of milestones intended to result in the execution of an option to ground lease agreement (which the parties executed on March 29, 2023), and ultimately a long-term ground lease agreement for each developers’ portion of Block 2 after public hearing and consideration by the Commission.

K. On November 1, 2022, by Resolution Nos. 39-2022 through 44-2022, the Commission recommended an amendment to the Redevelopment Plan authorizing additional height and bulk for Block 2, conditionally approved schematic designs and related actions modifying the scope of development for Block 2 to include approximately 335 affordable residential units and approximately 11,351 square feet of community commercial space in two separate buildings on Block 2 comprised of 151 residential units, amenities and open space, and 2,945 square feet of commercial space on Block 2 West (“**Block 2 West Project**”) and 184 residential units, amenities and open space, and 8,406 square feet of community commercial space on Block 2 East (“**Block 2 East Project**”). On February 3, 2023, by Ordinance No. 09-23, the City adopted amendments to the Redevelopment Plan effectuating the modified scope for the development of Block 2.

L. Pursuant to a ground lease with OCII, Tenant intends to construct approximately one hundred eighty-four (184) residential units within Block 2 East, including one hundred eighty-two units of low-income rental housing and two unrestricted manager’s units with 40 units set aside to serve formerly homeless households subsidized by the Local Operating Subsidy Program (“**LOSP**”), with related management, services and amenity space, associated landscape and access improvements, and the portion of the Pedestrian Mews located on Block 2 to be constructed on the Site (defined below in Recital R), all as more particularly set forth in the Schematic Design approved on November 1, 2022 by Commission Resolution No. 43-2022, and as further set forth in Design Development Documents approved by OCII on October 4, 2023 and as may be further revised in accordance with Redevelopment Requirements (“**Project**”).

M. Tenant has determined that, to maximize the ability of the Block 2 East Project to obtain affordable housing financing, the community commercial space should be constructed by an affiliate of the Tenant within a separate air rights parcel under a separate ground lease and loan agreement (“**Community Commercial Component**”), and that site preparation should be completed separate from the construction of the Block 2 West Project and Block 2 East Project

under a separate horizontal ground lease (the “**Horizontal Project**”). Tenant succeeded in obtaining a State affordable housing bond and tax credit allocations on December 6, 2023.

N. The Project and the Community Commercial Component are integrated components of the overall Block 2 East Project, with the Community Commercial Component providing community-focused uses, including space for a childcare facility and a private interior courtyard for childcare use, that are beneficial to residents of the Project and the surrounding community, and the Project providing a stable base of customers for the goods and services provided in the Community Commercial Component.

O. On August 4, 2023, the Citywide Affordable Housing Loan Committee approved a total OCII subsidy for the development of the Block 2 East Project in an aggregate amount not to exceed Seventy Two Million Nine Hundred Seventy-Two Thousand One Hundred Seventy-Nine Dollars (\$72,972,179) comprised of (i) an approximately \$61,961,845 permanent loan for the construction and operation of the Project (“**Site Loan**”), which includes an increase of the Predevelopment Loan Amount by Four Million Five Hundred Thousand Dollars (\$4,500,000) (for a total aggregate Predevelopment Loan Amount of Eight Million Dollars (\$8,000,000)) to fund additional predevelopment costs of the Project (“**Total Predevelopment Loan Amount**”); (ii) an approximately \$8,676,682 permanent loan to fund construction of the Community Commercial Component (“**Community Commercial Loan**”); and (iii) \$2,333,653 in cost reimbursement funding for the Horizontal Project.

P. On August 15, 2023, by Resolution No. 25-2023, the Commission authorized a First Amendment to the Predevelopment Loan Agreement, to increase the Predevelopment Loan Amount to the Total Predevelopment Loan Amount. Also on August 15, 2023, by Resolution No. 26-2023, the Commission authorized a horizontal ground lease with a Transbay 2 Family LLC (an affiliate of Tenant) (“**Horizontal Ground Lease**”). The Horizontal Ground Lease went into effect on September 22, 2023 and terminates as of the effective date of this Lease.

Q. On _____, 2024, by Resolution No. __-2024, the Commission authorized an Amended and Restated Loan Agreement (“**Loan Agreement**”) by and between OCII and Tenant for disbursement of the Site Loan for development and operation of the Project, and a ground lease by and between OCII and the Tenant for development and operation of the Project on the Site. Also on _____, 2024, the Commission separately approved the Community Commercial Loan and ground lease for the Community Commercial Component of the Block 2 East Project.

R. In furtherance of the foregoing, OCII has subdivided Block 2 by Final Subdivision Map No. 11541 (recorded in the Official Records on December 1, 2023 as Document No. 2023097238 in Book 53 of Parcel Maps at Pages 160 to 163, “**Final Map**”), creating two vertical subdivisions of roughly equal size (with Parcels 015 and 016 of the Final Map constituting Block 2 West and Parcels 017 and 018 of the Final Map constituting Block 2 East). The Project will be constructed within Parcel 017 of the Final Map (as further described in Attachment 1, the “**Site**”), and the Community Commercial Component of the Block 2 East Project will be constructed within Parcel 018 of the Final Map (the “**Community Commercial Parcel**”).

S. OCII now intends to lease the Site to Tenant for the purposes of constructing and maintaining the Project on the Site, in accordance with the terms of this Lease.

T. For purposes of implementation and to ensure consistency with the City's overall affordable housing goals and priorities, OCII has engaged the City's Mayor's Office of Housing and Community Development ("MOHCD") to provide loan disbursement services for the Project, in cooperation with OCII.

U. Upon completion of the Project, OCII intends to assign its rights and obligations under this Lease and the Loan Documents (as defined herein), together with conveyance of fee title to the Site, to MOHCD as the designated Housing Successor of the City and County of San Francisco under Board of Supervisors Resolution 11-12 (January 24, 2012), as required by Redevelopment Dissolution Law and OCII's approved Long-Term Property Management Plan dated December 2015.

NOW THEREFORE, in consideration of the mutual obligations of the parties to this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Site, for the Term (as defined in ARTICLE 2), and subject to the terms, covenants, agreements, and conditions set forth below, each and all of which Landlord and Tenant mutually agree.

ARTICLE 1 DEFINITIONS

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

1.01 **Agreement Date** means the date first set forth above.

1.02 **Annual Rent** has the meaning set forth in Section 4.01(a).

1.03 **Area Median Income** (or **AMI**) means median income as determined and published annually by MOHCD, derived in part from the Income Limits determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area, also referred to as "Unadjusted Median Income."

1.04 **Base Rent** has the meaning set forth in Section 4.02(a).

1.05 **Base Rent Accrual** has the meaning set forth in Section 4.02(b).

1.06 **Certificate of Occupancy** means a Temporary Certificate of Occupancy or a Final Certificate of Occupancy as issued by the San Francisco Department of Building Inspection.

1.07 **Certificate of Completion** has the meaning set forth in Section 11.01.

- 1.08 **Change** has the meaning set forth in Section 12.02.
- 1.09 **City** means the City and County of San Francisco.
- 1.10 **Claim(s)** has the meaning set forth in Section 21.01.
- 1.11 **Community Commercial Component** has the meaning set forth in Recital M.
- 1.12 **Community Commercial Parcel** has the meaning set forth in Recital R.
- 1.13 **Community Commercial Loan** has the meaning set forth in Recital N.
- 1.14 **Construction Documents** has the meaning set forth in Section 10.03.
- 1.15 **COP Outreach Obligation** has the meaning set forth in Section 6.02(e).
- 1.16 **CRL** means the California Community Redevelopment Law (Health and Safety Code, section 33000 *et seq.*).
- 1.17 **Declaration of Restrictions** means the restrictions and covenants substantially in the form of Exhibit K to the Loan Agreement.
- 1.18 **Declaration of Public Access Restrictions** means that agreement substantially in the form attached hereto as Attachment 12.
- 1.19 **Effective Date** means the date on which the Memorandum of Ground Lease is recorded in the Official Records of the County of San Francisco.
- 1.20 **Environmental Law** has the meaning set forth in Section 21.02(b)(ii).
- 1.21 **Extremely Low-Income Households** means a household with combined initial income that does not exceed thirty percent (30%) of Area Median Income.
- 1.22 **Facilities Condition Report** has the meaning set forth in Section 17.02.
- 1.23 **First Lease Payment Year** means the year in which the 151st and final residential unit receives its Certificate of Occupancy, which may be a full or partial Lease Year depending on the date of issuance of the Certificate of Occupancy.
- 1.24 **First Mortgage Lender** means any lender and its successors, assigns, and participants or other entity holding the first deed of trust on the Leasehold Estate.
- 1.25 **Former Agency** has the meaning set forth in Recital A.

- 1.26 **Hazardous Substance** has the meaning set forth in Section 21.02(b)(i).
- 1.27 **Holder** has the meaning set forth in Section 25.02.
- 1.28 **Horizontal Ground Lease** has the meaning set forth in Recital P.
- 1.29 **Horizontal Project** has the meaning set forth in Recital M.
- 1.30 **Improvements** means all physical construction, including all structures, fixtures, and other improvements, to be constructed or rehabilitated on the Site.
- 1.31 **Indemnified Party or Parties** has the meaning set forth in Section 22.01.
- 1.32 **Landlord** means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure or OCII, and its successors and/or assigns.
- 1.33 **Laws** means all statutes, laws, ordinances, regulations, rules, orders, writs, judgments, injunctions, decrees, or awards of the United States or any state, county, municipality, or governmental agency.
- 1.34 **Lease** means this Ground Lease, as it may be amended from time to time.
- 1.35 **Lease Year** means each calendar year during the Term, beginning on January 1 and ending on December 31, provided that the “First Lease Year” will commence on the Effective Date and continue through December 31st of that same calendar year. Furthermore, the “Last Lease Year” will end upon the expiration of the Term.
- 1.36 **Leasehold Estate** means the estate held by the Tenant created by and pursuant to this Lease.
- 1.37 **Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits from the Site, or any portion thereof, that constitutes a lien on the Leasehold Estate and is approved in writing by Landlord.
- 1.38 **Lender** means any entity holding a Leasehold Mortgage.
- 1.39 **Loan Documents** means the Loan Agreement (as defined in Recital Q) and those certain agreements, notes, deeds of trust, declarations, and any other documents executed and delivered in connection with the predevelopment, construction, and permanent financing for the Project.

1.40 **LOSP** means the local operating subsidy provided by the City to the Tenant for the operation of the Project, the amount of which is sufficient to permit Tenant to operate the Project with residential units for Qualified Households with income levels below those set forth in the Declaration of Restrictions.

1.41 **Memorandum of Ground Lease** has the meaning set forth in ARTICLE 48. A form of the Memorandum of Ground Lease is included as Attachment 5.

1.42 **MOHCD** means the San Francisco Mayor's Office of Housing and Community Development, the Housing Successor to the Redevelopment Agency of the City and County of San Francisco, as designated under Board of Supervisors Resolution No. 11-12 (January 26, 2012).

1.43 **MOHCD Fees Policy** means the MOHCD Multifamily Affordable Housing Operating Fees Policy (effective April 1, 2016), as may be amended from time to time.

1.44 **New Developer** has the meaning set forth in Section 10.16.

1.45 **Notice to Proceed** has the meaning set forth in the Loan Documents.

1.46 **OCII** means the San Francisco Office of Community Investment and Infrastructure, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California, Landlord under this Lease.

1.47 **Pedestrian Mews** means the privately owned public access walkway providing mid-block public access, ingress and egress north/south through Block 2, approximately 135 linear feet long and 25 linear feet wide, divided approximately evenly between the Site and the Block 2 West by the two parcels' shared boundary, as shown on the site map in Attachment 11 and subject to the Declaration of Public Access Restrictions.

1.48 **Permitted Limited Partner** means _____.

1.49 **Personal Property** means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is located in, on, or about the Premises and that can be removed from the Premises without substantial economic loss to the Premises or substantial damage to the Premises and that is incident to the ownership, development, or operation of the Improvements or the Premises, belonging to Tenant, any Residential Occupant, or any subtenant or other occupant of the Premises and/or in which Tenant, Residential Occupant, or any subtenant or other occupant has an ownership interest, together with all present and future attachments, replacements, substitutions, and additions thereto or therefor.

1.50 **Premises** means the Site and all Improvements (including without limitation the portion of the Pedestrian Mews to be located on the Site).

1.51 **Predevelopment Loan** has the meaning set forth in Recital I.

1.52 **Prohibited Use** has the meaning set forth in Section 9.02.

1.53 **Project** has the meaning given in Recital L. If indicated by context, Project means the Leasehold Estate and the fee interest in the Improvements on the Site.

1.54 **Project Expenses** means the following costs: (a) all charges incurred in the operation of the Project for utilities, real estate taxes and assessments, and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages and any other compensation due and payable to the employees or agents of Tenant who maintain, administer, operate or provide services in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) required payments of interest and principal, if any, on any senior financing that has been approved by OCII and is secured, consistent with the Lease, by either the Tenant's leasehold interest in the Lease, the improvements constructed thereon, or both, and used to finance the Project; (d) all other expenses actually incurred by Tenant to cover operating costs of the Project, including supportive services (if any), maintenance and repairs and any property management fee, each as indicated in the Annual Operating Budget; (e) required, or necessary, deposits to the Replacement Reserve Account, Operating Reserve Account and any other reserve account required under this Agreement or required by another lender or regulatory agency, each as approved by OCII and MOHCD pursuant to the Final Financial Plan; (f) annual base rent payments under the Lease in an amount equal to FIFTEEN THOUSAND AND No/100 DOLLARS (\$15,000.00); (g) an annual bond monitoring fee equal to 12.5 basis points of the average outstanding bond amount in the prior year, and \$2,500 for the remainder of the qualified project period after the bonds have been paid off; (h) mandatory interest payment(s) payable to HCD for any loan made by HCD to Tenant for the Project or mandatory interest payment(s) payable to another subordinate lender for any loan made by such lender to Tenant for the Project, each as approved by OCII and MOHCD pursuant to the Final Financial Plan; (i) a bond issuer fee, fiscal agent fee and annual asset management fee indicated in the Annual Operating Budget established in the Final Financial Plan and consistent with the limitations set out in the MOHCD Fees Policy; (j) credit adjuster payments including interest to the Permitted Limited Partner; and (k) any extraordinary expenses approved in advance by OCII (other than expenses paid from any reserve account). Project Fees are not Project Expenses.

1.55 **Project Fees** means (i) any partnership management fee payable to the Tenant's general partner, as established in the Final Financial Plan and consistent with the limitations set out in the MOHCD Fees Policy; and (ii) a limited partner asset management fee/annual investor services fee payable to the Permitted Limited Partner as approved by OCII pursuant to the terms of the Loan Documents and consistent with the MOHCD Fees Policy.

1.56 **Project Income** means all revenue, income, receipts in any form, and other consideration received by Tenant from the operation of the Improvements, including without

limitation: all rents, fees, and charges paid by Residential Occupants; Section 8 or other rental subsidy payments received for the dwelling units; supportive services funding; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; accrued interest disbursed from any reserve account required under this Lease for a purpose other than that for which the reserve account was established; and the proceeds of business interruption or similar insurance. Project Income does not include individual tenants' security deposits (except forfeited deposits), loan proceeds, capital contributions or similar advances, condemnation proceeds, insurance proceeds provided for the purpose of reconstructing all or part of the Project, or interest accruing on any portion of the Site Loan.

1.57 **Qualified Households** means households earning no more than the maximum permissible annual income level allowed under the Declaration of Restrictions, subject to Article 9 below. For purposes of this Ground Lease, Qualified Households has the same meaning as "Qualified Tenants" in the Declaration of Restrictions.

1.58 **Redevelopment Dissolution Law** has the meaning set forth in Recital E.

1.59 **Redevelopment Requirements** means the Community Redevelopment Law, Redevelopment Dissolution Law, Redevelopment Plan and Plan Documents (as defined in the Redevelopment Plan).

1.60 **Release** has the meaning set forth in Section 21.02(b)(iii).

1.61 **Residential Occupant** means any person or entity authorized by Tenant to occupy a residential unit on the Site, or any portion thereof.

1.62 **Residential Unit** has the meaning set forth in Section 9.01.

1.63 **Residual Rent** has the meaning set forth in Section 4.03.

1.64 **Site** means the real property as more particularly described in the Site Legal Description, Attachment 1.

1.65 **Site Loan** has the meaning set forth in Recital O.

1.66 **Subsequent Owner** means any successor (including a Lender or an affiliate or assignee of a Lender as applicable) to the Tenant's interest in the Leasehold Estate and the Improvements who acquires such interest as a result of a foreclosure, deed in lieu of foreclosure, or transfer from a Lender, its affiliate, and any successors to any such person or entity.

1.67 **Successor Agency** means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure or OCII, and its successors and/or assigns.

1.68 **Surplus Cash** means all Project Income in any given Lease Year remaining after payment of Project Expenses and Project Fees. The amount of Surplus Cash will be based on figures contained in audited financial statements. All permitted uses and distributions of Surplus Cash will be governed by Section 6.02(g) of this Lease.

1.69 **Temporary Construction Access Area** is defined in Section 49.01.

1.70 **Tenant** means Transbay 2 Family, L.P., a California limited partnership and its permitted successors and assigns (or a Subsequent Owner, where appropriate).

1.71 Whenever an Attachment is referenced, it means an attachment to this Lease unless otherwise specifically identified. Whenever a section, article, or paragraph is referenced, it is a reference to this Lease unless otherwise specifically referenced.

ARTICLE 2 TERM

2.01 Initial Term. The term of this Lease will commence upon the Effective Date and will end seventy-five (75) years from that date (“**Term**”), unless extended under Section 2.02 below or earlier terminated as provided in this Lease.

2.02 Option for Extension. The Term may be extended at the option of the Tenant for one twenty-four (24) year period, as provided in this Article 2, below. If the Term is extended pursuant to this Section, all applicable references in this Lease to the “**Term**” will mean the Term as extended by this extension period.

2.03 Notice of Extension. Not later than one hundred eighty (180) days before the Termination Date, the Tenant may notify Landlord in writing that it wishes to exercise its option to extend the term of this Lease (an “**Extension Notice**”). Provided that the Tenant is not in default under the terms of this Lease and the Loan Documents either at the time of giving of an Extension Notice or on the last day of the initial seventy-five year Term (the “**Termination Date**”), the Term will be extended for twenty-four (24) years from the Termination Date upon Tenant’s exercise of this option, for a total Lease term not to exceed ninety-nine (99) years.

2.04 Rent During Extended Term. Rent for any extended term will be as set forth in ARTICLE 4.

2.05 Holding Over. Any holding over after expiration or earlier termination of the Term without Landlord’s written consent will constitute a default by Tenant and entitle Landlord to exercise any or all of its remedies as provided in this Lease, even if Landlord elects to accept one or more payments of Annual Rent. Failure to surrender the Site in the condition required by this Lease will constitute holding over until the conditions of surrender are satisfied.

ARTICLE 3 FINANCIAL ASSURANCE

Tenant will submit for Landlord's approval, on the dates specified in the Schedule of Performance, Attachment 2, evidence satisfactory to Landlord that Tenant has sufficient equity capital and commitments for construction and permanent financing, and/or such other evidence of capacity to proceed with the construction of the Improvements in accordance with this Lease as is acceptable to Landlord. Landlord acknowledges that as of the Effective Date Tenant has met this requirement.

ARTICLE 4 RENT

4.01 Annual Rent.

a) To the extent Base Rent and Residual Rent are due pursuant to Section 4.02 and 4.03, Tenant will pay to Landlord _____ Dollars (\$_____) (the "**Annual Rent**") per year for each year of the Term of this Lease. Annual Rent consists of Base Rent and Residual Rent, as defined in Section 4.02 below, without offset of any kind (except as otherwise permitted by this Lease) and without necessity of demand, notice or invoice. Annual Rent will be re-determined on the fifteenth (15th) anniversary of the date of the first payment of Base Rent pursuant to Section 4.02(a) below and every fifteen (15) years thereafter, and will be equal to ten percent (10%) of the appraised fair market value of the Site as determined by an MAI appraiser selected by and at the sole cost of the Tenant. Any such adjustment will be made to the Residual Rent and not to the Base Rent.

b) If the Tenant elects to extend the Term of this Lease pursuant to ARTICLE 2 above, Annual Rent (along with any potential future adjustments) during any such extended Term will be set by mutual agreement of the parties; provided, however, that Annual Rent during the extended Term will in no event be less than the Annual Rent set forth in Section a) above. If the parties cannot agree on Annual Rent for the extended Term, either party may invoke a neutral third-party process and the parties will agree on a neutral third-party appraiser to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, Tenant may, after the neutral third-party process and in its sole discretion, rescind the Extension Notice if it does not wish to extend the Term of this Lease.

4.02 Base Rent.

a) "**Base Rent**" means Fifteen Thousand Dollars (\$15,000) per annum; provided, however, that if the Tenant or any Subsequent Owner fails, after notice and opportunity to cure, to comply with the provisions of Section 9.01 and the Declaration of Restrictions, then Base Rent will be increased to the full amount of Annual Rent, in addition to any other remedies of Landlord for said default. Base Rent will be due and payable in arrears on January 31st following the lease Year for which it is owed; provided, however, Base Rent for the First Lease Payment Year shall be equal to Fifteen Thousand Dollars (\$15,000) multiplied by the number of days in the

First Lease Payment Year, divided by three hundred sixty-five (365); and provided further that no Base Rent will be due until all Residential Units have received Certificates of Occupancy.

b) If the Project does not have sufficient Project Income to pay Base Rent in any given Lease Year after the payment of (a) through (d) in the definition of Project Expenses, above, and Landlord has received written notice from Tenant regarding its inability to pay Base Rent from Project Income at least sixty (60) days before the Base Rent due date, along with supporting documentation for Tenant's position that it is unable to pay Base Rent from Project Income, then the unpaid amount will be deferred and all deferred amounts will accrue without interest until paid ("**Base Rent Accrual**"). The Base Rent Accrual will be due and payable each year from and to the extent Surplus Cash is available. Any Base Rent Accrual will be due and payable upon the earlier of (i) sale of the Project (but not a refinancing or foreclosure of the Project); or (ii) termination of this Lease (unless a new lease is entered into with a mortgagee under Section 26.09 below).

c) If Tenant has not provided Landlord with the required written notice and documentation under Section 4.02(b) in connection with its claim that it cannot pay Base Rent due to insufficient Project Income, and/or Landlord has reasonably determined that Tenant's claim that it is unable to pay Base Rent is not supported by such documentation, Landlord will assess a late payment penalty of two percent (2%) for each month or any part thereof that any Base Rent payment is delinquent. This penalty will not apply to Base Rent Accrual that has been previously approved by Landlord under Section 4.02(b). The Tenant may request in writing that Landlord waive such penalties by describing the reasons for Tenant's failure to pay Base Rent and Tenant's proposed actions to ensure that Base Rent will be paid in the future. Landlord may, in its sole discretion, waive in writing all or a portion of such penalties if it finds that Tenant's failure to pay Base Rent was beyond Tenant's control and that Tenant is diligently pursuing reasonable solutions to such failure to pay.

4.03 Residual Rent. "**Residual Rent**" means, in any given Lease Year, _____ Dollars (\$ _____), Annual Rent less Base Rent, subject to any periodic adjustments under Section 4.01(a). Commencing with the First Lease Payment Year, Residual Rent will be due in arrears on May 15th following the Lease Year for which it is owed, provided that the Residual Rent for the First Lease Payment Year shall be due on May 15th of the following calendar year and shall be equal to the difference of Base Rent subtracted from Annual Rent then multiplied by the number of days in the First Lease Payment Year then divided by three hundred sixty-five (365). Residual Rent will be payable only to the extent of Surplus Cash as provided in Section 6.02(g) below, and any unpaid Residual Rent will not accrue. Furthermore, Residual Rent shall not be due during any Lease Year prior to the First Lease Payment Year. If Surplus Cash available in a given year is insufficient to pay the full amount of the Residual Rent owed, Tenant will certify to Landlord, in writing and no later than May 15th of the calendar year the Residual Rent is due, that available Surplus Cash is insufficient to pay Residual Rent and Tenant will provide to Landlord any supporting documentation reasonably requested by Landlord to allow Landlord to verify the insufficiency.

4.04 Triple Net Lease. This Lease is a triple net lease and the Tenant will be responsible to pay all costs, charges, taxes, assessments, impositions, and other obligations related to the Premises accruing after the Effective Date. If Landlord pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, Landlord will be entitled to be reimbursed by Tenant the full amount of such payments as additional rent within thirty (30) days of written demand by Landlord. Failure to timely pay the additional rent will be a default by Tenant of this Lease. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease, or gives Tenant any right to terminate this Lease in whole or in part.

ARTICLE 5 LANDLORD COVENANTS

OCII is duly created, validly existing and in good standing under the Law, and has full right, power and authority to enter into and perform its obligations under this Lease. Landlord covenants and warrants that the Tenant and its tenants will have, hold and enjoy, during the Term, peaceful, quiet and undisputed possession of the Site leased without hindrance or molestation by or from anyone so long as the Tenant is not in default under this Lease.

ARTICLE 6 TENANT COVENANTS

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

6.01 Authority. Tenant is a California limited partnership and has full rights, power, and authority to enter into and perform its obligations under this Lease.

6.02 Use of Site and Rents. During the Term of this Lease, Tenant and its successors and assigns will comply with the following requirements:

a) Permitted Uses. Tenant will devote the Site to, exclusively and in accordance with, the uses specified in the Declaration of Restrictions and this Lease, including as specified in ARTICLE 9 below, which are the only uses permitted by this Lease. Tenant acknowledges that that a prohibition on the change in use contained in Section 9.01 is expressly authorized by California Civil Code section 1997.230 and is fully enforceable.

b) Non-Discrimination. Tenant herein covenants by and for itself, its assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises herein leased nor shall the tenant himself or herself, or any person claiming under or through him

or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Premises herein leased. Tenant will not discriminate against tenants with certificates or vouchers under the Section 8 program or any successor rent subsidy program.

c) Non-Discriminatory Advertising. All advertising (including signs) for sublease of the whole or any part of the Site must include the legend “Equal Housing Opportunity” in type or lettering of easily legible size and design, or as required by applicable Law.

d) Access for Disabled Persons. Tenant will comply with all applicable Laws providing for access for persons with disabilities, including, but not limited to, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

e) Marketing. Early outreach and marketing of the Residential Units shall comply, to the extent consistent with fair housing laws, with the early outreach and marketing requirements established in Article 6 “Marketing” in the Loan Agreement and related Exhibits I, S, T-1, and T-2. Under the Loan Agreement (including its attachments), Tenant is required to submit a marketing plan to Landlord and MOHCD that addresses how it intends to affirmatively market units in the Project to income-eligible persons displaced by redevelopment actions and their descendants, as required under Sections 33413.3 and 34178.8 of the Health and Safety Code, respectively, (the “**Certificate of Preference**” or “**COP**”) holders and also requires that Tenant, either through a third-party Access to Housing counseling organization as approved by MOHCD or on its own, conduct outreach to COP holders, including making “support services staff available to provide assistance throughout the application process, as it may be needed, with the goal of maximizing COP participation to the extent possible” and ensuring that COP holders “are aware that such assistance is available” (“**COP Outreach Obligation**”). In addition to meeting these requirements, Tenant will also provide a report to the Commission on its compliance with the COP Outreach Obligation at least three months prior to construction completion and prior to the initiation of any tenant selection process.

f) Lead Based Paint. Tenant agrees to comply with the regulations set forth in 24 CFR Part 35 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in certain residential structures undergoing federally assisted construction and require the elimination of lead-based paint hazards.

g) Permitted Uses of Surplus Cash. If the Tenant is in compliance with all applicable requirements and agreements under this Lease, Tenant will use any Surplus Cash to make the following payments in the following order of priority:

- i. First, to Base Rent Accrual payments, if any;
- ii. Second, (a) if the Project includes a deferred developer fee and Tenant is in compliance with the Loan Documents and MOHCD policies, then fifty percent (50%) of remaining Surplus Cash to Landlord (Landlord’s

portion of Surplus Cash will be applied first to repayment of the Site Loan according to the terms of the Loan Documents, then to Residual Rent) beginning on the initial Payment Date (as such term is defined in the Loan Documents) until and including the earlier of the year (i) of the fifteenth (15th) Payment Date, or (ii) in which all deferred developer fees have been paid to Tenant; and thereafter, one-third (1/3) of Surplus Cash shall be distributed to Tenant and the remaining two-thirds (2/3) of Surplus Cash shall be Distributed to Landlord; or (b) if the project does not include a deferred developer fee, then two-thirds (2/3) of remaining Surplus Cash to Landlord (Landlord's portion of Surplus Cash will be applied first to repayment of Site Loan according to the terms of the Loan Documents, then to Residual Rent); and

iii. Then, any remaining Surplus Cash may be used by Tenant for any purposes permitted under the residual receipt policy governing the Project, as it may be amended from time to time.

h) Notwithstanding the foregoing, Tenant and Landlord agree that the distribution of Surplus Cash may be modified based on the requirements of other Lenders or the Permitted Limited Partner.

6.03 Reciprocal Easements; Covenants, Conditions and Restrictions. Subject to OCII review and approval, Tenant shall cooperate with lessee of the Community Commercial Parcel to prepare and execute a reciprocal easement agreement, covenants, conditions and restrictions and/or other similar document(s) to establish the terms for access, use, maintenance, repair, replacement to and of spaces, structural supports and all other components of the Block 2 East Project shared between or common or mutually necessary to the development and/or operation of improvements on the Site and the Community Commercial Parcel.

6.04 Landlord Deemed Beneficiary of Covenants. In amplification and not in restriction of the provisions of the preceding subsections, it is intended and agreed that Landlord will be deemed beneficiary of the agreements and covenants provided in this ARTICLE 6 for in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Those agreements and covenants will run in favor of Landlord for the entire term of those agreements and covenants, without regard to whether Landlord has at any time been, remains, or is an owner of any land or interest therein, or in favor of, to which such agreements and covenants relate. Landlord or its successor will have the exclusive right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

ARTICLE 7 ANNUAL INCOME COMPUTATION, AND CERTIFICATION

No later than OCII's issuance of the Certificate of Completion (as defined in Section 11.01) by the Tenant for the Improvements, and not later than May 31st of each year thereafter, Tenant will compile and furnish to Landlord a list of the persons who are Residential Occupants of the Project, the specific unit that each person occupies, the household income of the Residential Occupants of each unit, the household size and the rent being charged to the Residential Occupants of each unit along with an income certification, in the form set forth in Attachment 6, for each Residential Occupant. In addition, Tenant will require each Residential Occupant to provide any other information, documents, or certifications deemed necessary by OCII/MOHCD to substantiate the Residential Occupant's income. If any state or federal agency requires an income certification for Residential Occupants of the Project containing the above-referenced information, Landlord agrees to accept such certification in lieu of Attachment 6 as meeting the requirements of this Lease.

ARTICLE 8 CONDITION OF SITE— "AS IS"

8.01 Tenant acknowledges and agrees that Tenant is familiar with the Site and the Temporary Construction Access Area, the Site is being leased and the Temporary Construction Access Area is being licensed and accepted in their "as-is" condition, without any improvements or alterations by Landlord, without representation or warranty of any kind, and subject to all applicable Laws governing their use, development, occupancy, and possession. Tenant further represents and warrants that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Site and the Temporary Construction Access Area and the suitability of the Site and the Temporary Construction Access Area for Tenant's intended use. Tenant acknowledges and agrees that neither Landlord nor any of its agents have made, and Landlord hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Site, the physical or environmental condition of the Site or the Temporary Construction Access Area, or the present or future suitability of the Site or the Temporary Construction Access Area for Tenant's use, or any other matter whatsoever relating to the Site or the Temporary Construction Access Area, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose; it being expressly understood that the Site is being leased and the and the Temporary Construction Access Area is being licensed in an "AS IS" condition with respect to all matters.

8.02 Accessibility Disclosure. California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Site has not been inspected by a CASp.

ARTICLE 9 PERMITTED AND PROHIBITED USES

9.01 Permitted Uses and Occupancy Restrictions. The permitted uses of the Project are limited to the construction and operation of one hundred eighty-two (182) units of affordable rental housing for Qualified Households plus two manager's units including forty (40) LOSP units reserved for formerly homeless households (collectively, the "**Residential Units**"), common areas for tenants, and the Pedestrian Mews, constituting the Project. Upon the completion of construction of the Project, one hundred eighty-four (184) of the Residential Units in the Project will be occupied or held vacant and available for rental by Residential Occupants certified as Qualified Households (except as provided in Section B of the Declaration of Restrictions). For as long as Tenant has a LOSP contract or other equivalent operating or rental subsidy for 40 residential units, 40 of the Residential Units must be set aside for households experiencing homelessness that will use LOSP. Residential Units must be occupied and rented in accordance with all applicable restrictions imposed on the Project by this Lease, the Declaration of Restrictions, and by Lenders for so long as such restrictions are required.

9.02 Prohibited Uses. Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "**Prohibited Use**" and collectively, "**Prohibited Uses**"), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

- a) any activity, or the maintaining of any object, that is not within the Permitted Use;
- b) any activity, or the maintaining of any object, that will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;
- c) any activity or object that will overload or cause damage to the Premises excluding normal wear and tear;
- d) any activity that constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises, or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Premises;
- e) any activity that will in any way injure, obstruct, or interfere with the rights of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;
- f) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Landlord, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Landlord;

g) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids;

h) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes, except to the extent necessary during construction of the Project or during critical maintenance or repairs to the Project or its shared systems for the timeframe reasonably necessary to complete such maintenance or repairs;

i) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials, except to the extent necessary during construction of the Project or during critical maintenance or repairs to the Project or its shared systems for the timeframe reasonably necessary to complete such maintenance or repairs;

j) any unauthorized structure or improvement that will preclude or limit public access to and use of, or impede public ingress and egress across, the Pedestrian Mews.

ARTICLE 10 CONSTRUCTION OF IMPROVEMENTS

10.01 Schedule of Performance. Tenant shall undertake and complete all physical construction on the Site, in accordance with the Schedule of Performance, Attachment 2.

10.02 Reserved.

10.03 General Requirements and Rights of Landlord. All construction documents for the construction of the Improvements by Tenant (the “**Construction Documents**”) must be prepared by a person registered in and by the State of California to practice architecture and shall be in conformity with this Lease, including any limitations established in OCII’s approval of the schematic drawings, preliminary construction documents, and final construction documents for the Project, and all applicable Federal, State, and local laws and regulations. The architect will use, as necessary, members of associated design professions, including engineers and landscape architects. All Improvements shall be owned, for federal income tax purposes, by Tenant, subject to the rights of Landlord upon expiration or early termination of the Lease.

10.04 OCII Approvals and Limitation Thereof. The Construction Documents must be approved by OCII in the manner set forth below:

a) Compliance with Redevelopment Plan and Lease. OCII’s approval with respect to the Construction Documents is limited to determination of their compliance with the Redevelopment Requirements, Schematic Design, this Lease and the Loan Documents. The Construction Documents will be subject to general architectural review and guidance by OCII as part of this review and approval process.

b) OCII Does Not Approve Compliance with Construction Requirements. OCII's approval is not directed to engineering or structural matters or compliance with local building codes and regulations, the Americans with Disabilities Act, or any other applicable Law relating to construction standards or requirements. Nothing in this Lease will limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, OCII is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable Laws.

10.05 Construction of Improvements to be in Compliance with Construction Documents and Law.

a) Compliance with Approved Documents. Construction of the Improvements must be in compliance with all OCII-approved Construction Documents.

b) Compliance with Local, State and Federal Law. Construction of the Improvements must be in strict compliance with all applicable Laws, including all laws relating to accessibility for persons with disabilities and all applicable mitigation measures identified in the Final Environmental Impact Statement/Environmental Impact Report ("FEIS/EIR") for the Transbay Redevelopment Project Area. Tenant understands and agrees that Tenant's use of the Premises and construction of the Improvements permitted under this Lease will require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, City agencies. Tenant will be solely responsible for obtaining any and all such regulatory approvals. Tenant will bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and will be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Project or OCII's interest therein must first be approved by OCII in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval will be immediately paid and discharged by Tenant, and Landlord will have no liability, monetary or otherwise, for any such fines or penalties. Tenant will indemnify, defend, and hold harmless OCII and the other Indemnified Parties hereunder against all Claims (as such terms are defined in ARTICLE 21 below) arising in connection with Tenant's failure to obtain or failure by Tenant, its agents, or invitees to comply with the terms and conditions of any regulatory approval except to the extent such Claims are caused by gross negligence or willful misconduct of the party seeking indemnification.

10.06 Approval of Construction Documents by OCII. Tenant will submit and OCII will approve or disapprove the Construction Documents referred to in this Lease within the times established in the Schedule of Performance, so long as each set of the applicable Construction Documents are complete and properly submitted within the time frames set forth in the Schedule of Performance. Failure by OCII either to approve or disapprove within the times established in

the schedule of Performance will entitle Tenant to a day for day extension of time for completion of any activities delayed as a direct result of OCII's failure to timely approve or disapprove the Construction Documents.

10.07 Disapproval of Construction Documents by OCII. If OCII disapproves the Construction Documents in whole or in part as not being in compliance with Redevelopment Requirements or this Lease, Tenant will submit new or corrected Construction Documents which are in compliance within thirty (30) days after written notification to it of disapproval, and the provision of this section relating to approval, disapproval and re-submission of corrected Construction Documents will continue to apply until the Construction Documents have been approved by OCII; provided, however, that in any event Tenant must submit satisfactory Construction Documents (*i.e.*, approved by OCII) no later than the date specified therefor in the Schedule of Performance.

10.08 Issuance of Building Permits.

a) Tenant will have the sole responsibility for obtaining all necessary building permits and will make application for such permits directly to the City's Department of Building Inspection. Landlord understands and agrees that Tenant may use the Fast Track method of permit approval for construction of the Improvements. Tenant shall report permit status every thirty (30) days to OCII. Failure to timely file and to diligently pursue issuance of permits shall be a breach of this Lease.

b) The Tenant is advised that the Central Permit Bureau will forward all building permits to OCII for approval of compliance with Redevelopment Requirements. OCII's approval under this Section 10.08(b) is limited to its determination of compliance with Redevelopment Requirements and does not include Section 10.04(b) matters. OCII evidences such compliance by signing the permit and returning the permit to the Central Permit Bureau for issuance directly to the Tenant. Approval of any intermediate permit, however, is not approval of compliance with all Redevelopment Requirements necessary for a full and final building permit.

10.09 Performance and Payment Bonds. Except as provided elsewhere in this Agreement or the Loan Agreement, before commencement of construction of the Improvements, and subject to the reasonable approval of OCII, Tenant will deliver to OCII performance and payment bonds, each for the full value of the cost of construction of the Improvements, which bonds will name OCII as co-obligee, or such other completion security which is acceptable to OCII. The payment and performance bonds may be obtained by Tenant's general contractor and name Tenant and OCII as co-obligees.

10.10 OCII Approval of Changes after Commencement of Construction. Tenant may not approve or permit any change to the Construction Documents approved by OCII without OCII's prior written consent, except as may be permitted under the Loan Agreement.

10.11 Times for Construction. Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any part thereof, that Tenant and such successors and assigns will promptly begin and diligently prosecute to completion the construction of the Improvements upon the Site, and that such construction will be completed no later than the dates specified in the Schedule of Performance, subject to force majeure, unless such dates are extended by Landlord.

10.12 Force Majeure. For the purposes of any of the provisions of this Lease, and notwithstanding anything to the contrary, neither Landlord nor Tenant, as the case may be, will be considered in breach or default of its obligations, and there will not be deemed a failure to satisfy any conditions with respect to the beginning and completion of construction of the Improvements, or progress in respect thereto, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions, due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God, acts of the public enemy, terrorism, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials, unusually severe weather, or delays of subcontractors due to unusual scarcity of materials or unusually severe weather; it being the purposes and intent of this provision that the time or times for the satisfaction of conditions to this Lease including those with respect to construction of the Improvements, will be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph must have notified the other party of the delay and evidence of its causes in writing within thirty (30) days after the beginning of any such enforced delay and requested an extension for the reasonably estimated period of the enforced delay; and, provided further, that this paragraph does not apply to, and nothing contained in this paragraph will extend or will be construed to extend, the time of performance of any of Tenant's obligations to be performed before the commencement of construction, and the failure to timely perform pre-commencement of construction obligations will not extend or be construed to extend Tenant's obligations to commence, prosecute, and complete construction of the Improvements in the manner and at the times specified in this Lease.

10.13 Reports. Commencing when construction of the Improvements commences and continuing until completion of construction of the Improvements, Tenant will make a report in writing to OCII every month, in such detail as may reasonably be required by OCII, as to the actual progress of the Tenant with respect to the construction. During such period, the work of the Tenant shall be subject to inspection by representatives of OCII, at reasonable times and upon reasonable advance notice.

10.14 Access to Site. As of the Effective Date and until OCII issues a Certificate of Completion (as defined in Section 11.01 below), Tenant will permit access to the Site to Landlord whenever and to the extent necessary to carry out the purposes of the provisions of this Lease or other redevelopment obligations, at reasonable times and upon reasonable advance notice, and on an emergency basis without notice whenever Landlord believes that emergency access is required. After OCII's issuance of a Certificate of Completion, access to the Premises will be governed by ARTICLE 24, below.

10.15 Notice of Completion. Promptly upon completion of the construction of the Improvements in accordance with the provisions of this Lease, Tenant will file a Notice of Completion (“**NOC**”) and record the NOC in the San Francisco Recorder’s Office. Tenant will provide OCII with a copy of the recorded NOC.

10.16 Completion of Improvements by New Developer. In the event a Lender or a successor thereto forecloses, obtains a deed in lieu of foreclosure, or otherwise realizes upon the Premises and undertakes construction of the Improvements (“**New Developer**”) (a) the New Developer will not be bound by the provisions of the Schedule of Performance with respect to any deadlines for the completion of the Improvements but will only be required to complete the Improvements with due diligence and in conformance with a new Schedule of Performance as agreed upon by the New Developer and OCII, (b) the New Developer will only be required to complete the Improvements in accordance with all applicable building codes and ordinances, and the OCII-approved Construction Documents with such changes that are mutually agreed upon by OCII and the New Developer under the following clause (c); and (c) OCII and New Developer will negotiate in good faith such reasonable amendments and reasonable modifications to the Schedule of Performance and ARTICLE 10 of this Lease as the parties mutually determine to be reasonably necessary based upon the financial and construction conditions then existing.

ARTICLE 11 COMPLETION OF IMPROVEMENTS

11.01 Certificate of Completion—Issuance. After completion of the construction of the Improvements in accordance with the provisions of this Lease, if requested by Tenant together with reasonable supporting documentation, including an architect’s certification of completion, OCII will furnish Tenant with an appropriate instrument so certifying (the “**Certificate of Completion**”). OCII’s Certificate of Completion will be a conclusive determination of satisfaction and termination of the agreements and covenants of this Lease regarding Tenant’s obligation to construct the Improvements in accordance with approved Construction Documents. The Certificate of Completion will include the dates of the beginning and completion of construction of the Improvements, but the Certificate of Completion will not constitute evidence of compliance with or satisfaction of Tenant’s obligations to any Lender, or any insurer of a mortgage, securing money loaned to finance the construction or any part thereof; provided further, that OCII’s issuance of a Certificate of Completion does not relieve Tenant or any other person or entity from any and all OCII requirements, regulatory approvals, or conditions relating to construction or occupancy of the Improvements, which requirements or conditions must be complied with separately.

OCII may elect to issue Tenant a Certificate of Completion if no events of default by Tenant are then existing under this Lease or the Loan Documents, and Tenant has completed the Improvements in accordance with this Lease, except for: (1) punch list items; and (2) other items that do not adversely affect or impair Tenant’s use and occupancy of the Improvements for the purposes contemplated by this Lease and that do not preclude the City’s issuance of a certificate of occupancy or other certificate or authorization of Tenant’s use and occupancy of the Improvements. However, OCII will not be obligated to issue a Certificate of Completion in these circumstances unless and until Tenant has provided to OCII, at OCII’s request, a bond, letter of

credit, certificate of deposit, or other security reasonably acceptable to OCII in an amount equal to 110% of the estimated cost to OCII of completing the items described in clauses (1) through (3) above, as reasonably determined by OCII.

11.02 Certifications to be Recordable. The Certificate of Completion will be in a form that permits it to be recorded with the Recorder of the City.

11.03 Certification of Completion—Non-Issuance Reasons. If OCII refuses or fails to provide a Certificate of Completion in accordance with the provisions of Section 11.01, OCII will provide Tenant with a written statement indicating in adequate detail in what respects Tenant has failed to complete the construction of the Improvements in accordance with the provisions of this Lease or is otherwise in default hereunder and what measures or acts will be necessary, in the opinion of OCII, for Tenant to take or perform in order to obtain a Certificate of Completion.

ARTICLE 12 CHANGES TO THE IMPROVEMENTS

12.01 Post-Completion Changes. Landlord has a particular interest in the Project and in the nature and extent of the permitted changes to the Improvements. Accordingly, it imposes the following controls on the Site and on the Improvements: during the term of this Lease, neither Tenant nor any voluntary or involuntary successor or assign, may make or permit any Change (as defined in Section 12.02) in the Project or the Premises, unless the express prior written consent for any Change has been requested in writing from Landlord and obtained, and, if obtained, upon such terms and conditions as Landlord may reasonably require. Landlord agrees not to unreasonably withhold or delay its response to such a request.

12.02 Definition of Change. “**Change**” as used in this Article 12 means any alteration, modification, addition, and/or substitution of or to the Leasehold Estate, the Project, the Premises, and/or the density of development that differs materially from that which existed upon the completion of construction of the Improvements in accordance with this Lease, and includes, without limitation, the exterior design and exterior materials. For purposes of the foregoing, “exterior” includes the roof of the Project. “Change” does not include any repair, maintenance, cosmetic interior alterations (e.g., paint, carpet, installation of moveable equipment and trade fixtures, and hanging of wall art) in the normal course of operation of the Project, or as may be required in an emergency to protect the safety and well-being of the Project’s Residential Occupants.

12.03 Enforcement. Subject to ARTICLE 19 hereof, Landlord will have any and all remedies in law or equity (including, without limitation, restraining orders, injunctions, and/or specific performance), judicial or administrative, to enforce the provisions of this ARTICLE 12, including, without limitation, any threatened or actual breach or violation of this Section.

ARTICLE 13 TITLE TO IMPROVEMENTS

Landlord acknowledges that fee title to the Improvements will be vested in Tenant for the Term of this Lease. It is the intent of the Parties that this Lease and the Memorandum of Ground Lease will create constructive notice of severance of the Improvements from the land without the necessity of a deed from Landlord to Tenant. Landlord and Tenant hereby agree that fee title to the Improvements will remain vested in Tenant during the Term, subject to Section 14.01 below; provided, however, that, subject to the rights of any Lenders and as further consideration for Landlord entering into this Lease, at the expiration or earlier termination of this Lease, fee title to all the Improvements will vest in Landlord without further action of any party, without any obligation by Landlord to pay any compensation to Tenant, and without the necessity of a deed from Tenant to Landlord. Notwithstanding the foregoing, if requested by Landlord, upon expiration or sooner termination of this Lease, Tenant shall execute and deliver to Landlord an acknowledged and good and sufficient grant deed conveying to Landlord Tenant's fee interest in the Improvements. For so long as it is not in default of this Lease, Tenant shall have the exclusive right to deduct, claim retain and enjoy any and all rental income appreciation, gain, depreciation, amortization, and tax credits for federal and State tax purposes relating thereto, substitution therefor, fixtures therein and other property relating thereto.

ARTICLE 14 ASSIGNMENT, SUBLEASE, OR OTHER CONVEYANCE

14.01 Assignment, Sublease, or Other Conveyance by Tenant. Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its interest in the Site, this Lease or in the Improvements or any portion thereof except as provided in ARTICLE 51 of this Lease.

a) Assignment, Sublease, or Other Conveyance by Landlord. The Parties acknowledge and agree that OCII, effective upon the issuance of the Certificate of Completion or some later date as determined by OCII, intends to transfer all of its rights, interests and obligations under this Lease and the Loan Documents, together with conveyance of fee title to the Site, to MOHCD as the designated Housing Successor of the City and County of San Francisco under Board of Supervisors Resolution 11-12 (January 26, 2012), Redevelopment Dissolution Law, and OCII's approved Long-Term Property Management Plan (November 23, 2015). Tenant shall have no right to object and shall attorn to such assignee, and shall execute such instruments and take such actions as may be reasonably required to carry out OCII's intent. Upon assignment to MOHCD, all references herein to Landlord shall be deemed references to MOHCD. OCII and Tenant hereby agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Section 14.01. Upon assignment to MOHCD, all references herein to OCII shall be deemed references to MOHCD.

b) As a condition of the assignment of the Lease and Loan Documents to the City, the City may require standard City contracting provisions under San Francisco Administrative Code or other Laws, as described in Attachment 7, be incorporated into the Lease and Loan Documents.

c) The parties acknowledge that any sale, assignment, transfer, or conveyance or encumbrance of all or any part of Landlord's interest in the Premises, the Site, the Improvements, or this Lease, is subject to this Lease. Landlord will require that any purchaser, assignee, or transferee expressly assume all of the obligations of Landlord under this Lease by a written instrument recordable in the Official Records of the City. This Lease will not be affected by any such sale, and Tenant will attorn to any such purchaser or assignee.

ARTICLE 15 TAXES

Subject to any exemption available therefor, Tenant agrees to pay, or cause to be paid, before delinquency to the proper authority, any and all valid taxes, assessments, and similar charges on the Premises that become effective after the Effective Date of this Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Site. Tenant will not permit any such taxes, charges, or other assessments to become a defaulted lien on the Site, Leasehold Estate or the Improvements thereon; provided, however, that in the event any such tax, assessment, or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment, or similar charge, through such proceedings as Tenant considers necessary or appropriate provided that such proceedings are initiated on or before the date the disputed tax, assessment or similar charge would otherwise be due and payable, and Tenant may defer the payment thereof so long as the validity or amount thereof is contested by Tenant in good faith and without expense to Landlord. If Tenant contests a tax, assessment, or other similar charge, then Tenant will protect, defend, and indemnify Landlord against all Claims resulting therefrom, and if Tenant is unsuccessful in any such contest, Tenant will immediately pay, discharge, or cause to be paid or discharged, the tax, assessment, or other similar charge. Landlord will furnish such information as Tenant may reasonably request in connection with any such contest, provided that such information is in Landlord's possession or control or is otherwise available to the public. Landlord hereby consents to and will reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Site, the Improvements, or on Tenant's interest therein. Tenant will have no obligation under this Section before the Effective Date, including but not limited to any taxes, assessments, or other charges levied against the Site that are incurred before the Effective Date.

ARTICLE 16 UTILITIES

From and after the Effective Date, Tenant will procure water and sewer service from the City and electricity, telephone, natural gas, if applicable, and any other utility service from the City or utility companies providing such services, and will pay all connection and use charges imposed in connection with such services. From and after the Effective Date, as between Landlord and Tenant, Tenant will be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service.

ARTICLE 17 MAINTENANCE AND OPERATION

17.01 Maintenance. Tenant, at all times during the Term, shall maintain or cause to be maintained the Premises in good condition and repair to the reasonable satisfaction of Landlord, including the exterior, interior, substructure, and foundation of the Improvements and all fixtures, equipment, and landscaping from time to time located on the Site or any part thereof. Landlord will not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Premises or any buildings or improvements now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Landlord's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect.

17.02 Facilities Condition Report. Every five (5) years beginning on the fifth anniversary date of the issuance of the Certificate of Completion, Tenant will deliver to Landlord a facilities condition report for the Premises, prepared by a qualified team of construction professionals acceptable to Tenant and Landlord, describing at a minimum the condition and integrity of the Premises, foundation and structural integrity of the building, and all utilities systems serving the building (the "**Facilities Condition Report**"). Tenant will provide with its submittal of the Facilities Condition Report, an anticipated schedule of and budget for, the repairs identified in the Facilities Condition Report. If Landlord reasonably believes the Facilities Condition Report does not adequately describe the condition and integrity of the listed items or the timing of required repairs, then Landlord will notify Tenant of the deficiency and Tenant will revise the Facilities Condition Report to address Landlord's concerns. If Tenant fails to provide a Facilities Condition Report to Landlord every five (5) years, then Landlord after giving thirty (30) days' notice to Tenant will have the right, but not the obligation, to cause a Facilities Condition Report to be prepared by a team of construction professionals of Landlord's choice, at Tenant's sole cost. Tenant will perform the repairs within the timeframe set forth in the Facilities Condition Report approved by Landlord.

17.03 Landlord's Right to Inspect. Without limiting ARTICLE 24 below, Landlord may, upon reasonable prior notice to Tenant, make periodic inspections of the Premises and other areas for which Tenant has obligations and may advise Tenant when maintenance or repair is required, but such right of inspection will not relieve Tenant of its independent responsibility to maintain the Premises, Improvements, and other areas as required by this Lease in a condition as good as, or better than, their condition at the completion of the Improvements, excepting ordinary wear and tear.

17.04 Landlord's Right to Repair. If Tenant fails to maintain or to promptly repair any damage to the Premises as required by this Lease, then subject to applicable notice and cure periods, Landlord may repair the damage at Tenant's sole cost and expense and Tenant will immediately reimburse Landlord for all costs of the maintenance or repair.

17.05 Operation. Following completion of the Improvements, Tenant will maintain and operate the Project consistent with the maintenance and operation of a safe, clean, well-maintained first-class mixed-use residential/commercial project located in San Francisco. Tenant will be

exclusively responsible, at no cost to Landlord except as otherwise contemplated herein and under the Loan Documents, for the management and operation of the Project. In connection with managing and operating the Project, Tenant will provide (or require others to provide), services as necessary and appropriate to the uses to which the Project are put, including (a) repair and maintenance of the Improvements; (b) utility, telecommunications and internet (including Wi-Fi) services to the extent customarily provided by equivalent projects located in San Francisco; (c) cleaning, janitorial, pest extermination, recycling, composting, and trash and garbage removal; (d) landscaping and groundskeeping; (e) security services with on-site personnel for the Project; and (f) lighting at night sufficient for safe pedestrian navigation along pathways. Tenant will use commercially reasonable efforts to ensure that no portion of the Project remains unoccupied or unused without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

17.06 Pedestrian Mews. Tenant shall have all rights and shall be subject to and perform all obligations of [Declarant] under that certain Declaration of Public Access Restrictions recorded on _____ as Instrument No. _____ (“**Declaration of Public Access Restrictions**”) with respect to the portion of the Premises subject to the Declaration of Public Access Restrictions, and enjoy such rights and perform such obligations at no cost to OCII.

ARTICLE 18 LIENS

Tenant will use its best efforts to keep the Premises free from any liens arising out of any work performed or materials furnished by itself or its subtenants. If Tenant does not cause a lien to be released of record or bonded around within thirty (30) days following written notice from Landlord of the imposition of the lien, Landlord will have, in addition to all other remedies provided in this Lease and by Law, the right (but not the obligation) to cause the lien to be released by any means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose, and all reasonable expenses incurred by it in connection therewith, will be payable to Landlord by Tenant as additional Base Rent, and paid promptly on demand. Notwithstanding the foregoing, Tenant will have the right, upon posting of an adequate bond or other security, to contest any lien, and Landlord will not seek to satisfy or discharge the lien unless Tenant has failed so to do within ten (10) days after the final determination of the validity of the lien. If Tenant contests a lien, then Tenant will protect, defend, and indemnify Landlord against all Claims resulting therefrom. The provisions of this Section will not apply to any liens arising before the Effective Date that are not the result of Tenant's contractors, consultants, or activities.

ARTICLE 19 GENERAL REMEDIES

19.01 Application of Remedies. The provisions of this ARTICLE 19 govern the parties' remedies for breach of this Lease.

19.02 Breach by Landlord. If Tenant believes that Landlord has materially breached this Lease, Tenant must first notify Landlord in writing of the purported breach, giving Landlord one

hundred twenty (120) days from receipt of such notice to cure the breach. If Landlord does not cure the breach within the 120-day period, or if the breach is not reasonably susceptible to cure within that 120-day period, begin to cure within one hundred twenty (120) days and diligently prosecute then cure to completion, then Tenant will have all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this entire Lease with the written consent of each Lender; (ii) prosecuting an action for damages; (iii) seeking specific performance of this Lease; or (iv) any other remedy available at law or equity.

19.03 Breach by Tenant.

a) Default by Tenant. Subject to the notice and cure rights under Sections 19.03(b) and 19.04, the following events each constitute a basis for Landlord to take action against Tenant:

(i) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions set forth in Section 9.01 and the Declaration of Restrictions;

(ii) Tenant voluntarily or involuntarily assigns, transfers, or attempts to transfer or assign this Lease or any rights in this Lease, or in the Improvements, except as permitted by this Lease or otherwise approved by Landlord;

(iii) From and after the Effective Date, Tenant or its successor in interest fails to pay real estate taxes or assessments in accordance with Article 15, or places or allows to be placed on the Leasehold Estate, Site, the Premises, or any portion thereof, any encumbrance or lien not authorized by this Lease, or suffers any levy or attachment, or any material supplier's or mechanic's lien or the attachment of any other unauthorized encumbrance or lien, and the taxes or assessments have not been paid, or the encumbrance or lien removed or discharged within the time period provided in ARTICLE 18; provided, however, that Tenant has the right to contest any tax or assessment or encumbrance or lien as provided in ARTICLE 15 and ARTICLE 18;

(iv) Tenant is adjudicated bankrupt or insolvent or makes a transfer to defraud its creditors, or makes an assignment for the benefit of creditors, or brings or has brought against Tenant any action or proceeding of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy, or reorganization act and, in the event such proceedings are involuntary, Tenant is not dismissed from the proceedings within sixty (60) days thereafter; or, a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days;

- (v) Tenant breaches any other material provision of this Lease;
- (vi) Tenant fails to pay any portion of Annual Rent when due in accordance with the terms and provisions of this Lease;
- (vii) Failure to commence any maintenance or repair obligation concerning the Premises.

b) Notification and Landlord Remedies. Upon the happening of any of the events described in Section 19.03(a) above, and before exercising any remedies, Landlord will notify Tenant, the Permitted Limited Partner(s), and each Lender in writing of Tenant's purported breach, failure, or act in accordance with the notice provisions of ARTICLE 39, giving Tenant, any Lender, and Permitted Limited Partner(s) sixty (60) days from the giving of the notice to cure such breach, failure, or act, with the exception of breach of Section 19.03(a)vii, above, which shall be subject to a cure period of ten (10) days. If Tenant, Lender, or Permitted Limited Partner does not cure or, if the breach, failure, or act is not reasonably susceptible to cure within the applicable cure period, begin to cure within the applicable cure period and thereafter diligently prosecute such cure to completion, then, subject to the rights of any Lender and Permitted Limited Partner and subject to Section 19.04 and ARTICLE 26, Landlord will have all of its rights at law or in equity, including, but not limited to:

- (i) the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and the Landlord may enforce all of its rights and remedies under this Lease, including the right to collect rent when due. During the period Tenant is in default, Landlord may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant will be liable immediately to Landlord for all reasonable costs that Landlord incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Landlord deems advisable, subject to any restrictions applicable to the Premises. Tenant shall owe Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from any reletting. If Landlord elects to relet, then rentals received by Landlord from the reletting will be applied in the following order: (1) to reasonable attorneys' and other fees incurred by Landlord as a result of a default and costs if suit is filed by Landlord to enforce its remedies; (2) to the payment of any costs of

maintaining, preserving, altering, repairing, and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, reasonable attorneys' fees and expenses of removal of Tenant's Personal Property and Changes; (3) to the payment of rent due and unpaid; (4) the balance, if any, will be paid to Tenant upon (but not before) expiration of the Term. If that portion of the rentals received from any reletting during any month that is applied to the payment of rent, is less than the rent payable during the month, then Tenant shall owe the deficiency to Landlord. The deficiency will be calculated and paid monthly. No act by Landlord allowed by this Section will terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises by written notice, if Tenant obtains Landlord's consent Tenant will have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability and the assignment or subletting will not serve to cure the default;

(ii) terminate Tenant's right to possession of the Leasehold Estate at any time. No act by Landlord other than giving notice of termination to Tenant will terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease will not constitute a termination of Tenant's right to possession. If Landlord elects to terminate this Lease, then Landlord has the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Annual Rent and any additional charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Landlord's efforts to mitigate the damages caused by Tenant's breach of this Lease will not waive Landlord's rights to recover damages upon termination;

(iii) cause a receiver to be appointed for Tenant upon application by Landlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Landlord under this Lease;

(iv) seek specific performance of this Lease; or

(v) in the case of default under Section 19.03(a)(i), increase the Base Rent to the full amount of the Annual Rent.

Notwithstanding the foregoing, during the 15-year tax credit “compliance period” (as defined in Section 42 of the Internal Revenue Code, as amended) for the Project, Landlord may only terminate this Lease for a default by Tenant under Section 19.03(a)(vi) above.

19.04 Rights of Permitted Limited Partner.

a) If a Permitted Limited Partner cannot cure a default due to an automatic stay in Bankruptcy court because the general partner of the Tenant is in bankruptcy, any cure period will be tolled during the pendency of such automatic stay.

b) Landlord will not exercise its remedy to terminate this Lease if a Permitted Limited Partner is attempting to cure the default and the cure requires removal of the managing general partner, so long as the Permitted Limited Partner is proceeding diligently to remove the managing general partner in order to effect a cure of the default and the removal of such general partner(s) shall not in and of itself cause a default hereunder.

c) Unless otherwise provided for in this Lease, any limited partner that is not the Permitted Limited Partner identified in ARTICLE 39 wishing to become a Permitted Limited Partner must provide five (5) days written notice to Landlord in accordance with the notice provisions of this Lease, setting forth a notice address and providing a copy of such notice to the Tenant and all of the Tenant’s partners. The limited partner will become a Permitted Limited Partner upon the expiration of the five-day period. A limited partner will not be afforded the protections of this Section with respect to any default occurring before the limited partner becomes a Permitted Limited Partner.

19.05 Landlord’s Right to Cure Tenant’s Default. If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may at any time thereafter after notice and expiration of the applicable cure period (except in the event of an emergency as determined by Landlord, in which case the Landlord may act when Landlord determines necessary), remedy the default for Tenant’s account and at Tenant’s expense. Tenant will pay to Landlord as additional Base Rent, promptly upon demand, all sums expended by Landlord, or other costs, damages, expenses, or liabilities incurred by Landlord, including reasonable attorneys’ fees, in remedying or attempting to remedy the default. Tenant’s obligations under this Section will survive the termination of this Lease. Nothing in this Section implies any duty of Landlord to do any act that Tenant is obligated to perform under any provision of this Lease, and Landlord’s cure or attempted cure of Tenant’s default will not constitute a waiver of Tenant’s default or any rights or remedies of Landlord on account of the default.

19.06 Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure

Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any default of Tenant hereunder.

19.07 Remedies Not Exclusive. The remedies set forth in Section 19.03(b) are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Landlord now or later allowed by Law. Tenant's obligations hereunder will survive any termination of this Lease.

ARTICLE 20 DAMAGE AND DESTRUCTION

20.01 Insured Casualty. If the Improvements or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant under this Lease, Tenant will promptly commence and diligently complete the restoration of the Improvements as nearly as possible to the condition thereof before such damage or destruction, or in accordance with plans approved by Landlord; provided, however, that if more than fifty percent (50%) of the Improvements are destroyed or are damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to complete the restoration, then Tenant, with the written consent of each Lender and Permitted Limited Partner, may terminate this Lease within thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. If Tenant is required or elects to restore the Improvements, then all proceeds of any policy of insurance required to be maintained by Tenant under this Lease will, subject to any applicable rights of Lenders and the Permitted Limited Partner, be used by Tenant for that purpose and Tenant will make up from its own funds or obtain additional financing as reasonably approved by Landlord any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost. If Tenant elects to terminate this Lease as provided under this Section 20.01, or elects not to restore the Improvements, then the insurance proceeds will be divided in the order set forth in Section 20.03.

20.02 Uninsured Casualty. If (i) more than fifty percent (50%) of the Improvements are damaged or destroyed and ten percent (10%) or more of the cost to complete the restoration is not covered by insurance required to be carried under this Lease; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be completed or operated on an economically feasible basis; and (iii) there is not available to Tenant any feasible source of third party financing for restoration reasonably acceptable to Tenant; then Tenant may, with the written consent of each Lender and the Permitted Limited Partner, other than Landlord, terminate this Lease upon ninety (90) days written notice to Landlord. If it appears that the provisions of this Section 20.02 may apply to a particular event of damage or destruction, Tenant will notify Landlord promptly and not consent to any settlement or adjustment of an insurance award without Landlord's written approval, which approval will not be unreasonably withheld or delayed. If Tenant terminates this Lease under this Section 20.02, then all insurance proceeds and damages payable by reason of the casualty will be divided among Landlord, Tenant, and Lenders in accordance with the provisions of Section 20.03. If Tenant does not have the right, or elects not to exercise the right, to terminate this Lease as a result of an uninsured or underinsured casualty, then

Tenant will promptly commence and diligently complete the restoration of the Improvements as nearly as possible to their condition before the damage or destruction in accordance with the provisions of Section 20.01 and will, subject to any applicable rights of Lenders, be entitled to all available insurance proceeds to do so.

20.03 Distribution of the Insurance Proceeds. If Tenant elects to terminate and surrender as provided in either Sections 20.01 or 20.02, then the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by Tenant hereunder will be as follows:

- a) First to the Lenders, in order of their priority, to control, disburse or apply to any outstanding loan amounts in accordance with the terms their respective Leasehold Mortgages and applicable Law;
- b) Second, at Landlord's election, to pay the actual cost of removing all debris from the Site and adjacent and underlying property, and for the actual cost of any work or service required by any Law, for the protection of persons or property from any risk, or for the abatement of any nuisance, created by or arising from the casualty or the damage or destruction caused thereby;
- c) Third, to compensate Landlord for any diminution in the value (as of the date of the damage or destruction) of the Site caused by or arising from the damage or destruction; and
- d) The remainder to Tenant.

20.04 Clean-up of Housing Site. If Tenant terminates this Lease under the provisions of Sections 20.01 or 20.02, Tenant must, at Landlord's election, clean up and remove all debris from the Site and adjacent and underlying property and leave the Site in a clean and safe condition and in compliance with all Laws upon surrender, as described in Section 20.03(b). If the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Section 20.03(b), then Tenant must pay the portion of the costs not covered by the insurance proceeds.

20.05 Waiver. Tenant and Landlord intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, Landlord and Tenant each hereby waive the provisions of Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

ARTICLE 21 DAMAGE TO PERSON OR PROPERTY; HAZARDOUS SUBSTANCES; INDEMNIFICATION

21.01 Damage to Person or Property—General Indemnification. Landlord will not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site or Temporary Construction Access Area, for any injury or damage to the Premises or

Temporary Construction Access Area, or to any property of Tenant, or to any property of any other person, entity, or association on or about the Premises or Temporary Construction Access Area, unless: (a) during construction of the Project, arising from the active negligence, sole negligence, or willful misconduct of an Indemnified Party (as defined below); or (b) after construction of the Project, arising from the gross negligence or willful misconduct of an Indemnified Party (as defined below). To the fullest extent allowable by law, Tenant will defend, hold harmless, and indemnify Landlord and the City and County of San Francisco, including but not limited to their boards, commissions, commissioners, departments, agencies, and other subdivisions, officers, agents, invitees and employees (each, an “**Indemnified Party**” and collectively the “**Indemnified Parties**”), of and from all claims, loss, damage, injury, actions, causes of action, and liability of every kind, nature and description (collectively, “**Claims**”) incurred in connection with or directly or indirectly arising from the Site, Temporary Construction Access Area, this Lease, Tenant’s tenancy, its or their use of the Site, Temporary Construction Access Area, including adjoining sidewalks and streets, and any of its or their operations or activities thereon or connected thereto; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further excepting only such Claims that are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing indemnity will include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and Landlord’s costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Landlord from any claim that actually or potentially falls within any indemnity provision set forth in this Lease even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter. Tenant’s obligations under this Article will survive the termination or expiration of this Lease.

21.02 Hazardous Substances—Indemnification.

a) Tenant will indemnify, defend, and hold the Indemnified Parties harmless from and against any and all Claims of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to violation of any Environmental Law, or any Release, threatened Release, and any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site or Temporary Construction Access Area caused by Tenant, its employees, agents, affiliates, or contractors; provided, however, that this Section 21.02(a) shall not be deemed or construed to, and shall not impose any obligation on Tenant to indemnify and save harmless the Indemnified Parties from any Claim to the extent arising from or in any way related to or connected with any willful misconduct or gross negligence by any Indemnified Party occurring after the Effective Date. No Indemnified Party shall be entitled to indemnification under this Section for, and Tenant will have no liability for any Claims relating to a violation of, any Environmental Law, Release, or threatened Release, or arising out of any condition or action of pollution,

contamination or Hazardous Substance-related nuisance on, under or from the Site or Temporary Construction Access Area occurring prior to the Effective Date except for those contributed to or exacerbated by Tenant.

b) For purposes of this Section 21.02, the following definitions apply:

(i) "**Hazardous Substance**" has the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Lease, 42 U.S.C. 9601(14), and in addition includes, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos- containing materials, polychlorinated biphenyls ("**PCBs**"), PCB- containing materials, all hazardous substances identified in the California Health & Safety Code 25316 and 25281(d), all chemicals listed under the California Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition does not include substances that occur naturally on the Site or commercially reasonable amounts of hazardous materials used in the ordinary course of construction and operation of a mixed-use residential development, provided they are used and stored in accordance with all applicable Laws.

(ii) "**Environmental Law**" means all Laws governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Lease.

(iii) "**Release**" means any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance.

21.03 Exculpation and Waiver. Tenant, as a material part of the consideration to be rendered to Landlord, hereby waives any and all Claims against the Indemnified Parties related to this Lease including their rights or obligations as landlord under this Lease, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct (including breach of this Lease) or active gross negligence. The Indemnified Parties will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims against the Indemnified Parties related to this Lease including their rights or obligations as landlord under this Lease for, any injury, loss, or

damage to any person or property in or about the Premises or Temporary Construction Access Area by or from any cause whatsoever occurring on or after the Effective Date including, without limitation, (a) any act or omission of persons occupying adjoining premises or any part of the Premises adjacent to or connected with the Premises, (b) theft, (c) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (d) stopped, leaking, or defective building systems, (d) construction or site defects, (f) damages to goods, wares, goodwill, merchandise, equipment, or business opportunities, (g) Claims by persons in, upon or about the Premises or any other Landlord property for any cause arising at any time, (h) alleged facts or circumstances of the process or negotiations leading to this Lease before the Effective Date (other than with respect to any Environmental Law or Release); and (i) any other acts, omissions, or causes.

21.04 Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease might be found later to be other than or different from the facts now believed to be true and agrees that the releases in this Lease will remain effective. Therefore, with respect to the Claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO
CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR.

Tenant initials ____

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time this Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

21.05 Insurance. The Indemnification requirements under this Lease, or any other agreement between OCII and Tenant, will in no way be limited by any insurance requirements under any such agreements.

21.06 Survival. The provisions of ARTICLE 21 will survive the expiration or earlier termination of this Lease.

ARTICLE 22 INSURANCE

22.01 Insurance. Subject to approval by OCII's Risk Manager of the insurers and policy forms, Tenant must obtain and maintain, or cause to be maintained, the insurance and bonds as set forth in Attachment 8 throughout the Term of this Lease at no expense to OCII.

ARTICLE 23 COMPLIANCE WITH SITE-RELATED AND LEGAL REQUIREMENTS

23.01 Compliance with Legal Requirements. From and after the Effective Date, Tenant will at its cost and expense, promptly comply with all applicable Laws now in force or that may later be in force, including, without limitation, the requirements of the fire department or other similar body now or later constituted and with any direction or occupancy certificate issued under any Law as any of them may relate to or affect the condition, use, or occupancy of the Site. If Tenant contests any of the foregoing, Tenant will not be obligated to comply therewith to the extent that the application of the contested Law is stayed by the operation of law or administrative or judicial order and Tenant indemnifies, defends, and holds harmless the Indemnified Parties against all Claims resulting from noncompliance.

23.02 Regulatory Approvals. Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Site and not as a regulatory agency with certain police powers. Tenant understands and agrees that neither entry by Landlord into this Lease nor any approvals given by Landlord under this Lease will be deemed to imply that Tenant has thereby obtained any required approvals from City departments, boards, or commissions that have jurisdiction over the Premises. By entering into this Lease, Landlord is in no way modifying or limiting the obligations of Tenant to develop the Project in accordance with all Laws and as provided in this Lease.

Tenant understands that the construction of the Improvements on the Leasehold Estate and development of the Project will require approval, authorization, or permit by governmental agencies with jurisdiction. Tenant must use good faith efforts to obtain and will be solely responsible for obtaining any approvals required for the Project in the manner set forth in this Section. Throughout the permit process for any regulatory approvals, Tenant will consult and coordinate with Landlord in Tenant's efforts to obtain permits. Landlord will cooperate reasonably with Tenant in its efforts to obtain permits; provided, however, Tenant may not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency if Landlord is required to be a co-permittee under the permit or the conditions or restrictions could create any financial or other material obligations on the part of Landlord whether on or off of the Premises, unless in each instance Landlord has approved the conditions previously in writing and in Landlord's reasonable discretion. No approval by Landlord will limit Tenant's obligation to pay all the costs of complying with conditions under this Section. Tenant must bear all costs associated with applying for and obtaining any necessary regulatory approval, as well as any fines, penalties or corrective actions imposed as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval.

With Landlord's prior written consent, Tenant will have the right to appeal or contest any condition in any manner permitted by Law imposed upon any regulatory approval. In addition to any other indemnification provisions of this Lease, Tenant must indemnify, defend, and hold harmless Landlord and its commissioners, officers, agents or employees from and against any and all Claims that may arise in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval or with the appeal or contest of any conditions of any regulatory approval, except to the extent damage arises out of the active gross negligence or willful misconduct of Landlord or its agents.

ARTICLE 24 ENTRY

24.01 Landlord reserves for itself and its authorized representatives (including MOHCD) the right to enter the Premises at all reasonable times during normal business hours upon not less than forty-eight (48) hours' written notice to Tenant (except in the event of an emergency), subject to the rights of the occupants, tenants, and others lawfully permitted on the Premises, for any of the following purposes:

- a) to determine whether the Premises is in good condition and to inspect the Premises (including soil borings or other Hazardous Substance investigations);
- b) to determine whether Tenant is in compliance with its Lease obligations and to cure or attempt to cure any Tenant default;
- c) to serve, post, or keep posted any notices required or allowed under any of the provisions of this Lease;
- d) to do any maintenance or repairs to the Premises that Landlord has the right or the obligation, if any, to perform hereunder; and
- e) to show the Premises to any prospective purchasers, brokers, Lenders, or public officials, or, during the last year of the Term of this Lease, exhibit the Premises to prospective tenants or other occupants, and to post any reasonable "for sale" or "for lease" signs in connection therewith.

24.02 In the event of any emergency, as reasonably determined by Landlord, at its sole option and without notice, Landlord may enter the Premises and alter or remove any Improvements or Tenant's personal property on or about the Premises as reasonably necessary, given the nature of the emergency. Landlord will have the right to use any and all means Landlord considers appropriate to gain access to any portion of the Premises in an emergency, in which case, Landlord will not be responsible for any damage or injury to any property, or for the replacement of any property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

24.03 Landlord will not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry onto the Premises, except to the extent damage arises out of the active gross negligence or willful misconduct of Landlord or its agents. Landlord will be responsible for any losses resulting from its active gross negligence or willful misconduct and will repair any resulting damage promptly.

24.04 Tenant will not be entitled to any abatement in Annual Rent if Landlord exercises any rights reserved in this Section, subject to Section 24.03 above.

24.05 Landlord will use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use of the Premises as permitted by this Lease.

ARTICLE 25 MORTGAGE FINANCING

25.01 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Lease and subject to the prior written consent of Landlord in the form attached hereto as Attachment 3, which consent will not be unreasonably withheld, conditioned, or delayed, Leasehold Mortgages (and encumbrances related to such Leasehold Mortgages or required by Project lenders or equity investors, including, but not limited to use agreements and regulatory agreements) are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing the acquisition of the Project; refinancing of financing used to acquire or rehabilitate the Project; design, construction, renovation, or reconstruction of the Improvements; and any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Improvements under this Lease and in connection with the operation of the Project; and costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Lease. OCII, acting solely in its capacity as landlord under this Lease, hereby acknowledges and accepts _____ (or the Fiscal Agent acting on its behalf pursuant to the tax-exempt loan to Tenant) as a Lender, and consents to the Leasehold Mortgage associated with Lender's construction loan to Tenant for the Project.

25.02 Holder Not Obligated to Construct. The holder of any mortgage, deed of trust, or other security interest authorized by Section 25.01 ("**Holder**" or "**Lender**"), including the successors or assigns of the Holder, is not obligated to complete any construction of the Improvements or to guarantee such completion; and no covenant or any other provision of this Lease may be construed to obligate the Holder. However, if the Holder undertakes to complete or guarantee the completion of the construction of the Improvements, nothing in this Lease will be deemed or construed to permit or authorize the Holder or its successors or assigns to devote the Premises or any portion thereof to any uses, or to construct any Improvements on the Site, other than those uses or Improvements authorized under Section 9.01 and the Declaration of Restrictions and any reasonable modifications in plans proposed by the Holder or its successors in interest proposed for the viability of the Project approved by Landlord in its reasonable discretion under Section 10.16. To the extent any Holder or its successors in interest wish to change such uses or

construct different improvements, Holder or its successors in interest must obtain the advance written consent of Landlord.

25.03 Failure of Holder to Complete Construction. In any case where six (6) months after assumption of obligations under Section 25.02 above, a Lender, having first exercised its option to complete the construction, has not proceeded diligently with completion of the construction, Landlord will have all the rights against the Holder it would otherwise have against Tenant under this Lease for events or failures occurring after such assumption; subject to any extensions of time granted under Section 10.16 of this Lease.

25.04 Default by Tenant and Landlord's Rights.

a) Right of Landlord to Cure a Default or Breach by Tenant under a Leasehold Mortgage. In the event of a default or breach by Tenant under any Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of such default or breach, Landlord may, at its option, cure such breach or default for the period of one hundred ten (110) days after the date that the Lender files a notice of default. In such event, Landlord will be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by Landlord in curing the default or breach. Landlord will also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent such costs and disbursements are not reimbursed by Tenant. Any such lien will be subject to the lien of any then-existing Leasehold Mortgage authorized by this Lease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Lender filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable Loan Documents, Landlord will also have the right to assign Tenant's interest in the Lease to another entity, subject to all Lenders' and Permitted Limited Partner's written consent, and which consent may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage. After ninety (90) days following the date of Lender filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable Loan Documents, Landlord will also have the right to assign Tenant's interest in the Lease to another entity, subject to all Lenders' and Permitted Limited Partner's written consent in the exercise of their sole and absolute discretion, and which consent may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage.

b) Notice of Default to Landlord. Tenant will use its best efforts to require Lender to give Landlord prompt written notice of any default or breach of the Leasehold Mortgage and each Leasehold Mortgage will provide for that notice to Landlord and contain Landlord's right to cure as above set forth.

25.05 Cost of Mortgage Loans to be Paid by Tenant. Tenant covenants and affirms that it will bear all of the costs and expenses in connection with (a) the preparation and securing of any Leasehold Mortgage, (b) the delivery of any instruments and documents and their filing and

recording, if required, and (c) all taxes and charges payable in connection with any Leasehold Mortgage.

ARTICLE 26 PROTECTION OF LENDER

26.01 Notification to Landlord. Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in this ARTICLE 26, Tenant will cause each Lender to give written notice to Landlord of the Lender's address and of the existence and nature of its Leasehold Mortgage. Execution of Attachment 3 will constitute Landlord's acknowledgement of Lender's having given such notice as is required to obtain the rights and protections of a Lender under this Lease. Landlord hereby acknowledges that _____ (or the Fiscal Agent acting on its behalf pursuant to the tax-exempt loan to Tenant) is the First Mortgage Lender and is deemed to have given such written notice as First Mortgage Lender and Attachment 3 is not required.

26.02 Lender's Rights to Prevent Termination. Each Lender has the right, but not the obligation, at any time before termination of this Lease and without payment of any penalty other than the interest on unpaid rent, to pay all of the rents due under this Lease, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant or necessary and proper to be done in the performance and observance of the agreements, covenants and conditions of this Lease to prevent a termination of this Lease to the same effect as if the same had been made, done, and performed by Tenant instead of by Lender.

26.03 Lender's Rights When Tenant Defaults. If any event of default under this Lease occurs and is continuing, and is not cured within the applicable cure period, Landlord will not terminate this Lease or exercise any other remedy unless it first gives written notice of the event of default to Lender, and:

a) If the event of default is a failure to pay a monetary obligation of Tenant (not including any of Tenant's indemnification obligations under this Lease (the "**Indemnification Obligations**")), Lender fails to cure such default within sixty (60) days from the date of written notice from Landlord to Lender to cure the default; or

b) If the event of default is not a failure to pay a monetary obligation of Tenant, Lender fails, within sixty (60) days of receipt of the written notice, to either (a) remedy such default; or (b) obtain title to the Leasehold Estate and Improvements in lieu of foreclosure; or (c) commence foreclosure or other appropriate proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in which case such event of default will be remedied or deemed remedied in accordance with Section 26.04 below.

c) All rights of Landlord to terminate this Lease as the result of the occurrence of any uncured event of default is subject to, and conditioned upon, Landlord having first given Lender written notice of the event of default and Lender having failed to

remedy such default or acquire Tenant's Leasehold Estate or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Section 26.03, and upon the Permitted Limited Partners having failed to proceed as permitted under Sections 19.04(b) or 26.06(b).

26.04 Default That Cannot be Remedied by Lender. Any event of default under this Lease that in the nature thereof cannot be remedied by Lender will be deemed to be remedied as it pertains to Lender or any Subsequent Owner if (a) within sixty (60) days (and as may be extended in the OCII Executive Director's discretion) after receiving notice from Landlord setting forth the nature of such event of default, Lender has acquired the Leasehold Estate and Improvements or has commenced foreclosure or other appropriate proceedings in the nature of foreclosure, (b) Lender is diligently prosecuting any such proceedings to completion, (c) Lender has fully cured any event of default arising from failure to pay or perform any monetary obligation (other than the Indemnification Obligations) in accordance with Section 26.03, and (d) after gaining possession of the Improvements, Lender diligently proceeds to perform all other obligations of Tenant as and when due in accordance with the terms of this Lease. Notwithstanding anything to the contrary contained elsewhere herein, in no event shall any Lender have the obligation, or be required, as a condition to preventing the termination of this Ground Lease, as a condition to obtaining a new lease or otherwise, to cure any breach by Tenant of its obligation, under Article 25.04 of this Ground Lease, to reimburse Landlord for all costs, expenses, advances and disbursements made or incurred by Landlord in connection with its cure of any breach of default under any Leasehold Mortgage (and all such breaches shall automatically be deemed cured upon a foreclosure under any Leasehold Mortgage (or acceptance of a deed in lieu thereof).

26.05 Court Action Preventing Foreclosure. If Lender is prohibited by any process or injunction issued by any court or because of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure, the times specified in Sections 26.03 and 26.04 above for commencing or prosecuting such foreclosure or other proceedings will be extended for the period of such prohibition. If this Lease is terminated for any reason or rejected by Tenant in bankruptcy, then Landlord agrees to enter into a new ground lease with the Lender on the same terms set forth in this Lease, and said new lease shall be afforded a priority equal to the recording priority of this Lease. For purpose of this Article, if there is more than one Lender, Landlord will offer the new lease to each Lender in the order of priority until accepted.

26.06 Lender's Rights to Record, Foreclose, and Assign. Landlord hereby agrees with respect to any Leasehold Mortgage, that:

a) the Lender may cause its Leasehold Mortgage to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate to an assignee from whom it may accept a purchase price; provided however that: (a) except with respect to affiliates of a Lender, Lender obtains prior written approval from Landlord with respect to the selection of the assignee, which approval shall not be unreasonably withheld,

conditioned or delayed; and (b) the proposed assignee maintains the use restrictions of Section 9.02 and is controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Premises would, if leased by such entity, receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code. Lender, furthermore, may acquire title to the Leasehold Estate in any lawful way, and if the Lender, or an affiliate, shall become the assignee, then Lender (or affiliate) may sell and assign said Leasehold Estate subject to Landlord approval as to assignee or purchaser, which shall not be unreasonably withheld, conditioned or delayed and to Landlord's cure rights under Section 25.04. The foreclosure of the Leasehold Mortgage shall not constitute an Event of Default hereunder.

b) each Subsequent Owner must take the Leasehold Estate subject to all of the provisions of this Lease, and except as provided elsewhere in this Lease, must assume all of the obligations of Tenant under this Lease for so long as it is the owner of the Leasehold Estate;

c) Landlord will mail or deliver to any Lender that has an outstanding Leasehold Mortgage a duplicate copy of all notices that Landlord may give to Tenant under this Lease; and

d) any Permitted Limited Partners of Tenant will have the same rights as any Lender under Sections 26.02, 26.03, and 26.06(c), and any reference to a Lender in those sections will be deemed to include the Permitted Limited Partners; provided, however, that the rights of the Permitted Limited Partners are subordinate to the rights of any Lender.

26.07 Lease Rent after Lender Foreclosure or Assignment. Upon foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure, (i) any accrued Annual Rent at the time of foreclosure will be forgiven by Landlord, and will not be an obligation of the Lender, its assignee, or the Subsequent Owner; and (ii) for so long as the Project is operated in accordance with the use and occupancy restrictions of ARTICLE 9, Annual Rent shall be set as follows:

a) The obligations of any Subsequent Owner other than a Lender (or its affiliate) for payment of Annual Rent shall be as set forth in ARTICLE 4;

b) A Lender (or the affiliate of a Lender) who acquires the Leasehold Estate as a result of foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure shall pay Annual Rent as follows:

(i) For 180 days after foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure, the

obligations for payment of Annual Rent of the Lender (or such affiliate) shall be as set forth in ARTICLE 4;

(ii) If, within 180 days after foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure: (a) the Lender (or such affiliate) identifies as a potential assignee of the Leasehold Estate an entity that is controlled by, or includes a partner or member which is, a California nonprofit public benefit corporation that is exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Leasehold Estate would, if leased by such entity, receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code, (b) Landlord has approved such entity (which approval shall not be unreasonably withheld, conditioned or delayed), and (3) Lender (or its affiliate) is engaged, diligently and in good faith, in negotiations with such entity for assignment of the Leasehold Estate, then, if requested by Lender, the obligations for payment of Annual Rent of the Lender (or such affiliate) shall continue to be as set forth in ARTICLE 4 for an additional sixty (60) days after the end of the one- hundred eighty (180) day period set forth in 26.07(ii)(B)(1) above;

(iii) From and after the date that Lender (or its affiliate) no longer qualifies under paragraph (1) or paragraph (2) of this Section 26.07(ii)(B), Base Rent shall accrue and shall be payable by Lender (or such affiliate) in arrears on each January 31st in accordance with Section 4.02; provided, however, that payment of Base Rent thus accrued may, at the option of the Lender (or such affiliate), be deferred, with simple interest at six percent (6%) per annum until paid, until the first to occur of (x) assignment of the Leasehold Estate to a Subsequent Owner or (y) the date that is sixty days after the termination of this Lease.

26.08 Permitted Uses After Lender Foreclosure. Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Premises must be operated in accordance with the Declaration of Restrictions and Section 9.01 of this Lease, and in accordance with those uses specified in the schematic designs and final construction documents approved by OCII and the building permit, with all addenda, as approved by the City's Department of Building Inspection, and any reasonable modifications in plans proposed by the Subsequent Owner or its successors in interest for the viability of the Project approved by Landlord in its reasonable discretion under Section 10.16.

26.09 Preservation of Leasehold Benefits. Until such time as a Lender notifies Landlord in writing that the obligations of the Tenant under its Loan Documents have been satisfied, Landlord agrees:

a) That subject to Section 19.03(b) Landlord will not voluntarily cancel or surrender this Lease, or accept a voluntary cancellation or surrender of this Lease by Tenant, or amend this Lease to materially increase the obligations of the Tenant or the rights of Landlord under this Lease or alter the rights and protections of Lender, without the prior written consent of the Lender (which may not be unreasonably withheld or delayed);

b) That Landlord will not enforce against a Lender any waiver or election made by the Tenant under this Lease that has a material adverse effect on the value of the Leasehold Estate without the prior written consent of the Lender (which will not be unreasonably withheld or delayed);

c) That, if a Lender makes written request to Landlord for a new ground lease within fifteen (15) days after Lender receives written notice of termination of this Lease, then Landlord will enter a new ground lease with the Lender commencing on the date of termination of this Lease and ending on the normal expiration date of this Lease, on substantially the same terms and conditions as this Lease and subject to the rent provisions set forth in Section 26.07, and with the same priority as against any subleases or other interests in the Premises; so long as the Lender cures all unpaid monetary defaults under this Lease (other than the Indemnification Obligations), through the date of such termination;

d) That Landlord will provide reasonable prior notice to each Lender of any proceedings for adjustment or adjudication of any insurance or condemnation claim involving the Premises and will permit each Lender to participate the proceedings as an interested party.

26.10 No Merger. The Leasehold Estate will not merge with the fee interest in the Site, notwithstanding ownership of the leasehold and the fee by the same person, without the prior written consent of each Lender.

26.11 Landlord Bankruptcy.

a) If a bankruptcy proceeding is filed by or against Landlord, Landlord will immediately notify each Lender of the filing and will deliver a copy of all notices, pleadings, schedules, and similar materials regarding the bankruptcy proceedings to each Lender.

b) Landlord acknowledges that: (i) the Tenant seeks to construct improvements on the Leasehold Estate using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both the Tenant and the Lenders to sell the Site free and clear of the Leasehold Estate. Therefore, Landlord waives its right, under section 363(f) of the Bankruptcy Code, to sell Landlord's fee interest in the Site free and clear of the Leasehold Estate.

c) If a bankruptcy proceeding is filed by or on behalf of Landlord, Landlord agrees as follows:

(i) the Tenant will be presumed to have objected to any attempt by Landlord to sell the fee interest free and clear of the Leasehold Estate;

(ii) if Tenant does not so object, each Lender will have the right to so object on its own behalf or on behalf of the Tenant; and

(iii) in connection with any such sale, the Tenant will not be deemed to have received adequate protection under section 363(e) of the Bankruptcy Code, unless it has received and paid to each Lender the outstanding balance under its respective loan.

d) Landlord recognizes that the Lenders are authorized on behalf of the Tenant to vote, participate in, or consent to any bankruptcy, insolvency, receivership, or court proceeding concerning the Leasehold Estate.

26.12 Encumbrance of Landlord's Interest. Landlord shall not voluntarily encumber Landlord's interest in the Site with a foreclosable mortgage or similar interest without the prior written consent of Tenant, Permitted Limited Partners and all Lenders.

ARTICLE 27 CONDEMNATION AND TAKINGS

27.01 Parties' Rights and Obligations to be Governed by Agreement. If, during the term of this Lease, there is any condemnation of all or any part of the Premises or any interest in the Leasehold Estate is taken by condemnation, the rights and obligations of the parties will be determined under this ARTICLE 27, subject to the rights of any Lender. Accordingly, Tenant waives any right to terminate this Lease upon the occurrence of a partial condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as those sections may from time to time be amended, replaced, or restated.

27.02 Notice. In case of the commencement of any proceedings or negotiations that might result in a condemnation of all or any portion of the Premises during the Term, the party learning of such proceedings will promptly give written notice of the proceedings or negotiations to the other party. The notice will describe with as much specificity as is reasonable, the nature and extent of such condemnation or the nature of such proceedings or negotiations and of the condemnation that might result, as the case may be.

27.03 Total Taking. If the Project is totally taken by condemnation, this Lease will terminate on the date the condemnor has the right to possession of the Site.

27.04 Partial Taking. If any portion of the Project is taken by condemnation, this Lease will remain in effect, except that Tenant may, with Lender's written consent, elect to terminate

this Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Tenant's continued operation of the Project. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate under this paragraph by giving notice to Landlord within thirty (30) days after Landlord notifies Tenant of the nature and the extent of the taking. Tenant's termination notice must include the date of termination, which date may not be earlier than thirty (30) days or later than six (6) months after the date of Tenant's notice; except that this Lease will terminate on the date the condemnor has the right to possession of the Project if that date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the thirty (30) day notice period, this Lease will continue in full force and effect.

27.05 Effect on Rent. If any portion of the Project is taken by condemnation and this Lease remains in full force and effect, then on the date of taking the rent will be reduced by an amount that is in the same ratio to the rent as the value of the area of the portion of the Improvements taken bears to the total value of the Improvements immediately before the date of the taking.

27.06 Restoration of Improvements. If there is a partial taking of the Project and this Lease remains in full force and effect under Section 27.04, then Tenant may, subject to the terms of the Leasehold Mortgage, use the proceeds of the taking to accomplish all necessary restoration to the Improvements.

27.07 Award and Distribution. Any compensation awarded, paid, or received on a total or partial condemnation of the Project or threat of condemnation of the Project will belong to and be distributed in the following order:

- a) First, to pay the balance due on any outstanding Leasehold Mortgages and other outstanding or unpaid obligations and/or liabilities, including but not limited to, trade accounts, taxes, payroll accruals, and lease residuals, to the extent provided therein; and
- b) Second, to the Tenant in an amount equal to the then fair market value of Tenant's interest in the Project, such value to be determined as it existed immediately preceding the earliest taking or threat of taking of the Site; and;
- c) Third, to Landlord.
- d) Notwithstanding anything to the contrary set forth in this Section, any portion of the compensation awarded that has been specifically designated by the condemning authority or in the judgment of any court to be payable to Landlord or Tenant on account of any interest in the Premises or the Improvements separate and apart from the condemned land value, the value of Landlord's reversionary interest in the Improvements, Tenant's Leasehold Estate, or the value of the Improvements on the Premises for the

remaining unexpired portion of the Term, will be paid to Landlord or Tenant, as applicable, as so designated by the condemning authority or judgment.

27.08 Payment to Lenders. In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date when any compensation resulting from a condemnation or threatened condemnation is to be paid to Tenant, the award will be disposed of as provided in the Leasehold Mortgages.

27.09 Temporary Condemnation. If there is a condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term, this Lease will remain in full force and effect, there will be no abatement of Rent, and the entire award will be payable to Tenant.

27.10 Personal Property; Goodwill. Notwithstanding Section 27.07, Landlord will not be entitled to any portion of any award payable in connection with the condemnation of the Personal Property of Tenant or any of its subtenants, or any moving expenses, loss of goodwill or business loss or interruption of Tenant, severance damages with respect to any portion of the Premises and Improvements remaining under this Lease, or other damages suffered by Tenant.

ARTICLE 28 ESTOPPEL CERTIFICATE

Landlord or Tenant, as the case may be, will execute, acknowledge, and deliver to the other and/or any Lender or a Permitted Limited Partner, promptly upon request, its certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which rent has been paid, (c) whether there are then existing any charges, offsets, or defenses against the enforcement by Landlord or Tenant to be performed or observed and, if so, specifying them, and (d) whether there are then existing any defaults by Tenant or Landlord in the performance or observance by Tenant or Landlord of any agreement, covenant, or condition on the part of Tenant or Landlord to be performed or observed under this Lease, and whether any notice has been given to Tenant or Landlord of any default that has not been cured and, if so, specifying the uncured default. Within ten (10) days following Tenant's request, Landlord shall deliver to Tenant an estoppel certificate in the form attached hereto as Attachment 10.

ARTICLE 29 SURRENDER AND QUITCLAIM

29.01 Surrender.

a) Upon expiration or earlier termination of this Lease, Tenant will surrender to Landlord the Project in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for Casualty or Condemnation as described in ARTICLE 20 and ARTICLE 27). Ordinary wear and tear will not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations

under this Lease. The Premises must be surrendered clean, free of debris, waste, and Hazardous Substances, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created or approved in writing by Landlord. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost will remove from the Premises, and repair any damage caused by removal of, Personal Property, including any signage. Improvements and Changes will remain in the Premises as Landlord property and title to the Improvements and any Changes will be conveyed to Landlord as provided in ARTICLE 13 above.

b) If the Project is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this ARTICLE 29, Tenant will continue to be responsible for the payment of Annual Rent until the Project is surrendered in accordance with this ARTICLE 29, and Tenant will indemnify, defend and hold harmless the Indemnified Parties from and against any and all Claims resulting from delay by Tenant in so surrendering the Project including, without limitation, any costs of Landlord to obtain possession of the Project; any loss or liability resulting from any Claim against Landlord made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Landlord due to lost opportunities to lease any portion of the Project or the Site to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

c) No act or conduct of Landlord, including, but not limited to, the acceptance of the keys to the Project, will constitute an acceptance of the surrender of the Project by Tenant before the expiration of the Term. Only a written notice from Landlord to Tenant confirming termination of this Lease and surrender of the Project by Tenant will constitute acceptance of the surrender of the Project and accomplish a termination of this Lease.

29.02 Quitclaim. Upon the expiration or earlier termination of this Lease, the Project will automatically, and without further act or conveyance on the part of Tenant or Landlord, become the property of Landlord, free and clear of all liens and without payment therefore by Landlord, as provided in ARTICLE 13. Upon expiration or sooner termination of this Lease, Tenant must surrender the Project to Landlord and, at Landlord's request, will execute, acknowledge, and deliver to Landlord a good and sufficient quitclaim deed with respect to any interest of Tenant in the Premises.

29.03 Abandoned Property. Any items, including Personal Property, not removed by Tenant will be deemed abandoned. Landlord may retain, store, remove, and sell or otherwise dispose of abandoned Personal Property, and Tenant waives all Claims against Landlord for any damages resulting from Landlord's retention, removal, and disposition of abandoned Personal Property; provided, however, that Tenant will be liable to Landlord for all costs incurred in storing, removing, and disposing of abandoned Personal Property and repairing any damage to the Premises resulting from its removal. Tenant agrees that Landlord may elect to sell abandoned Personal Property and offset against the sales proceeds Landlord's storage, removal, and

disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993, the benefits of which Tenant waives.

29.04 Survival. Tenant's obligation under this ARTICLE 29 will survive the expiration or earlier termination of this Lease.

ARTICLE 30 EQUAL OPPORTUNITY

Tenant agrees to comply with OCII's Equal Opportunity Program as described in Attachment 9 and will submit all documents required pursuant to the policies included in Attachment 9.

ARTICLE 31 OCII LABOR STANDARDS PROVISIONS

California Labor Code Section 1720 *et seq.* requires payment of prevailing wages for developments paid for in whole or in part out of public funds. Although the Parties acknowledge that the development of the Project is a private work of improvement, Tenant further acknowledges that the Project may be subject to Labor Code requirements. Tenant agrees to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in Attachment 9-3 and to comply with applicable provisions of the Labor Code.

ARTICLE 32 OCII MINIMUM COMPENSATION AND HEALTH CARE ACCOUNTABILITY POLICY

OCII finds that it has a significant proprietary interest in the public parcel that is being leased to the Tenant pursuant to this Lease. Tenant agrees that the Tenant and its subtenants, if any, will comply with the applicable provisions of OCII's Health Care Accountability Policy, Attachment 9-5, and Minimum Compensation Policy, Attachment 9-6, and, adopted by Agency Resolution No. 168-2001 on September 25, 2001, as these policies may be amended from time to time (jointly in this Article, the "Policies"). Notwithstanding this requirement, the Parties recognize that the residential housing component of the Improvements is not subject to the Policies, but leasing and operations of any Non-residential Space is subject to the Policies (the Parties acknowledge that no Non-residential Space is proposed).

ARTICLE 33 OCII PREFERENCE PROGRAMS

To the extent permitted by applicable Law and non-OCII funding approved by OCII for the Project, Tenant agrees to comply with the requirements of OCII's current housing preference programs, as amended from time to time.

ARTICLE 34 CONFLICT OF INTEREST

No commissioner, official, or employee of OCII may have any personal or financial interest, direct or indirect, in this Lease, and any such commissioner, official, or employee may not

participate in any decision relating to this Lease that affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

ARTICLE 35 NO PERSONAL LIABILITY

No commissioner, official, or employee of OCII will be personally liable to Tenant or any successor in interest in the event of any default or breach by Landlord or for any amount that may become due to Tenant or its successors or on any obligations under the terms of this Lease.

ARTICLE 36 ENERGY CONSERVATION

Tenant agrees that it will use its best efforts to maximize provision of, and incorporation of, both energy conservation techniques and systems and improved waste-handling methodology in the construction of the Improvements.

ARTICLE 37 WAIVER

The waiver by Landlord or Tenant of any term, covenant, agreement or condition in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement, or condition in this Lease, and no custom or practice that may grow up between the parties in the administration of this Lease may be construed to waive or to lessen the right of Landlord or Tenant to insist upon the performance by the other in strict accordance with its terms. The subsequent acceptance of rent or any other sum by Landlord will not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, agreement, or condition of this Lease, other than the failure of Tenant to pay the particular rent or other sum accepted, regardless of Landlord's knowledge of the preceding breach at the time of acceptance of such rent or other sum. Any waiver by Landlord of any term or provision of this Lease must be in writing.

ARTICLE 38 TENANT RECORDS

Upon reasonable notice during normal business hours, and as often as Landlord may deem necessary, Tenant will make available to Landlord and its authorized representatives for examination all records, reports, data, and information made or kept by Tenant regarding its activities or operations on the Site for a period of four years from the date of the termination of the Agreement; except that records that are the subject of audit findings shall be retained for four years or until such audit findings have been resolved, whichever is later. Nothing contained in this Lease will entitle Landlord to inspect personal histories of residents or lists of donors or supporters. To the extent that it is permitted by Law to do so, Landlord will respect the confidentiality requirements of Tenant in regard to the lists above of the names of Residential Occupants of the Premises furnished by Tenant under to ARTICLE 7 above.

ARTICLE 39 NOTICES AND CONSENTS

All notices, demands, consents, or approvals that may be given or are required to be given by either party to the other under this Lease must be in writing and will be deemed to have been fully given when delivered in person to such representatives of the Tenant and Landlord, or when deposited in the United States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and addressed as follows:

- if to Tenant at: Transbay 2 Family, L.P.
c/o Mercy Housing Calwest
1256 Market Street
San Francisco, CA 94102
Attn: President

- With a copy to: Gubb & Barshay LLP
235 Montgomery Street, Suite 1110
San Francisco, CA 94104
Attn: [...]

- if to Landlord at: Successor Agency to the Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: Executive Director

- with a copy to: Mayor's Office of Housing and Community Development
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: Director

- if to Investor
Limited Partner:

With a copy to:

or to such other address with respect to either party as that party may from time to time designate by notice to the other given under the provisions of this ARTICLE 39. Any notice given under this ARTICLE 39 will be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt. Courtesy copies of notices may be delivered by email.

ARTICLE 40 HEADINGS

Any titles of the paragraphs, articles, and sections of this Lease are inserted for convenience only and will be disregarded in construing or interpreting any of its provisions. "Paragraph," "article," and "section" may be used interchangeably.

ARTICLE 41 SUCCESSORS AND ASSIGNS

This Lease will be binding upon and inure to the benefit of the successors and assigns of Landlord and Tenant and where the term "Tenant" or "Landlord" is used in this Lease, it means and includes their respective successors and assigns; provided, however, that Landlord will have no obligation under this Lease to, and no benefit of this Lease will accrue to, any unapproved successor or assign of Tenant where Landlord approval of a successor or assign is required by this Lease. If and when Landlord sells the Site to any third party, Landlord will require such third party to assume all of Landlord's obligations under this Lease arising on and after the transfer in writing for the benefit Tenant and its successors and assigns.

ARTICLE 42 TIME

Time is of the essence in the enforcement of the terms and conditions of this Lease. References to days, months and years mean calendar days, months and years unless otherwise specified.

ARTICLE 43 PARTIAL INVALIDITY

If any provisions of this Lease are determined to be illegal or unenforceable, that determination will not affect any other provision of this Lease and all the other provisions of this Lease will remain in full force and effect.

ARTICLE 44 APPLICABLE LAW; NO THIRD PARTY BENEFICIARY

This Lease is governed by and construed under the laws of the State of California. This Lease is entered into solely among, between, and for the benefit of, and may be enforced only by, the parties hereto and does not create rights in any other third party.

ARTICLE 45 ATTORNEYS' FEES

If either Landlord or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, will pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Lease (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of OCII or the City's Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the 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 OCII or the Office of the City Attorney. The term "attorneys' fees" also includes, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which the fees were incurred. The term "costs" means the costs and expenses of counsel to the parties, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

ARTICLE 46 EXECUTION IN COUNTERPARTS

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

ARTICLE 47 BROKERS

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Lease contemplated herein. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, the party through whom the broker or finder makes a claim will be responsible for such commission or fee and will indemnify, defend and hold harmless the other party from any and all Claims. The provisions of this Section shall survive any termination of this Lease.

ARTICLE 48 RECORDATION OF MEMORANDUM OF GROUND LEASE

This Lease may not be recorded, but a memorandum of this Lease will be recorded in the form attached hereto as Attachment 5 ("**Memorandum of Ground Lease**"). The parties will execute the memorandum in form and substance as required by a title insurance company insuring Tenant's leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive notice of the Lease to subsequent purchasers and mortgagees.

ARTICLE 49 TEMPORARY PERMISSION TO ENTER AND USE FUTURE CLEMENTINA STREET

49.01 Permission to Enter. Landlord hereby grants to Tenant a non-exclusive license to enter and use for construction staging Landlord's property adjacent to the Site, as more particularly shown in Attachment 13 (the "**Temporary Construction Access Area**"), subject to terms and conditions consistent with applicable provisions of this Lease and as may be further modified in the sole discretion of the Executive Director in a permit to enter ("**Temporary License**").

49.02 Nature of Permission. The Temporary License is non-exclusive and is subject to the rights of ingress and egress by the Successor Agency and the Indemnified Parties who are authorized to access the Temporary Construction Access Area.

49.03 Permitted Uses. Tenant, its employees, invitees, subpermittees and subcontractors (collectively, "**Tenant Parties**") shall use the Permit Area for construction staging activities. Tenant acknowledges that ECLP, its invitees and members of the public may be engaged in uses immediately adjacent to the Temporary Construction Access Area, and Tenant shall ensure that the Tenant Parties take reasonable measures to minimize disturbance to such uses. As so limited, the uses described in this Section 49.03 are the "**Permitted Temporary Access Uses.**" No uses other than those specifically stated in this ARTICLE 49 are authorized on the Temporary Construction Access Area.

49.04 Time of Entry; Duration. Entry may commence at 7:00 a.m. upon the date of the Notice to Proceed, and shall terminate upon the earlier of: (i) termination of this Lease or (ii) termination by Landlord providing 14 days' advanced written notice of termination of this Temporary License to Tenant.

49.05 Tenant's Covenants. Tenant acknowledges and agrees that its and Tenant Parties' access to and use of the Temporary Construction Access Area are strictly subject to the provisions of this Lease (whether or not the Temporary Construction Access Area is specifically referenced in a particular provision), including without limitation, Article 6 (Tenant Covenants), Article 8 (As-Is Acceptance), Article 17 (Maintenance), Article 18 (Liens), Article 21 (Damage to Person or Property; Hazardous Substances; Indemnification) and Article 50 (Survival).

ARTICLE 50 SURVIVAL

Termination or expiration of this Lease will not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, the ability to collect any damages or sums due, and it will not affect any provision of this Lease that expressly states it will survive termination or expiration of this Lease.

ARTICLE 51 TRANSFER OF PARTNERSHIP INTERESTS IN TENANT

Tenant may not cause or permit any voluntary transfer, assignment, or encumbrance of its interest in the Site or Project or of any ownership interests in Tenant, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases, or occupancy agreements to Residential Occupants; or (b) security interests for the benefit of lenders securing loans for the Project as approved by Landlord on terms and in amounts as approved by Landlord in its reasonable discretion, (c) transfers from Tenant to a limited partnership or limited liability company formed for the tax credit syndication of the Project, where Tenant or an affiliated nonprofit public benefit corporation is the sole general partner or manager of that entity; (d) transfers of the general partnership or manager's interest in Tenant to a nonprofit public benefit corporation approved in advance by Landlord; (e) transfers of any limited partnership or membership interest in Tenant to an investor under the tax credit syndication of the Project and

transfers of any limited partner interest in Tenant to affiliates of the Permitted Limited Partner in accordance with the terms of the Tenant's partnership agreement; (f) any transfers by foreclosure or deed in lieu of foreclosure consistent with this Agreement; or (g) the grant or exercise of an option agreement or right of first refusal between Tenant and Tenant's general partner(s) or manager or any of their respective affiliates in connection with the tax credit syndication of the Project where such agreement has been previously approved in writing by Landlord. Further, the Landlord shall not unreasonably delay consent to approval or replacement of a general partner by the Permitted Limited Partner due to a default by a general partner as provided in Tenant's partnership agreement. Any other transfer, assignment, encumbrance, or lease without Landlord's prior written consent will be voidable and, at Landlord's election, constitute a default under this Agreement. Landlord'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 Landlord's rights under this Lease.

ARTICLE 52 CITY PROVISIONS

Upon transfer of the Site and assignment of the rights and obligations of this Lease under Section 14.02 herein, Tenant is required to comply with the provisions set out in Attachment 7 to this Lease. At that time, any conflict between such provisions and those of this Lease shall be resolved in favor of the provisions contained in Attachment 7.

ARTICLE 53 COMPLETE AGREEMENT

There are no oral agreements between Tenant and Landlord affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings between Tenant and Landlord with respect to the lease of the Site.

ARTICLE 54 AMENDMENTS

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought (including, if applicable, the Permitted Limited Partner(s) and/or the Lender). No waiver of any breach will affect or alter this Lease, but each and every term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Any amendments or modifications to this Lease (including the Declaration of Public Access Restrictions), including, without limitation, amendments to or modifications to the attachments to this Lease, will be subject to the mutual written agreement of Landlord and Tenant, and Landlord's agreement may be made upon the sole approval of OCII's Executive Director, or his or her designee; provided, however, material amendments, or modifications to this Lease (a) changing the legal description of the Site, (b) increasing the Term beyond that provided in ARTICLE 2, (c) increasing the Rent, (d) changing the general use of the Project from the use authorized under this Lease, and (e) any other amendment or modification which materially increases Landlord's liabilities or financial

obligations under this Lease will additionally require the approval of the Commission on Community Investment and Infrastructure.

ARTICLE 55 ATTACHMENTS

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

1. Legal Description of Site
2. Schedule of Performance
3. Consent to Leasehold Mortgage
4. Operational Rules for San Francisco Housing Lotteries and Rental Lease-Up Activities
5. Form of Memorandum of Ground Lease
6. Form of Income Certification Form
7. City Contract Provisions Applicable Upon Assignment
8. Insurance Requirements
9. Contract Compliance Policies
 - 9-1. Small Business Enterprise Agreement
 - 9-2. Construction Workforce Agreement
 - 9-3. Prevailing Wage Policy
 - 9-4. Nondiscrimination in Contracts and Benefits
 - 9-5. Health Care Accountability Policy Declaration
 - 9-6. Minimum Compensation Policy Declaration
10. Landlord Estoppel Certificate
11. Site Map Showing Open Space Courtyard and Pedestrian Mews
12. Declaration of Public Access Restrictions
13. Temporary Construction Access Area

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF OCII HAS AUTHORITY TO COMMIT OCII TO THIS LEASE UNLESS AND UNTIL THE COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE HAS DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF OCII UNDER THIS LEASE ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE WILL BE NULL AND VOID IF THE COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE DOES NOT APPROVE THIS LEASE IN ITS SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, AND NO SUCH APPROVAL WILL CREATE ANY BINDING OBLIGATIONS ON OCII.

[signatures begin on following page]

IN WITNESS WHEREOF, the Tenant and Landlord have executed this Lease as of the day and year first above written.

TENANT:

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family LLC,
a California limited liability company

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

By: _____
Ramie Dare
Vice President

[Signatures continue on following page]

LANDLORD:

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

By: _____

Thurston Kaslofsky
Executive Director

APPROVED AS TO FORM:

James B. Morales
General Counsel

By: _____

Authorized by Resolution No. __-2024 adopted _____, 2024

ATTACHMENT 1

LEGAL DESCRIPTION OF THE SITE

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

[to be added]

ATTACHMENT 2**SCHEDULE OF PERFORMANCE**

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
1	Acquisition/Predev Financing Commitment	June 2021	Complete
2.	Site Acquisition	May 2024	July 2024
3.	Development Team Selection		
a.	Architect	November 2020	Complete
b.	General Contractor	June 2021	Complete
c.	Owner's Representative	April 2021	Complete
d.	Property Manager	November 2020	Complete
e.	Service Provider	November 2020	Complete
4.	Design		
a.	Submittal of Schematic Design & Cost Estimate	November 2022	Complete
b.	Submittal of Design Development & Cost Estimate	August 2023	Complete
c.	Submittal of 50% CD Set & Cost Estimate	November 2023	Complete
d.	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	February 2024	March 2024
5.	Commercial Space		
a.	Commercial Space Plan submission (preliminary)	May 2023	Complete
b.	Commercial Space Plan submission (updated)	February 2024	March 2024
c.	LOIs executed (target)	May 2024	N/A
6.	Environ Review/Land-Use Entitlements		
a.	CEQA Environ Review Submission	October 2022	Complete
7.	PG&E		
a.	Temp Power Application Submission	March 2023	Complete
b.	Perm Power Application Submission	November 2022	Complete

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
8.	Permits		
a.	Building / Site Permit Application Submitted	November 2022	Complete
b.	Foundation Addendum Submitted	December 2023	February 2024
c.	Superstructure Addendum Submitted	December 2023	February 2024
9.	Request for Bids Issued	February 2024	April 2024
10.	Service Plan Submission		
a.	Preliminary	May 2023	Complete
b.	Final	February 2024	July 2024
11.	Additional City Financing		
a.	Gap Financing Application	June 2023	Complete
12.	Other Financing		
a.	HCD IIG Application	July 2023	Complete
b.	Construction Financing RFP	November 2023	Complete
c.	CDLAC/TCAC Application	September 2023	Complete
d.	LOSP Funding Request	November 2024	February 2025
13.	Closing		
a.	Construction Loan Closing	May 2024	July 2024
b.	Conversion of Construction Loan to Permanent Financing	December 2026	April 2027
14.	Construction		
a.	Notice to Proceed	May 2024	July 2024
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	May 2026	October 2026
15.	Marketing/Rent-up		
a.	Early Outreach Plan Submission	June 2024	September 2024
b.	Marketing Plan Submission	November 2024	May 2025
c.	Commence Marketing	September 2025	March 2026
d.	95% Occupancy	December 2026	March 2027
16.	Cost Certification/8609	December 2027	March 2028
17.	Close Out MOH/Site Loan(s)	December 2027	March 2028

ATTACHMENT 3

CONSENT TO LEASEHOLD MORTGAGE

Date:

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

RE: _____, San Francisco (LEASEHOLD MORTGAGE)

To Whom It May Concern:

Under Section 25.01 of the _____ Ground Lease, dated _____, 20__, between the Office of Community Investment and Infrastructure (“OCII”) and _____, a California _____, we are formally requesting the OCII’s consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for OCII to provide its consent:

Lender:

Principal Amount:

Interest:

Term:

Attached hereto are unexecuted draft loan documents, including the loan agreement, promissory note, and all associated security agreements which we understand are subject to review and approval by OCII. Furthermore, we are willing to supply any additional documentation related to the leasehold mortgage which OCII deems necessary.

Sincerely,

Transbay 2 Family, L.P.,
a California limited partnership

Transbay 2 Family LLC, a California limited liability company, its managing general partner

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

a California Limited Partnership

By: _____

Name: Ramie Dare
Title: Vice President
enc.

By signing this letter, the OCII consents to the leasehold mortgage, under the terms and conditions of Section 25.01 of the _____ Ground Lease, dated _____, 2024.

Office of Community Investment and Infrastructure

Thurston Kaslofsky
Executive Director

ATTACHMENT 4

OPERATIONAL RULES FOR SAN FRANCISCO HOUSING LOTTERIES AND RENTAL LEASE-UP ACTIVITIES

The Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities may be found in the current version of the Housing Preferences and Lottery Procedures Manual which is incorporated herein by this reference and may be downloaded from the Mayor's Office of Housing and Community Development website at the following link:

<https://sfmohcd.org/sites/default/files/Documents/MOH/Lottery Preferences/Lottery Preferences Manual.pdf>

ATTACHMENT 5

FORM OF MEMORANDUM OF LEASE

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §§27383 & 27388.1 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

WHEN RECORDED RETURN TO:

The Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco, One South Van Ness Avenue,
5th Floor, San Francisco, California 94103
Attn: Jane Suskin

Assessor's Block ____, Lot ____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into as of ____, 2024, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California ("Landlord"), and Transbay 2 Family, L.P., a California limited partnership ("Tenant"), with respect to that certain Ground Lease (the "Lease") dated for reference purposes as _____, 2024, between Landlord and Tenant.

Under the Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Lease will become effective on the date of recordation of this Memorandum and will end on the date that is 75 years from said date, subject to a 24-year option to extend, unless terminated earlier or extended pursuant to the terms of the Lease.

It is the intent of the parties to the Lease that the Lease creates a constructive notice of severance of the Improvements from the Property (as defined in the Lease), without the necessity of a deed from Lessor to Lessee, which Improvements together with the Leasehold Interest in the Property created by the Lease are and will remain real property.

This Memorandum incorporates herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and will not be construed to alter, modify, amend, or supplement the Lease, of which this is a memorandum.

This Memorandum may be signed by the parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts will be deemed an original of this Memorandum.

Executed as of _____, 2024 in San Francisco, California.

TENANT:

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family LLC,
a California limited liability company

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

By: _____
Ramie Dare
Vice President

[Signatures continue on following page]

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

By: _____
Thurston Kaslofsky
Executive Director

APPROVED AS TO FORM:
James B. Morales
General Counsel

By: _____

Exhibit A

Legal Description

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

[to be inserted]

ATTACHMENT 6

FORM OF TENANT INCOME CERTIFICATION

ATTACHMENT 7

CITY CONTRACT PROVISIONS APPLICABLE UPON ASSIGNMENT

In accordance with Article 52 of the Lease, upon transfer of the Site and assignment of the rights and obligations of this Lease to the City in accordance with Section 14.02 therein, the following provisions shall be applicable to Tenant and in that event, any conflict between these provisions and those of the Lease shall be resolved in favor of the provisions set out below.

1. Nondiscrimination; Penalties.

(a) *Nondiscrimination in Contracts.* The Tenant shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Tenant shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Tenant is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) *Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2.* The Tenant does not as of the date of this Lease, and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Lease. By entering into this Lease, the Tenant confirms that it has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

3. Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges the Tenant not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Tenant to remove from, City facilities personnel of the Tenant who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using

alcoholic beverages, or being under the influence of alcohol.

5. Compliance with Americans with Disabilities Act. The Tenant shall provide the services specified in this Lease in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

6. Sunshine Ordinance. The Tenant acknowledges that this Lease and all records related to its formation, the Tenant's performance under this Lease, and the City's payment are subject to the California Public Records Act (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

7. Limitations on Contributions. By executing this Lease, the Tenant acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of the Tenant's board of directors; the Tenant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Tenant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Tenant. The Tenant certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

8. Requiring Minimum Compensation for Covered Employees. If Administrative Code Chapter 12P applies to this Lease, the Tenant shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Tenant is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. The Tenant is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Lease, the Tenant certifies that it complies with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. If Administrative Code Chapter 12Q applies to this Lease, the Tenant shall comply with the requirements of Chapter 12Q. For each Covered Employee, the Tenant shall provide the appropriate health benefit set forth in

Section 12Q.3 of the HCAO. If the Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Tenant is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by the Tenant shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10. Prohibition on Political Activity with City Funds. In performing under this Lease, the Tenant shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Lease from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Tenant is subject to the enforcement and penalty provisions in Chapter 12G.

11. Nondisclosure of Private, Proprietary or Confidential Information. If this Lease requires the City to disclose "Private Information" to the Tenant within the meaning of San Francisco Administrative Code Chapter 12M, the Tenant shall use such information consistent with the restrictions stated in Chapter 12M and in this Lease and only as necessary in performing the services provided under this Lease. The Tenant is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under this Lease, the Tenant may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to the Tenant, such information must be held by the Tenant in confidence and used only in performing this Lease. The Tenant shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

12. Consideration of Criminal History in Hiring and Employment Decisions. The Tenant 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 Lease. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Tenant's obligations under Chapter 12T is set forth in this Section. The Tenant is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to the Tenant's operations to the extent those operations are in furtherance of the performance of this Lease, shall apply only to applicants and employees who would be or are performing work in furtherance of this Lease, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport property. Chapter 12T shall 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.

13. Reserved

14. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code § 21.35, including the enforcement and penalty provisions, is incorporated into this Lease. Under San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the 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.

15. Conflict of Interest. By entering into this Lease, the Tenant certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Lease.

16. Food Service Waste Reduction Requirements. The Tenant shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

17. Distribution of Beverages and Water. The Tenant agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Lease. The Tenant agrees that it shall not sell, provide or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Lease.

18. Consideration of Salary History. The Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." The Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Lease or in furtherance of this Lease, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at

<https://sfgov.org/olse/consideration-salary-history>. Tenant is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

19. Laws Incorporated by Reference. The full text of the laws listed in this Exhibit G, including enforcement and penalty provisions, are incorporated into this Lease by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Exhibit G are available at http://www.amlegal.com/codes/client/san-francisco_ca/

20. First Source Hiring Program. The Tenant must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Lease, and the Tenant is subject to the enforcement and penalty provisions in Chapter 83.

21. Prevailing Wages. Services to be performed by the Tenant under this Lease may involve the performance of trade work covered by the provisions of Section 6.22(e) or Section 21C of the Administrative Code (collectively, "Covered Services"). The provisions of Section 6.22(e) and Section 21C of the Administrative Code are incorporated as provisions of this Lease as if fully set forth herein and will apply to any Covered Services performed by the Tenant.

22. Contractor Vaccination Policy.

(a) Tenant acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("Contractor Vaccination Policy"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

(c) In accordance with the Contractor Vaccination Policy, Tenant agrees that:

(i) Where applicable, Tenant shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Tenant an exemption based on medical or religious grounds; and

(ii) If Tenant grants Covered Employees an exemption based on medical or religious grounds, Tenant will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("Exemptions Form"), which can be found at

<https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

ATTACHMENT 8

INSURANCE REQUIREMENTS

Subject to approval by the OCII Risk Manager of the insurers and policy forms, Tenant must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth in this Attachment 8 throughout the Compliance Term of this Agreement, or in accordance with the timeframes stated herein, at no expense to OCII.

A. Overview of Coverage Requirements. The following table summarizes required insurance policies and documentation. Please see Section B of this Attachment 8 for more detailed descriptions of policy requirements.

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Commercial General Liability (see Section B.1)	\$1,000,000 per occurrence/ \$2,000,000 aggregate*	Tenant's design and professional contractors; and Tenant (prior to start of construction)	Additional insured (see Section G)
	\$10,000,000 per occurrence/ \$10,000,000 aggregate*	Tenant (upon construction start), general contractor, and subcontractors to the general contractor	Completed Operations Coverage endorsement (on construction stage policy) (see Section G)
Automobile Liability (see Section B.2)	\$1,000,000 per accident*	Tenant and Tenant's contractors	Additional insured (see Section G)
	\$10,000,000 per accident*	Upon construction start - general contractor and subcontractors to the general contractor	
Worker's Compensation and Employer's Liability (see Section B.3)	As per statute for Workers Comp; \$1,000,000 per accident; \$1,000,000 per employee; and in aggregate for bodily injury by disease as respects Employers Liability*	Tenant and Tenant's contractors	Waiver of subrogation
Professional Liability (see Section B.4)	\$2,000,000 per claim/ \$2,000,000 aggregate	Tenant if engaged in any eligible design-related activities; and Tenant's design and professional contractors	None
Crime/Dishonesty (see Section B.5)	\$1,000,000 per loss	Tenant	Loss payee endorsement

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Pollution Liability/Asbestos (see Section B.6)	\$1,000,000 per claim/ \$2,000,000 aggregate	Tenant or Tenant's construction contractor(s)	Additional insured (see Section G)
Builder's Risk – During Construction (see Section B.7a)	100% of replacement value	Tenant	Loss payee endorsement
Property Insurance – After Construction Completion (see Section B.7b)	100% of replacement value	Tenant or Tenant's property manager	Loss payee endorsement
Performance and Payment Bonds (see Section B.8)	100% of contract value	Tenant's construction contractors	OCII and Tenant named as dual obligees

** Umbrella, excess liability policy, contractor controlled insurance program (CCIP), or owner controlled insurance program (OCIP) may be used to meet limits (see Section D)*

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

1) Commercial General Liability coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by OCII, with additional insured endorsement (form CG 20 10 or equivalent) (see Section G). Limits set forth below. Coverage must be included for contractual liability; explosion, collapse and underground (XCU); products and completed operations. Umbrella, Excess Liability, [Contractor Controlled Insurance Policy,] or an Owner Controlled Insurance Policy may be used to meet the terms of this section.

a. Before the start of demolition/construction if the Site is unoccupied, Tenant and Tenant's Contractors will maintain coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit. These limit requirements apply to Tenant's design and professional contractors throughout the required coverage period;

b. During demolition/construction and occupancy of the Site and ongoing operations of the Project, Tenant and its Construction Contractors and/or Property Manager will maintain coverage of not less than Ten Million Dollars (\$10,000,000) combined single limit per occurrence and Ten Million Dollars (\$10,000,000) annual aggregate limit. For subcontractors to the Construction General Contractor and the Property Manager, the Tenant, in consultation with the Construction General Contractor and the Property Manager, as appropriate, is required to assess the risks associated with such contractors and determine, authorize, and verify the appropriate level of coverage provided by the subcontractor or consultant;

c. The construction period general liability policy must include completed operations coverage for a minimum of ten (10) years. Tenant must provide a completed operations coverage endorsement (form CG 20 37 or equivalent) and OCII must be named as an additional insured pursuant to Section G below.

- 2) Automobile Liability coverage for all owned, non-owned, scheduled, and hired automobiles under Insurance Services Office form number CA 00 01 or other form approved by OCII, with additional insured endorsement (see Section G). If Tenant does not own any automobiles, Tenant must provide OCII a written statement confirming that no automobiles are owned, and OCII will accept an Automobile Insurance policy providing coverage for Symbol 8 (hired autos) and Symbol 9 (non-owned autos), with additional insured endorsement. One Million Dollars (\$1,000,000) per accident for bodily injury and property damage, combined single limit.

For construction operations, Tenant's Contractor will maintain coverage of not less than Ten Million Dollars (\$10,000,000) per accident for bodily injury and property damage, combined single limit. For subcontractors to the Construction General Contractor and the Tenant, the Construction General Contractor, is required to assess the risks associated with such contractors and, with the authorization of the Tenant, determine and verify the appropriate level of automobile liability coverage provided by the subcontractor or consultant.

- 3) Worker's Compensation and Employer's Liability as required by the State of California. A waiver of subrogation naming OCII is required (also known as "transfer of rights of recovery against others to us"). Employer's Liability coverage must provide limits of One Million Dollars (\$1,000,000) for bodily injury each accident; and not less than One Million Dollars (\$1,000,000) per employee; and One Million Dollars (\$1,000,000) in the annual aggregate for bodily injury by disease. If the Tenant does not have any employees, then evidence of Workers' Compensation and Employers Liability coverage required herein must be provided by either the Project Sponsor(s) or the General Partner of the Partnership, in lieu of such coverage being provided by the Tenant. Additionally, the Tenant must provide a written statement confirming that the Tenant does not have employees.
- 4) Professional Liability (Errors and Omissions) insurance, applicable to the Tenant's licensed design and professional contractors (architects, engineers, surveyors and other eligible consultants) and to the Tenant only if the Tenant or Sponsor has any employees providing design or engineering services. Two Million Dollars (\$2,000,000) for each claim and in the annual aggregate limit covering negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. If the Professional Liability insurance is "claims made" coverage, these minimum limits shall be maintained for no less than five (5) years beyond completion of the scope of services performed. Any deductible over One Hundred Thousand Dollars (\$100,000) each claim must be reviewed by OCII Risk Management.

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

- 5) Crime Policy or Fidelity Bond covering Tenant's officers and employees against employee dishonesty, forgery and alteration, theft of money and securities, and theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees with respect to the Funding Amount. One Million Dollars (\$1,000,000) each loss, with any deductible not to exceed Fifty Thousand Dollars (\$50,000). Tenant must provide an endorsement naming OCII as an additional obligee or loss payee.

Application of Crime Insurance Proceeds. Tenant shall promptly notify OCII of any claim under the required Crime Insurance Policy. OCII may retain from the proceeds of the required Crime Insurance Policy, a sufficient amount of the proceeds to pay the Funding Amount, if any, and shall pay the balance to Tenant. For the avoidance of doubt, OCII shall have no right or claim to the proceeds of the required Crime Insurance Policy in excess of the Funding Amount.

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

7) Property Insurance

- a. Builder's Risk Insurance during the course of any construction, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and OCII property in the care, custody and control of Tenant or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss, including OCII as loss payee. Builder's Risk must be maintained by the Tenant or the Tenant must cause its general contractor to maintain this insurance.
- b. Property Insurance after completion of construction, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, and including boiler and machinery insurance, for one hundred percent (100%) of the replacement value of all furnishings, fixtures,

equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Twenty Five Thousand Dollars (\$25,000) each loss, including OCII as a loss payee. A waiver of subrogation naming OCII is required (also known as “transfer of rights of recovery against others to us”).

- 8) Performance and Payment Bonds for eligible construction contractors during construction and/or rehabilitation, each in the amount of one hundred percent (100%) of contract amounts, naming OCII and Tenant as dual obligees, or other completion security approved by OCII in its sole discretion. OCII has approved issuance of a Completion Guaranty by an affiliate of Tenant to Tenant’s institutional lender as completion security.
 - 9) Performance Insurance. Tenant shall require its general contractor to obtain performance insurance that insures against delay in delivery of modules, up to the amount of Tenant’s or Tenant’s general contractor’s contract amount for the delivery of modules for the construction of the Project. Tenant shall limit general contractor’s use of proceeds from the performance insurance policy to be used to solely to reduce cost overruns in the construction of the Project related to or caused by delay in the delivery of modules, and Tenant shall, and shall require general contractor, to obtain OCII’s approval prior to expending such proceeds.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of those required for policies stated herein must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Tenant shall provide a financial guarantee satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- D. Umbrella, Excess Liability, and Owner Controlled Insurance Policies (OCIP). An Umbrella and/or Excess Liability policy(ies) or an OCIP may be used to reach the Commercial General Liability, Workers’ Compensation, and/or Automobile Liability coverage limits required herein. The Umbrella/Excess Liability/OCIP policy(ies) must appropriately schedule any such underlying policy(ies).
- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise approved by OCII’s Risk Manager.
- F. General Requirements.
- 1) If the Tenant maintains additional coverages and/or higher limits than the minimums shown in this Attachment 8, OCII requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Tenant.

- 2) The policies required herein, with the exception of Professional Liability and Workers Compensation, shall be primary insurance and non-contributory as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Tenant's insurance and shall not contribute with it.
- 3) Each insurance policy required herein must be endorsed (if endorsement is available) to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by mail has been given to OCII. Should the insurance carrier not be able to provide such notice, then the responsibility to provide the notice to OCII shall be borne by the policyholder.
- 4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
- 5) Approval of Tenant's insurance by OCII will not relieve or decrease the liability of Tenant under this Agreement.
- 6) OCII and its officers, agents and employees will not be liable for any required premium under any policy maintained by Tenant.
- 7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

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

- 1) Identify the following as the certificate holder:
Successor Agency to the Redevelopment Agency of the City and
County of San Francisco
Office of Community Investment and Infrastructure

One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

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

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

ATTACHMENT 9

CONTRACT COMPLIANCE POLICIES

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

- (i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 7-2022, March 15, 2022
- (ii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985);
- (iii) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997);
- (iv) Health Care Accountability Policy (adopted by Resolution No. 168-2001); and
- (v) Minimum Compensation Policy (adopted by Resolution No. 168-2001).

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

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

3. Conflict of Interest.

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

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

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

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

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

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

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

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

(b) **Non-Discrimination in Benefits.** Tenant does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San

Francisco or where the work is being performed for OCII or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a Governmental Agency under state or local law authorizing such registration, subject to the conditions set forth in the Agency's Nondiscrimination in Contracts Policy, adopted by Agency Resolution 175-97, as amended from time to time.

8. Public Disclosure

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

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

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

ATTACHMENT 9-1

SMALL BUSINESS ENTERPRISE AGREEMENT

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

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

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

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

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

IV. TRAINEE HIRING GOAL. In addition to the goals set forth above in Section III, there is a trainee hiring goal for all design professionals (architects, engineers, planners, and environmental consultants) on contracts or subcontracts over \$100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional’s contract as follows:

<u>Trainees</u>	<u>Design Professional Fees</u>
0	\$ 0 – \$99,000
1	\$ 100,000 – \$249,999
2	\$ 250,000 – \$499,999
3	\$ 500,000 – \$999,999
4	\$1,000,000 – \$1,499,999
5	\$1,500,000 – \$1,999,999
6	\$2,000,000 - \$4,999,999
7	\$5,000,000 - \$7,999,999
8	\$8,000,000 – or more

A. Procedures For Trainee Hires

1. Compliance with the Trainee Hiring Goal

Design professionals will be deemed in compliance with this Agreement by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. **Execution and Incorporation of this Agreement to Sub-agreements**

The Agency-Assisted Contractor shall execute this Agreement and shall incorporate by reference or attach this Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of this Agreement. The Agency-Assisted Contractor and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. **Contact Educational Institutions**

Each design professional shall call the City and County of San Francisco Office of Economic and Workforce Development (OEWD) or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution or OEWD to make the referral. The minimum duration of assignment is part-time for one semester. However, design professionals are strongly encouraged to offer longer trainee employment periods to allow a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) or OEWD may require the design professionals to send a confirming letter or complete its form(s). Each design professional is required to timely provide all of the information requested by the OEWD or educational institution(s) in order to get the referrals.

4. **Response from Educational Institutions**

Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

5. **Action by Design Professionals When Referrals Available**

The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency strongly encourages the design professional to hire a qualified San Francisco resident referred by the educational institution(s). The design professional shall notify the educational institution in writing of the hiring decision.

6. **Action by Design Professionals When Referrals Unavailable**

If after contacting two or more educational institutions the design professional is informed that no San Francisco residents are currently available, then the design professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco residents are currently available for hire as trainees. If no qualified San Francisco residents are currently available after the second request, then the design professional has fulfilled its obligation under this Agreement, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with this Section IV and submit a copy of its file to the Agency Compliance Officer upon request.

7. **Action by Design Professional When No Response From Educational Institutions**

If a design professional has not received a response to its request for referrals from any of the

educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals, then the design professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the design professional within five (5) business days of the Agency Compliance Officer being notified. If the design professional still has not received a response from the educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section IV, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with this Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

8. **Termination of Trainee for Cause**

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Agreement and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth above.

B. Reporting Requirements For Trainee Hires

1. **Reporting**

Upon completion of the Term of the Agreement or the term of the design professional's contract with the Agency-Assisted Contractor, whichever is less, the design professional (i.e. Employer) shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. **Report on Terminations**

In the event a San Francisco resident hired pursuant to this Agreement is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); and (4) whether the design professional replaced the trainee(s).

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

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

VII. ASSOCIATIONS AND JOINT VENTURES (JV). OCII will recognize JVs and Associations between non-SBE firms and SBE firms where the SBE partner performs at least 35% of the work defined

in the JV or Association agreement, and receives at least 35% (or a proportionate share, whichever is higher) of the dollars to be earned by the JV or Association. Under this arrangement, OCII will deem the JV or Association to be an SBE for the purposes of meeting the SBE goal. Due to the technical nature of the disciplines and the various standards of each industry, OCII will not require a standardized agreement. However, each JV and Association agreement must be in writing and contain, at a minimum, the following terms:

- Define the management of the agreement between the parties;
- Define the technical and managerial responsibilities of each party;
- Define the scope of work to be performed by each party, and where possible identify the percentage and break-down of scope of work for each party;
- Identify any additional subcontractors or consultants that will perform the work under the agreement;
- Define the schedule, duration, and deliverable of the agreement;
- Detail the fee schedule, fee breakdown, or division of compensation;
- Specify insurance requirements and/or if each party shall maintain its own insurance;
- Specify how additional work or changes in scope shall be negotiated or determined and which party shall be responsible for notifying OCII of the changes;
- Specify how claims and disputes will be resolved.

A copy of the JV or Association agreement must be provided to OCII for approval in order for the JV or Association to be recognized.

VIII. CERTIFICATION. The Agency no longer certifies SBEs but instead relies on the information provided in other public entities' business certifications to establish eligibility for the Agency's program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency's SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the SBE Policy.

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

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

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

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

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

Agency Contract means personal services contracts, purchase requisitions, and other similar contracts and operations agreements that the Agency executes with for-profit or non-profit entities.

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

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

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

Association means an agreement between two parties established for the purpose of completing a specific task or project. The associate agreement shall provide the SBE associate a significant project management role and the SBE associate shall be recognized in marketing and collateral material. The Association shall be distinguished from traditional subcontracting arrangements via a written Association agreement that defines the management of the agreement, technical and managerial responsibilities of the parties, and defined scopes and percentages of work to be performed by each party with its own resources and labor force. Unlike the more formal Joint Venture, an Association does not require formation of a new business enterprise between the parties. The Associate agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

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

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

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

Joint Venture means an entity established between two parties for the purposes of completing a venture or project. The Joint Venture agreement typically creates a separate business entity and requires acquisition of additional insurance for the newly created joint business entity. The Joint Venture agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

Non-San Francisco-based Small Business Enterprise means a SBE that has fixed offices

located outside the geographical boundaries of the City.

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

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

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

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

Small Business Enterprise (SBE) means an economically disadvantaged business that is certified by another public entity (either municipal, State, or federal agency) that considers the certification criteria stipulated in this Policy. In general, such criteria shall include a determination by the public entity as to whether an economically disadvantaged business is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; and has average gross annual receipts in at least the three years (and no more than five years, if practiced by the public entity) immediately preceding its application for certification as a SBE that do not exceed the following limits:

Industry	OCH SBE Size Standard
Construction Contractors	\$24,000,000
Specialty Construction Contractors	\$14,000,000
Suppliers (goods/materials/ equipment and general services)	\$12,000,000

Professional Services	\$5,000,000
Trucking	\$5,000,000

In addition, an economically disadvantaged business shall meet the other certification criteria described in Exhibit I of the SBE Policy in order to be considered an SBE by the Agency.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations) to calculate the firm's average annual gross receipts. In addition, the calculation of a firm's size shall include the receipts of all affiliates.

Once a business reaches the average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

Specialty Construction Contractor means a contractor licensed by the Contractors State License Board under the "C" classification license pursuant to California Business and Professions Code Section 7058.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XII. ADDITIONAL PROVISIONS

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

B. No Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of an Agency-Assisted Contract or Contract. The Agency-Assisted Contractor or Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS

status) or other protected class status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations.

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

“Amounts for work performed by a subcontractor shall be paid within seven (7) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq.* Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity.”

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

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

XIII. PROCEDURES

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

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

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

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

1. A report showing the responses, rejections, proposals and bids (including the amount

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

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

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

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

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

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

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

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

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

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

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

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

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

F. SBE Determination. The Agency shall exercise its reasonable judgment in determining whether a business, whose name is submitted by the Agency-Assisted Contractor or Contractor(s) as a SBE, is owned and controlled by a SBE. A firm's appearance in any of the Agency's current directories will be considered by the Agency as prima facie evidence that the firm is a SBE. Where the Agency-Assisted Contractor or Contractor(s) makes a submission the Agency shall make a determination, as to

whether or not a business which the Agency-Assisted Contractor or Contractor(s) claims is a SBE is in fact owned and controlled by San Francisco-based SBEs. If the Agency determines that the business is not a SBE, the Agency shall give the Agency-Assisted Contractor or Contractor a Notice of Non-Qualification and provide the Agency-Assisted Contractor or Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a Submission, concerning its good faith efforts. If the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to Section XIII.

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

XIV. ARBITRATION OF DISPUTES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and intentional breach.

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

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

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

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

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

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

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

Q. Arbitration Notice: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE

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

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

Agency

Agency-Assisted Contractor

XV. AGREEMENT EXECUTION

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

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family LLC,
a California limited liability company

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

By: _____
Ramie Dare
Vice President

ATTACHMENT 9-2

CONSTRUCTION WORKFORCE AGREEMENT

I. **PURPOSE.** This Agreement is entered into between the Office of Community Investment and Infrastructure (“OCII” or “Agency”), as successor agency to the San Francisco Redevelopment Agency, and Owner (who for this purposes of this Attachment 9-2 shall be the Tenant as defined under the Lease to which this document is an Attachment), for the purposes of ensuring participation of San Francisco residents and equal employment opportunities in the construction work force involved in constructing any of the phases upon the Site covered by the underlying agreement to which this Agreement is attached hereto.

II. **DEFINITIONS.**

The following definitions apply to this Agreement.

- A. “CityBuild” means the construction employment program of the Workforce Development Division of the San Francisco Office of Economic and Workforce Development (OEWD).
- B. "Contract" means any agreement in excess of \$10,000 between the Owner, its Contractors and a person to provide or procure labor, materials or services for the construction of the Improvements, including a purchase order that requires installation of materials.
- C. "Contractor" means the Owner's general contractor, all prime contractors and all subcontractors (regardless of tier) having a Contract or subcontract in excess of \$10,000 and who employ persons in a Trade for construction of the Improvements.
- D. "Improvements" has the meaning set out in the Lease to which this Attachment 9-2 is attached.
- E. “Project Area Resident” means a San Francisco Resident who resides in a redevelopment area under the management of OCII.
- F. "San Francisco Resident" in the case of a new hire shall mean an individual who has lived in San Francisco for at least one week prior to submitting his/her initial application for employment to work on the Improvements. In the case of a person employed by the Owner or its Contractor or Consultant prior to assignment to the Improvements, this term shall mean a person who has lived in San Francisco for at least six months prior to the date he/she applied for a transfer to a position at the Improvements or the date he/she was assigned to work on the Improvements, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that he/she lived in San Francisco prior to applying for or being considered for a position with the Owner, Contractor or Consultant.

III. **WORK FORCE GOALS.**

The Owner agrees and will require each Contractor and all subcontractors to use good faith efforts to employ 50 percent of its construction workforce hires by trade and by hours from qualified San Francisco Residents with first consideration given to Project Area Residents. Owner and Contractors will be deemed in compliance with this Agreement and the Policy by meeting or exceeding the goal or by demonstrating good faith efforts toward compliance.

IV. GOOD FAITH EFFORTS.

A. Submission of Labor Force Projections and Other Data

The Contractor shall submit, to the extent available, labor force projections to the OCII Compliance Officer, or its agent, within two (2) weeks of contract award.

B. Submit Subcontractor Information Form

The Contractor shall submit to the Compliance Officer, or its agent, the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Compliance Officer upon request.

C. Preconstruction Meeting

The Contractor shall hold a preconstruction meeting which shall be attended by the Compliance Officer, CityBuild, all prime contractor(s) and all subcontractor(s). The preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this Agreement and to explore any anticipated problems in complying with the Agreement. All questions regarding how this Agreement applies to the Owner, Contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of the Policy and this Agreement that may result in the Agency ordering a suspension of work until the breach has been cured. Suspension under this provision is not subject to arbitration.

D. Submit Construction Worker Request Form

For the Term of the Agreement, each time the Owner or Contractor seeks to hire workers for the construction or rehabilitation of improvements, they must first submit, by fax, email or hand delivery, an executed construction worker request form to CityBuild. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The construction worker request form is available from the Compliance Officer upon request.

E. Response from CityBuild

CityBuild shall respond, in writing, via fax, email or hand delivery to each request for construction workers. The response shall state that CityBuild was able to satisfy the request in full, in part or was unable to satisfy the request. CityBuild shall look to their own referral lists, as well as confer with CBOs in an attempt to find qualified Project Area Residents and San Francisco Residents. If CityBuild is able to satisfy the request in full or in part, it shall direct the qualified Project Area Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If CityBuild is unable to satisfy the request, then CityBuild shall send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

F. Action by Contractor When Referrals Available

The Owner or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the Project Area Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified Project Area Residents or San Francisco Residents referred by CityBuild. However, if the Contractor finds the Project Area Residents or San Francisco Residents are not qualified, then the Contractor shall send the Project Area Residents or San Francisco Residents back to CityBuild. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to CityBuild stating in detail the reason(s) the Project Area Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the Project Area Residents or San Francisco Residents. CityBuild shall, within one (1) business day of receipt of the fax or email, send new qualified Project Area Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

G. Action by Contractor When Referrals Unavailable

If a Contractor receives a response from CityBuild stating that no qualified Project Area Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request.

H. Action by Contractor When No Response From CityBuild

If a Contractor has not received a response to its construction worker request from CityBuild within two (2) business days, then the Contractor should immediately advise the Compliance Officer by phone, fax or email. The Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2)

business days of being notified. If the Contractor does not receive a response from CityBuild within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request. This Policy is intended to provide qualified Project Area and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

I. Action by Contractor When No Response From Union

The Contractor should immediately advise the Compliance Officer by phone, fax or email when the Contractor has sent a qualified Project Area Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified Project Area or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this Policy. Nothing in this Policy shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements.

J. Hiring Apprentices

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

K. Termination and Replacement of Referrals

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Policy, the Contractor shall notify CityBuild in writing via fax or email and submit a report of termination pursuant to Section (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Policy beginning at Section (A)(6).

V. REPORTING REQUIREMENTS.

A. Submission of Certified Payroll Reports

Each Contractor subject to this Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Owner is ultimately responsible for the submission of these reports by the Contractors. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses an online Project Reporting System (PRS) for submission of certified payroll reports. This system is available at no cost to the Contractor. Training and educational materials for PRS are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using PRS. However, a waiver may be granted to any Contractors who do not have a computer or online access.

B. Additional Information

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Policy and may be addressed as set forth in the arbitration provisions included in Agency contracts.

C. Report on Terminations

In the event a Project Area Resident or San Francisco Resident hired pursuant to this Policy is terminated for cause, the responsible Contractor shall within two (2) days fax or email a termination report to CityBuild with a copy to the Compliance Officer stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) were Project Area Resident(s) or San Francisco Resident(s).

D. Inspection of Records

The Owner and each Contractor shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency and its designated Compliance Officer, and shall permit such representatives to interview construction workers and apprentices during working hours on the job.

E. Failure to Submit Reports

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Agreement and the Policy, and may be addressed under arbitration provisions pursuant to Article VII (Arbitration of Disputes) of this Agreement.

F. Submission of Good Faith Effort Documentation

If the Owner's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency or its designated Compliance Officer with the documentation of its efforts to comply with this Policy and the Agreement. The Owner or Contractor must maintain a current file of the names, addresses and telephone numbers of each Project Area Resident or San Francisco Resident applicant referral (whether a self-referral or a referral from a union, CBO or CityBuild referral) and what action was taken with respect to each such individual.

G. Coding Certified Payrolls

Each Contractor shall include, on the weekly payroll submissions, the proper job classification (as approved by the California Department of Industrial Relations), apprentice's craft (if applicable), skill level, protected class status, and domicile of each construction worker.

VI. RECORDKEEPING REQUIREMENTS.

Contractor shall comply with the requirements of California Labor Code Section 1776, as amended, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its subcontractors of all tiers.

In addition, each Contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of Improvements, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Improvements. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident or disadvantaged worker, and the referral source or method through which the Contractor hired or retained that worker for work on the Improvements (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method). Contractor may verify that a worker is a local resident through the worker's possession of a valid SF City ID Card or other government-issued identification. OCII may require additional records to be kept with regard to Contractor's compliance with this Agreement. All records described in this section shall at all times be open to inspection and examination by the duly authorized officers and agents of OCII, including representatives of the OEWD.

VII. ARBITRATION OF DISPUTES.

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

- B. **Demand for Arbitration.** Where the Owner disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Owner shall have seven (7) business days, in which to file a Demand for Arbitration,** unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Owner fails to file a timely Demand for Arbitration, the Owner shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.
- C. **Parties' Participation.** The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Owner made an initial timely Demand for Arbitration pursuant to Section VII.B. above.
- D. **Agency Request to AAA.** Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.
- E. **Selection of Arbitrator.** One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.
- F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.
- G. **Discovery.** In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.
- H. **Burden of Proof.** The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.

- I. **California Law Applies.** Except where expressly stated to the contrary in this Construction Work Force Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.
- J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:
1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.
 2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.
 3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.
 4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Construction Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.
 5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.
- K. **Arbitrator's Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not

later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

- L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.
- M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.
- N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.
- O. **Exculpatory Clause.** Owner expressly waives any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Construction Work Force Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.
- P. **Severability.** The provisions of this Construction Work Force Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Construction Work Force Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Construction Work Force Agreement or the validity of their application to other persons or circumstances.

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

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

Agency

Owner

I, hereby certify that I have authority to execute this Construction Work Force Agreement on behalf of the Owner listed below and that Owner agrees to diligently exercise good faith efforts to comply with this Agreement to meet or exceed the construction work force participation goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family LLC,
a California limited liability company

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

By: _____
Ramie Dare

Vice President

ATTACHMENT 9-3

PREVAILING WAGE POLICY

These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the underlying agreement between the Tenant and OCII of which this Attachment and these Labor Standards are a part.

11.1 All Contracts and Subcontracts for construction and construction-related improvements shall contain the Labor Standards.

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

11.2 Definitions. The following definitions shall apply for purposes of this Exhibit H:

- (a) "Contractor" is the Tenant if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Improvements.
- (a) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.
- (b) "Working foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the work week.

11.3 Prevailing Wage.

- (a) All Laborers and Mechanics employed in the construction of the improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §5) the full amount of wages and bona fide fringe benefits

(or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency.

- (b) All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.
- (c) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Contractor that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §8. The Executive Director of the Agency may require the Contractor to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.
- (e) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

11.4 Permissible Payroll Deductions.

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

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
 - 3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
 - 4. The deduction shall serve the convenience and interest of the employee.
- (e) Any authorized purchase of United States Savings Bonds for the employee.
- (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

- (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
- (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

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

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

11.7 **Payrolls and Basic Records.**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include

the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

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

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

- (a) The Contractor shall make the records required under this §8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

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

11.10 **Equal Opportunity Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the Agency's equal opportunity program set forth in Attachment 5 of this Lease Agreement.

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

11.12 Posting of Notice to Employees. A copy of the Wage Determination referred to in subsection (a) of §4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Contractor at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

11.13 Violation and Remedies.

- (a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
- (b) Stop Work-Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the improvements to contain the Labor Standards as required by §2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Contractor with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.
- (c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Contractor, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Contractor shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Contractor, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Contractor fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Contractor

shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14.

- (d) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the improvements provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.
- (e) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

11.14 Arbitration of Disputes.

- (a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.
- (b) The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- (c) The arbitration shall take place in the City and County of San Francisco.
- (d) Arbitration may be demanded by the Agency, the Tenant or the Contractor.
- (e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Contractor, or as appropriate to one or the other if the Contractor or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §4) and copies of all notices sent or received by the Agency pursuant to §13. Such material shall be made part of the arbitration record.
- (f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.

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

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

ATTACHMENT 9-4

NONDISCRIMINATION IN CONTRACTS AND BENEFITS



OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (OCII)

(SUCCESSOR TO THE SAN FRANCISCO REDEVELOPMENT AGENCY)

DECLARATION FORM

Nondiscrimination in Contracts and Benefits

Section A

Is your company/organization currently certified by the City and County of San Francisco in compliance with Administrative Code 12B Equal Benefits Ordinance and will your company/organization ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts? If yes, please indicate below, skip Section B, and execute the Declaration in Section C. If no, please skip Section A and complete Sections B and C.

- My company/organization is certified and compliant with the 12B Equal Benefits Ordinance of the City and County of San Francisco and there has been no change in our 12B Declaration since certification. My company/organization agrees to ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts. (Please check box to affirm, if applicable)

Section B

1. Nondiscrimination—Protected Classes

a. Is it your company/organization’s policy that you will not discriminate against your employees, applicants for employment, employees of the Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency) (Agency), or City and County of San Francisco (City), or members of the public for the following reasons:

- | | | |
|---------------------------|------------------------------|-----------------------------|
| • Race | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • color | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Creed | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Religion | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • ancestry | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • national origin | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Age | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sex | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sexual orientation | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • gender identity | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • marital status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • domestic partner status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Disability | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • AIDS or HIV status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?

- Yes No

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

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?

Yes No

b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?

Yes No

If you answered “no” to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered “yes” to Question 2a or 2b, continue to 2c.

c. If “yes,” please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Pension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee assistance programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation and travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company discounts, facilities, events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d. If you answered “yes” to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

(1) Have you taken all reasonable measures? Yes No

(2) Do you provide a cash equivalent? Yes No

3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered “yes” to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated “yes” in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered “yes” to Question 2d(1) complete and attach form SFRA/CC-103, “Nondiscrimination in Benefits—Reasonable Measures Affidavit,” which is available from the Agency. You need not document your “yes” answer to Question 1a or Question 1b.

Section C

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

Remittance Address (if different from above): _____

Name of Signatory: _____ Title: _____

(Please Print)

Signature: _____

Phone Number: _____ Federal Tax Identification Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____
(if known)

ATTACHMENT 9-5

HEALTH CARE ACCOUNTABILITY POLICY DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (as Successor Agency to the Redevelopment Agency of the City and County of San Francisco) adopted the San Francisco Health Care Accountability Policy (the “HCAP”), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to offer health plan benefits to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits established by the San Francisco Department of Public Health (“SFPDH”), as approved by the OCII Commission; (2) pay OCII an amount equivalent to the current fee established by the SFPDH for each hour the employee works on the covered contract or subcontract or on property covered by a lease and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured; or (3) participate in a health benefits program developed and offered by SFPDH. The minimum health plan standards and fees established by SFPDH are published at <https://sfgov.org/olse/health-care-accountability-ordinance-hcao>.

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

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

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

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII’s contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same.

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

For more information, please see the complete text of the HCAP, available from the OCII’s Contract Compliance Department at: (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contact Compliance Department, Office of Community Investment and Infrastructure, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

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

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

Signature

Date _____

Print Name

Company Name

Phone _____

ATTACHMENT 9-6

MINIMUM COMPENSATION POLICY DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (Successor Agency to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy (“MCP”), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to pay Covered Employees a minimum hourly wage and to provide 12 compensated and 10 uncompensated days off per year. The Minimum Compensation rate adjusts automatically to match the wage rate required by the City and County of San Francisco’s Minimum Compensation Ordinance. Contractor is obligated to keep informed of the then-current requirements, which are published at <https://sfgov.org/olse/minimum-compensation-ordinance-mco>.

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

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

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

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same.

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

For more information, please see the complete text of the MCP, available from the OCII Contract Compliance Department at (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the MCP to our

covered employees, and will ensure that our subcontractors also subject to the MCP do the same, until further notice. This company will give such notice as soon as possible.

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

Signature

Date

Print Name

Company Name

Phone

ATTACHMENT 10

LANDLORD ESTOPPEL CERTIFICATE

This Landlord Estoppel Certificate (“Certificate”) is delivered as of _____, 20 (“Effective Date”) by SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California, commonly known as the Office of Community Investment and Infrastructure (“Landlord”), to and for the benefit and reliance of TRANSBAY 2 FAMILY, L.P. (“Tenant”), and _____, as nominee, and its successors in interest as the limited partner of Tenant (“Limited Partner”). Tenant is leasing the Premises (defined below) from Landlord pursuant to that certain Ground Lease (“Ground Lease”) dated on or about _____. Limited Partner has requested that Tenant obtain from Landlord this Certificate.

Landlord hereby represents and certifies as of the Effective Date as follows:

1. Status of Lease. The Lease is in full force and effect.
2. No Defaults. Landlord is not in default under the Lease and no event has occurred or situation exists which would, with the passage of time or giving of notice or both, result in Landlord being in default under the Lease. To Landlord’s knowledge, Tenant is not in default under the Lease and no event has occurred or situation exists which would, with the passage of time or giving of notice or both, result in Tenant being in default under the Lease.
3. No Termination. To Landlord’s knowledge, Landlord has no present right to terminate the Lease. Landlord has neither given nor received any notice of termination of the Lease.
4. No Defenses. To Landlord’s knowledge, Landlord has no defense, offset, claim, counterclaim, or right of recoupment against its obligations under the Lease.
5. Authority. Landlord and the person or persons executing this certificate on behalf of Landlord have the power and authority to execute this Certificate.

The truth and accuracy of the certifications contained herein is being relied upon by Tenant and Limited Partner and the certifications contained herein shall be binding upon Landlord and its successors and assigns and inure to the benefit of the Tenant and Limited Partner.

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

By: _____
Thurston Kaslofsky
Executive Director

ATTACHMENT 12

DECLARATION OF PUBLIC ACCESS RESTRICTIONS

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Office of Community Investment
and Infrastructure
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn: Development Services Manager

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code §27383 and §27388.1) and Documentary Transfer Tax (CA Rev. & Tax Code §11922 and S.F. Bus. & Tax Reg. Code §1105)

APN: Block 3739, Lot 017

(Space above this line reserved for Recorder's use only)

DECLARATION OF PUBLIC ACCESS RESTRICTIONS

Transbay Block 2 East

This DECLARATION OF RESTRICTIONS ("**Declaration**") is made as of _____, 2024, by Transbay 2 Family, L.P., a California limited partnership (including any successor or future lessee of the Property, "**Declarant**") owner of a leasehold interest in the land described in Exhibit A attached hereto (the "**Property**"), in favor of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California, commonly referred to as the Office of Community Investment and Infrastructure ("**Successor Agency**," including any successors or assigns). The restrictions and covenants stated herein shall bind Declarant and its successors and assigns and shall be enforceable by SUCCESSOR AGENCY and its successors and assigns.

RECITALS

A. SUCCESSOR AGENCY and Declarant have entered into that certain Ground Lease dated _____, 2024 ("**Ground Lease**") and an Amended and Restated Loan Agreement dated as of _____, 2024 ("**Loan Agreement**"). The Ground Lease and Loan Agreement obligate Declarant to develop the Project, a below-market-rate affordable housing development with associated improvements, on Declarant's leasehold interest in the Property. Definitions and rules of interpretation set forth in the Ground Lease apply to this Declaration, unless otherwise noted.

B. Pursuant to the Redevelopment Requirements, the Project includes construction of roughly half of a Pedestrian Mews separating the Project from adjacent development to the east

and providing mid-block public access, ingress and egress between Folsom Street and future Clementina Street and the future Transbay park, as shown on Exhibit B attached hereto (the “**Block 2E Pedestrian Mews**”).

C. Declarant has agreed to comply with certain access restrictions and maintenance obligations for the Block 2E Pedestrian Mews, as set out in the Ground Lease and contained herein, commencing on the date on which a certificate of occupancy is issued for the Project, and continuing for the Life of the Project (the "**Compliance Term**"), even if the Loan Agreement or Ground Lease, or both, are terminated or otherwise satisfied.

D. As further described below, Declarant intends by this Declaration to ensure public access to and maintenance of the Block 2E Pedestrian Mews in compliance with the Redevelopment Requirements and applicable law (including, without limitation, the Construction Documents).

NOW, THEREFORE, Declarant hereby declares, covenants and agrees for itself, its successors, assigns and all future lessees of the Property or owners of the Project, that the leasehold interest in the Property will be held, transferred, sold, leased, occupied and conveyed subject to the following restrictions and covenants, which are hereby declared to be for the benefit of the public, and that said restrictions and covenants will run with the Property and will be binding upon all parties having or acquiring any right or title in said Property.

Section 1 Restrictions

A. Block 2E Pedestrian Mews. Declarant shall make and maintain all portions of the Block 2E Pedestrian Mews as pedestrian ingress, egress and access available to all members of the public at all times of the day or night, except as reasonably required for construction, restoration, repairs or maintenance, provided that Declarant shall use good faith diligent efforts to minimize the length and extent of such closure and shall notify the Successor Agency or assignee in advance of such closures. In the event of an emergency or danger to the public health or safety created from whatever cause (including, but not limited to, flood, storm, fire, earthquake, explosion, accident, criminal activity, riot, civil disturbances, civil unrest, unlawful assembly), Declarant may temporarily close the Block 2E Pedestrian Mews (or affected portions thereof) in any manner deemed necessary or desirable to promote public safety, security, and the protection of persons and property.

B. Rules and Regulations. Declarant, in conjunction with Successor Agency’s ground lessee of the Block 2 West Project, may develop reasonable rules and regulations governing security, use, and conduct by the public within the Block 2E Pedestrian Mews. Such rules and regulations shall be consistent with the purpose of the Redevelopment Requirements and the Construction Documents whenever applicable and shall (a) not prohibit public access or limit pedestrian access except as permitted by this Declaration; (b) not be discriminatory; and (c) comply with applicable laws. Declarant may amend such rules and regulations from time to time in conformity with this Declaration; provided, that Declarant provide a copy of such amended Rules and Regulations to

the Successor Agency or its assignee promptly upon any amendment thereto. All rules and regulations for the public use shall be enforced in a nondiscriminatory manner.

In accordance with this paragraph, Declarant shall have the right to use the Block 2E Pedestrian Mews for privately- or publicly-sponsored special events, including meetings, festivals, gatherings, assemblies, celebrations, festivals, receptions, seminars, lectures, fitness classes, concerts, art displays, exhibits, booths for charitable, patriotic or welfare purposes, conventions, and open air sale of agriculturally produced seasonal decorations, such as Christmas trees and Halloween pumpkins, that do not require the closure of any portion of the Block 2E Pedestrian Mews to the public for pedestrian ingress, egress and access (collectively, "**Non-Closure Events**"). All Non-Closure Events on the Block 2E Pedestrian Mews must be approved in advance by Declarant and Successor Agency. Declarant shall notify the Successor Agency in writing at least seven days prior to Declarant's approval of Non-Closure Events on the Block 2 Pedestrian Mews. Declarant may require payment in the form of a permit fee or other charge for use of the Block Pedestrian Mews for Non-Closure Events, so long as the permit fee or use charge does not exceed the reasonable costs for administration, maintenance, security, liability, and repairs associated with such event. Declarant shall create and make available to all applicants a standardized, clear explanation of the application process and criteria for review and approval of such Non-Closure Events, including related fees, and provide a copy of this information to the Successor Agency prior to its first Non-Closure Event.

C. Obstructions. Except as permitted by this Declaration, Declarant shall not construct or permit any structures to be constructed in the Block 2E Pedestrian Mews that would in any way interfere with or obstruct the public's use of the area as described in Subsection 1.A above; provided, however, that nothing in this or the previous Subsections prohibit Declarant from installing vegetation, seating, furnishings, lighting, signage, traffic calming and other streetscape or parkscape fixtures (collectively "**Fixtures**") consistent with the Redevelopment Requirements and Construction Documents; or reasonably restricting access to the Block 2E Pedestrian Mews in connection with maintenance, repair, and reconstruction activities undertaken pursuant to this Declaration.

Section 2 Maintenance

Declarant shall maintain the Block 2E Pedestrian Mews in compliance with the Ground Lease, and all applicable laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco and the Redevelopment Requirements, for the useful Life of the Project.

Section 3 Right of Enforcement

A. Generally. The Successor Agency or its assignee may enforce, individually or collectively, any of the covenants and restrictions established by this Declaration by legal action or other legally permissible enforcement action either entity deems necessary. Before taking any enforcement action, Successor Agency or assignee shall provide Declarant with written notice ("**Notice**") detailing Declarant's failure to enforce the restrictions or perform any of its covenants under this

Declaration, and provide Declarant with the opportunity to cure such failure within thirty (30) business days of Declarant's receipt of the Notice or other cure period specified in the Notice, whichever is sooner.

B. Right to Cure and Abate. In addition to the foregoing, if Declarant does not cure, or commence action to cure and diligently thereafter proceed to completion, any failure identified by a Notice prior to the expiration of the Notice period, the Successor Agency or its assignee shall have the right, both independently and collectively, but not the obligation, to perform necessary work in the Block 2E Pedestrian Mews to remedy the failure specified in the applicable Notice, and Declarant shall reimburse Successor Agency and/or the City, as the case may be, for the actual costs of such work, not including compensation for staff time.

Section 4 Liability and Indemnity

A. Limitation on Liability. Neither the Successor Agency nor the City and County of San Francisco ("**City**") shall be liable, in any event whatsoever, for any injury or damage to any person on or about the Property or any injury or damage to the Property, to any property of any tenant or occupant, or to any property of any other person, entity or association on or about the Property, except with regard to work performed by the Successor Agency or its assignee pursuant to Section 3.B, or to the extent such injury or damage is caused solely by willful misconduct or gross negligence of the party seeking to enforce this limitation.

B. Indemnity. Declarant, and each successor and assign to Declarant holding an interest in the Block 2E Pedestrian Mews (collectively called "**Indemnitors**"), with respect to all matters arising during the period that Declarant or each such successor or assign is holds an interest in the Block 2E Pedestrian Mews, shall defend, hold harmless and indemnify the Successor Agency and the City, including but not limited to all of their boards, commissions, departments, agencies and other subdivisions, and their respective officers, directors, commissioners, employees and agents (collectively, "**Indemnified Parties**"), from and against any and all liabilities, penalties, costs, damages, expenses, causes of action, claims or judgments (including without limitation attorney's fees) (collectively, "**Indemnified Claims**"), arising under this Declaration or resulting from the death or injury of any person or damage to property occurring on the Block 2E Pedestrian Mews and directly or indirectly caused by any acts or omissions of Indemnitors or their agents, employees or contractors except to the extent that any of the foregoing indemnification, reimbursement, hold harmless and defense obligations is void or otherwise unenforceable under applicable Law. The foregoing indemnity shall not apply to any liabilities, penalties, costs, damages, expenses, causes of action, claims or judgments (including reasonable attorney's fees) (i) due to the negligence or willful misconduct of the Indemnified Parties, or their respective agents, employees or contractors, or (ii) arising from the Successor Agency's or its assignee's performance of work pursuant to Section 3.B. Declarant, on behalf of the Indemnitors, specifically acknowledges and agrees that the Indemnitors have an immediate and independent obligation to defend the Indemnified Parties from any claim which actually or potentially falls within this indemnity even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such Indemnified Claim is tendered to any applicable Indemnitor.

Section 5
Duration

This Declaration, and the restrictions and covenants herein, herein shall remain in effect for the Life of the Project and shall survive the termination of the Ground Lease and the Loan Agreement, even if the loan under the Loan Agreement is repaid or otherwise satisfied or the Deed of Trust is reconveyed.

Section 6
Notice of Restrictions

Concurrent with the recordation of this Declaration, Declarant shall ensure that all of its members are informed of the restrictions herein by providing a summary notice to all members then existing in Declarant, and thereafter Declarant shall provide such notice to each member as it is admitted to Declarant, with a copy of each notice provided to the Successor Agency.

Section 7
Miscellaneous Provisions

A. Time. Time is of the essence of this Declaration and each party's performance of its obligations hereunder.

B. Amendment. Declarant may modify this Declaration only with prior written consent of Successor Agency, and any such modification shall be duly recorded in the Official Records of the City and County of San Francisco.

C. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

D. Successors and Assigns. The rights and obligations set forth herein shall burden the Property, run with the land, and bind and inure to the benefit of the successors and assigns of the Declarant and Successor Agency for the Life of the Project.

E. Counterparts. This Declaration may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute on and the same Declaration.

F. Notices.

a. Notices. Any notice given under this Declaration shall be in writing and given by delivering the notice in person, by commercial overnight courier that guarantees next day delivery and provides a receipt, or by sending it by registered or certified mail, or Express Mail, turn receipt requested, with postage prepared, to the mailing address listed below or any other address notice of which is given.

Declarant:

Copy to:

Successor Agency: Successor Agency to the
San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attention: Executive Director

Copy to:

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

G. Severability. If any provision of this Declaration shall to any extent be invalid or unenforceable, the remainder of this Declaration (or the application of such provisions to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Declaration, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

H. Entire Declaration. This Declaration, together with any attachments hereto or inclusions by reference, constitute the entire Declaration between the Declarant and the Successor Agency on the subject matter hereof, and this Declaration supersedes and cancels any and all previous negotiations, arrangements, Declarations and understandings, if any, between the Declarant and the Successor Agency hereto with respect to the public access area defined in Section 1 which is the subject matter of this Declaration.

I. Compliance with Laws. Declarant, at Declarant's expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities having jurisdiction over the Block 2E Pedestrian Mews, now in force or hereafter adopted.

J. Assignment and Release of Liability. In the event of the conveyance of Declarant's leasehold interest in the Property from Declarant or any successor to a third party (each, an "**Acquiring Party**"), then from and after the date of such conveyance, Declarant or such successor lessee, as applicable, shall be released from all of its respective obligations and liability under this Declaration thereafter accruing and such Acquiring Party shall automatically assume all the obligations of Declarant or such successor lessee, as applicable, under this Declaration at the time

such Acquiring Party acquires the leasehold interest in the Property. In connection with any such conveyance of fee title, Declarant or such successor lessee, as applicable, and such Acquiring Party shall execute and deliver to the Successor Agency a written assignment and assumption of the Declaration; provided, however, that the failure of any party to execute or deliver such an assignment and assumption shall not affect the automatic transfer and assumption of obligations and liability under this Declaration by such Acquiring Party.

K. No Partnership or Joint Venture. This Declaration does not create a partnership or joint venture between the Successor Agency, the City and Declarant as to any activity conducted by Declarant on, in or relating to the Block 2E Pedestrian Mews.

L. Section Titles. All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Declaration.

M. Declarant Representation. Declarant represents and warrants that the execution and delivery of this Declaration by Declarant and the person signing on behalf of Declarant below has been duly authorized and Declarant is a non-profit corporation duly formed, validly existing and in good standing under the laws of the State of California.

N. Survival. All representations, warranties, and waivers given or made hereunder shall survive termination of this Declaration.

[Signatures begin on the following page]

IN WITNESS WHEREOF, Declarant has executed this instrument as of the Effective Date.

DECLARANT:

By: _____

Name:

Its:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____ ,
personally appeared _____ ,

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

Legal Description of Property

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

EXHIBIT B

CHILD CARE/COMMUNITY COMMERCIAL LOAN AGREEMENT

By and Between

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

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

and

TRANSBAY 2 FAMILY COMMERCIAL LLC, a California limited liability company

for

Transbay Block 2 East

[\$8,676,682]

Dated as of _____, 2024

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Q	Legal Description of the Site
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CHILD CARE/COMMUNITY COMMERCIAL LOAN AGREEMENT

Transbay Block 2 East
Transbay Redevelopment Project Area

This CHILD CARE/COMMUNITY COMMERCIAL LOAN AGREEMENT ("**Agreement**") is entered into as of _____, 2024, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California (commonly referred to as the Office of Community Investment and Infrastructure or "**OCII**"), and TRANSBAY 2 FAMILY COMMERCIAL LLC, a California limited liability company (consisting of Mercy Housing Calwest), (the "**Borrower**"), and their authorized successors and assigns.

RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California ("**CRL**"), the former Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") undertook programs to redevelop and revitalize blighted areas in San Francisco and in connection therewith established a redevelopment project area known as the Transbay Redevelopment Project Area (the "**Project Area**").

B. In 2003, the Transbay Joint Powers Authority ("**TJPA**"), the City and County of San Francisco ("**City**"), and the State of California ("**State**"), entered into a Cooperative Agreement setting forth the process for the transfer of certain State-owned parcels in the Project Area to the City and the TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1, which requires that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households (the "**Transbay Affordable Housing Obligation**").

C. The Board of Supervisors of the City and County of San Francisco ("**Board of Supervisors**") approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006, filed in the Office of the Recorder of the City and County of San Francisco ("**Official Records**") as Document No. 2006-I224836, as amended by Ordinance No. 84-15 (June 16, 2015) as Document No. 2015-K135871, as amended by Ordinance No. 62-16 (April 26, 2016) as Document No. 2016-K333253, and as amended by Ordinance No. 09-23 (January 24, 2023) as Document No. 2023041529, and as it may be amended from time to time ("**Redevelopment Plan**").

D. In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement ("**Implementation Agreement**") which incorporates the Transbay Affordable Housing Obligation and requires the Former Agency (now OCII) to prepare and sell certain formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and to meet affordable housing obligations.

E. The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the land use controls of the Redevelopment Plan and the Development Controls and Design Guidelines for the Transbay Redevelopment Project (2005) (and as currently amended “**Development Controls**”) are applicable and are to be administered by the Former Agency (now OCII), and Zone Two in which the San Francisco Planning Code applies and is administered by the San Francisco Planning Department.

F. On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency, by operation of law pursuant to California Health and Safety Code Section 34170 et seq. (“**Redevelopment Dissolution Law**”). Under the authority of the Redevelopment Dissolution Law and San Francisco Ordinance No. 215-12 (October 4, 2012) (establishing the Successor Agency Commission (“**Commission**”) and delegating to it state authority under the Redevelopment Dissolution Law), OCII is administering the enforceable obligations of the Former Agency. The Redevelopment Plan, Development Controls, Transbay Affordable Housing Obligation, Implementation Agreement and other relevant Project Area documents remain in effect and OCII retains all affordable housing obligations in the Project Area.

G. Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are “in compliance with a continuing enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5(a). On April 15, 2013, the California Department of Finance (“**DOF**”) finally and conclusively determined that the Implementation Agreement and its incorporation of the Transbay Affordable Housing Obligation are continuing enforceable obligations of OCII under Redevelopment Dissolution Law. DOF has confirmed that “any sale, transfer, or conveyance of property related to [the Transbay Final and Conclusive Determination] is authorized.” Email from Justyn Howard, Assistant Program Budget Manager, DOF, to Tiffany Bohee, Executive Director, OCII (September 10, 2013, 09:17 am).

H. In accordance with its obligations under the Redevelopment Plan and the Implementation Agreement, OCII intends to fund the development of two affordable housing developments on Block 2 as said block is depicted in the Redevelopment Plan (“**Block 2**”), by subdividing Block 2 into two vertical subdivisions (referred to herein as “**Block 2 East**” and “**Block 2 West**”), providing a subsidy for development and operation of affordable housing developments with ground floor community commercial on Block 2 East and Block 2 West, and entering into ground lease agreements with affordable housing developers to cause the construction and operation of the two developments. OCII anticipates that its subsidy will facilitate additional public and private financing necessary to make the development and operation of the Block 2 Site financially feasible.

I. The Development Controls and Design Guidelines for the Transbay Redevelopment Project (2005) (“DCDG”) states that “[g]round floor commercial spaces are required along the Folsom Boulevard frontage.” DCDG at p. 24, section C.3. of Zone One-Transbay Downtown Residential. The Block 2 East Project includes frontage along Folsom Boulevard and therefore must include commercial space.

J. On April 6, 2021, by Resolution No. 09-2021, the Commission affirmed the selection of the development team for Block 2, including lead developer Mercy Housing California (“**Mercy**”, the parent entity of Borrower’s general partner) and co-developer Chinatown Community Development Center (“**CCDC**”) and approved an Exclusive Negotiations Agreement (“**ENA**”). In accordance with Mercy and CCDC’s development proposal and their Joint Development Agreement dated as of March 30, 2021 (“**JDA**”), which defines the roles and responsibilities of Mercy and CCDC in developing Block 2, including requiring commercial affiliates of Mercy and CCDC to enter into a retail leasing agreement, reasonably reviewed and approved by OCII, providing Mercy commercial affiliate Mercy Commercial California (“**Mercy Commercial**”) with control over the marketing and leasing of community commercial spaces developed on the Block 2 Site (“**Community Commercial Leasing Agreement**”), subject to the requirements of this Agreement and of any similar agreement between OCII and CCDC or an affiliate of CCDC.

K. On November 1, 2022, by Resolution Nos. 39-2022 through 44-2022, the Commission conditionally approved schematic designs and related actions modifying the scope of development for Block 2 to include a total of approximately 335 affordable residential units and approximately 11,351 square feet of community commercial space in two separate buildings on Block 2, comprised of 151 residential units, amenities and open spaces and approximately 2,945 square feet of community commercial space on Block 2 West (“**Block 2 West Project**”) and 184 residential units, amenities and open spaces and 8,406 square feet of community commercial space on Block 2 East (“**Block 2 East Project**”). On February 3, 2023, by Ordinance No. 09-23, the City adopted amendments to the Redevelopment Plan effectuating the modified scope for development of Block 2.

L. To maximize the ability of the Block 2 East Project to obtain affordable housing financing, CCDC determined that the Block 2 East Project’s community commercial space should be constructed by an affiliate of Mercy within a separate air rights parcel under a separate commercial ground lease and commercial loan agreement. Mercy succeeded in obtaining a State affordable housing bond and tax credit allocations on December 6, 2023.

M. The Project and the Residential Component (as defined in Recital Q below) are integrated components of the overall Block 2 East Project, with the Project providing community-focused uses, including space and private interior courtyard for a childcare facility, that are beneficial to residents of the Residential Component and the surrounding community, and the Residential Component providing a stable base of customers for the goods and services provided in the Project.

N. On August 4, 2023, the Citywide Affordable Housing Loan Committee (“**Loan Committee**”) approved a total OCII subsidy for the development of the Block 2 East Project in an aggregate amount not to exceed Seventy Two Million Nine Hundred Seventy Two Thousand One Hundred Seventy Nine Dollars (\$72,972,179) (“**Total OCII Subsidy**”), constituting (i) an approximately [\$8,676,682] permanent loan for the construction and operation of the Project (“**Community Commercial Loan**”); (ii) an approximately [\$61,961,845] permanent residential

loan for the construction and operation of the Residential Component (as defined in Recital L, below); and (iii) approximately \$2,333,653 to reimburse costs associated with site preparation which amounts may be adjusted, subject to the limit of the Total OCII Subsidy and to MOHCD Director and OCII Executive Director approval through the Final Financial Plan Confirmation Letter (as defined herein), to address changes to the financial conditions of this Agreement after Commission approval but before loan closing.

O. On _____, 2024, by Resolution No. ___-2024, the Commission authorized a Ground Lease (as defined below) with Borrower for the purpose of constructing and thereafter operating on the Site (as defined below) three (3) community-serving commercial units, including one approximately 6,447 square-foot unit intended for use as a childcare facility, finished to a Warm Shell condition totaling approximately 8,406 square feet (each, a “**Community Commercial Unit**”) and an approximately 600 square-foot ground floor private interior courtyard, and an approximately 1,200 square foot second floor patio for child care use (“**Courtyard**”, and collectively, the “**Project**”). Also on _____, 2024, the Commission separately approved a loan and residential ground lease for operation of the residential component of the Block 2 East Project (“**Residential Component**”).

P. In furtherance of the foregoing, OCII has subdivided Block 2 by Final Subdivision Map No. 11541 (recorded in the Official Records on December 1, 2023 as Document No. 2023097238 in Book 53 of Parcel Maps at Pages 160 to 163, “**Final Map**”), creating two vertical subdivisions of roughly equal size (Parcels 015 and 016 of the Final Map constituting Block 2 West, and Parcels 017 and 018 of the Final Map constituting Block 2 East). The Project will be constructed within Parcel 018 of the Final Map (as further described in Exhibit Q, the “**Site**”), and the Residential Component will be constructed within Parcel 017 of the Final Map.

Q. OCII now intends to issue the Loan to Borrower in accordance with the terms of this Agreement.

R. Upon completion of the Project, OCII intends to assign its rights and obligations under this Agreement and the Ground Lease, together with conveyance of fee title to Block 2 East (including the Site and the Residential Component) as a mixed-use housing asset, to MOHCD, which is the designated Housing Successor of the City and County of San Francisco under Board of Supervisors Resolution 11-12 (January 24, 2012), as required by Redevelopment Dissolution Law, Health and Safety Code Sec. 34176(a), and OCII’s approved Long-Term Property Management Plan dated December 2015.

S. As a mixed-use asset under Section 34176 (f) of the Health and Safety Code, the Residential Component and the Project will be transferred to MOHCD as an affordable housing asset because of the overall value to the community and the benefit to taxing entities of keeping these uses together.

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:

"20-Year Cash Flow Proforma" means the 20-year cash flow proforma for the Project attached as Exhibit B-3, as it may be revised and approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date. Any revisions to the 20-Year Cash Flow Proforma so approved by the MOHCD Director and the OCII Executive Director will be attached to and included in this Agreement in the form of the Final Financial Plan Confirmation Letter.

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

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

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

"Annual Operating Budget" means an annual operating budget for the Project attached hereto as Exhibit B-2, as it may be revised and approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date. Any revisions to the Annual Operating Budget so approved by the MOHCD Director and the OCII Executive Director will be attached to and included in this Agreement in the form of the Final Financial Plan Confirmation Letter.

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

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

"Borrower" is defined in the first paragraph of this Agreement.

"**CFR**" means the Code of Federal Regulations.

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

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

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

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

"**Community Commercial Unit**" has the meaning set forth in Recital O.

"**Community Serving Uses**" has the same meaning set forth in the MOHCD Commercial Underwriting Guidelines attached hereto as Exhibit C.

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

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

"**Construction Documents**" are the Final Construction Documents as defined and described in the Design Review and Document Approval Procedure for Transbay Block 2 (Attachment 7 of the ENA).

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

"**Control of the Site**" means acquisition of fee ownership or a leasehold interest in the Site (or a portion thereof) by Borrower or an affiliate of Borrower.

"**Conversion Date**" means the date upon which the institutional construction financing for the Residential Component converts to a permanent phase requiring payments of principal amortized over the term of the loan for the Residential Component.

“**Courtyard**” has the meaning set forth in Recital O.

“**CRL**” has the meaning set forth in Recital A.

"**Declaration of Restrictions**" means a recorded declaration of restrictions in substantially the form and substance attached hereto as Exhibit K that requires Borrower and the Project to comply with the use restrictions in this Agreement for the duration specified therein, 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 OCII a lien on the Borrower's leasehold interest under the Ground Lease and Borrower's ownership interest in the Project to secure Borrower's performance under this Agreement and the Note, in substantially the form and substance attached hereto as Exhibit J.

"**Developer**" means, for purposes of distribution of the Developer Fees (as defined herein) Transbay 2 Family Commercial LLC, a California liability company, or an entity affiliated or under common control with the foregoing.

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

"**Development Controls**" has the meaning set forth in Recital D.

"**Development Expenses**" means all costs incurred by Borrower and approved by the OCII Executive Director and MOHCD Director in connection with the development of the Project, including: (a) hard and soft development costs; (b) deposits into required capitalized reserve accounts; (c) costs of converting Project financing, including bonds, into permanent financing; (d) the expense of a cost audit; and (e) allowed Developer Fees.

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

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

"**Disburse**", "**Disbursement**" and other derivatives thereof means the disbursement of all or a portion of the Funding Amount by OCII as described in Article 4.

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

“**Early Retention Release Contractors**” has the meaning set forth in Section 4.4.

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

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

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

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

"Excess Development Proceeds" means Development Proceeds remaining after payment of Development Expenses.

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

"Final Financial Plan" means the Table of Sources and Uses, the Annual Operating Budget and 20-Year Cash Flow Proforma (including without limitation the Funding Amount, interest rate and distribution of Surplus Cash) (Exhibits B-1, B-2, and B-3), as they may be revised by any Final Financial Plan Confirmation Letter approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date.

"Final Financial Plan Confirmation Letter" means a letter documenting the approved Final Financial Plan including any adjustments thereto made and approved by the MOHCD Director and the OCII Executive Director subsequent to execution of this Agreement but prior to the Loan Closing Date, including without limitation the Funding Amount, interest rate and distribution of Surplus Cash.

"Funding Amount" means an aggregate amount not to exceed [Eight Million Six Hundred Seventy Six Thousand Six Hundred Eighty Two Dollars (\$8,676,682)] and shall include any revision to the foregoing amount included in the Final Financial Plan.

"Funds" means the monies Disbursed by OCII under this Agreement.

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

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

"Ground Lease" means a ground lease of the Site between Borrower as tenant and OCII as landlord, as approved by the Commission.

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

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

"Investor Limited Partner" means the tax credit equity investor who will be admitted as a limited partner of Transbay 2 Family concurrent with Loan Closing, and its successors and assigns.

"JDA" has the meaning set forth in Recital J.

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

“Life of the Project” means the period of time in which the Residential Component continues to operate as an affordable housing development substantially similar to its current condition in terms of square footage and number of units, and in the event the Block 2 East Project is substantially damaged or destroyed by fire, the elements, an act of any public authority or other casualty, and is subsequently replaced by a development substantially similar to its current condition in terms of square footage and number of units, the life of such replacement project will be deemed to be a continuation of the Life of the Project.

"Loan" has the meaning set forth in Recital K.

“Loan Documents” means those certain loan agreements, notes, deeds of trust, declarations, and any other documents executed and delivered in connection with the predevelopment, construction, and permanent financing for the Project.

“Loan Closing” means the date on which the Deed of Trust and Declaration of Restrictions are recorded as authorized by Borrower and OCII in accordance with the provisions of this Agreement.

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

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

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

"Maturity Date" has the meaning set forth in Section 3.3.

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

“MOHCD Commercial Underwriting Guidelines” means the MOHCD Commercial Space Underwriting Guidelines (effective March 3, 2023), as amended from time to time.

"Note" means the promissory note executed by Borrower in favor of OCII in the original principal amount of the Funding Amount, the form of which is attached hereto as Exhibit D.

"Notice to Proceed" has the meaning set forth in Section 5.5.

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

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

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

"Official Records" means the Official Records of the City and County of San Francisco.

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

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

"Payment Date" means the first May 1st following the Completion Date and each succeeding until the Maturity Date.

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

"Project" means the development described in Recitals J and L. If indicated by the context, "Project" means the Site and the improvements developed on the Site.

"Project Area" has the meaning set forth in Recital A.

"Project Expenses" means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, maintenance, common area maintenance ("CAM") charges and other fees due and payable under the REA, 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 Project; (b) all other expenses actually incurred by Tenant to cover operating costs of the Project, including maintenance, repairs, and turnover expenses; (c) required, or necessary, deposits to the Replacement Reserve Account, Commercial Leasing Reserve Account, and any other reserve account required under this Agreement or required by another lender or regulatory agency, each as approved by OCII and MOHCD pursuant to the Final Financial Plan; (d) Ground Lease rent; and (e) any extraordinary expenses approved in advance by OCII (other than expenses paid from

any reserve account). Project Expenses excludes depreciation, amortization, depletion, other non-cash expenses or expenditures from reserve accounts.

"Project Fees" means any fees established in the Final Financial Plan and/or consistent with the set out in the MOHCD Commercial Underwriting Guidelines.

"Project Income" means all revenue, income, receipts in any form, and other consideration received by Borrower from the operation of the Project, including without limitation: all rents, fees, deposits, accrued interest disbursed from any reserve account required under this Agreement for a purpose other than that for which the reserve account was established; reimbursements and other charges paid to Borrower in connection with the Project; and the proceeds of business interruption or similar insurance. Project Income does not include interest accruing on any portion of the Funding Amount.

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

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

"Redevelopment Dissolution Law" has the meaning set forth in Recital E.

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

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

"Retention" has the meaning set forth in Section 4.4.

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

"Site" means the real property described in Exhibit Q of this Agreement.

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

"Table of Sources and Uses" means the 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 be adjusted by the Final Financial Plan Confirmation Letter as approved by the MOHCD Director and the OCII Executive Director prior to the Loan Closing Date, and may not be adjusted without OCII's prior written approval after the Loan Closing Date.

"Tenant Improvement Reserve" has the meaning set forth in Section 12.3.

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

"Total OCII Subsidy" has the meaning set forth in Recital K.

"Transbay 2 Family" means Transbay 2 Family, L.P., a California limited partnership, the developer of the Residential Component.

"Vacancy Reserve" has the meaning set forth in Section 12.3.

"Warm Shell" has the same meaning set forth in the MOHCD Commercial Underwriting Guidelines.

"Work Product" has the meaning set forth in Section 24.21.

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

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

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

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the date of

performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

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

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

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

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

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

1.4 Notwithstanding the cancellation of the promissory note issued thereunder, this Agreement incorporates in its entirety the Predevelopment Loan Agreement for the purposes of Disbursements of monies remaining under the Predevelopment Loan Agreement made prior to Loan Closing. In the event of a conflict between the Predevelopment Loan Agreement and this Agreement, the Predevelopment Loan Agreement shall prevail for Disbursements of monies made prior to the Loan Closing, and thereafter this Agreement shall prevail.

ARTICLE 2 FUNDING.

2.1 Funding Amount. OCII agrees to lend to Borrower a maximum principal amount equal to the Funding Amount to finance development costs of the Project, all in accordance with this Agreement.

2.2 Use of Funds. Borrower acknowledges that OCII's agreement to make the Loan is based in part on Borrower's agreement to use the 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 OCII (unless otherwise specified) as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, any interest earned on funds in any Account must be used for the benefit of the Project.

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

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

2.6 Contracting Requirements. Borrower shall comply with OCII's contract compliance requirements for procurement activities as further set forth in Exhibit E of this Agreement.

2.7 Workforce Requirements. Borrower shall comply with OCII workforce requirements pursuant to Exhibits E-2 and E-3, including but not limited to OCII's Labor Standards and the Construction Workforce Agreement, as set forth in Exhibit E for all construction related work.

ARTICLE 3 TERM; FINANCIAL PROVISIONS OF THE LOAN.

3.1 Term. The term of this Agreement shall commence on the Agreement Date, and shall continue until the fifty seventh (57th) anniversary of the date the Deed of Trust is recorded in the Official Records, regardless of any reconveyance of the Deed of Trust (the "**Compliance Term**"). To ensure the Borrower's, or subsequent assignees', continued compliance with such obligations during the Compliance Term, the Deed of Trust shall be recorded in the Official Records upon execution of the Ground Lease.

3.2 Interest. The outstanding principal balance of the Loan will bear simple interest at a rate of zero percent (0%) per annum, as such rate may be adjusted by review and approval by the OCII Executive Director and the MOHCD Director in their sole discretion as part of the Final Financial Plan.

3.3 Loan Repayment Terms. Interest shall accrue, and repayment of principal and interest shall be paid from Surplus Cash in accordance with Section 3.6, below. Notwithstanding the foregoing, the outstanding principal balance and any accrued but unpaid interest of the Loan will be due and payable upon the expiration of the Compliance Term, but in all events not later than December 31 of the year that is 55 years from the Conversion Date (the "**Maturity Date**"), which Maturity Date is expected to be _____, according to the terms set forth in full in the Note. At least sixty (60) days prior to the Maturity Date, the Borrower may apply to

the City (via MOHCD or its successor) for an extension of the Maturity Date. If, as of the date of such request, the Borrower continues to be in compliance with the Loan Documents, the City may, in its discretion, agree to extend the Maturity Date pursuant to a written amendment to the Agreement and permit the Borrower to continue to defer repayment of principal and interest, or may require that the Borrower make amortized payments of principal and interest; provided that if the City grants such an extension to the Residential Component it shall be applicable to the Maturity Date hereunder.

3.4 Declaration of Restrictions. Borrower and its assigns must comply with all provisions of the Declaration of Restrictions (and any amended and restated versions of such declaration recorded in the Official Records) for the duration of the Declaration of Restrictions, even if the Loan is repaid or otherwise satisfied, or the Deed of Trust is reconveyed. Notwithstanding anything to the contrary contained herein, Borrower's obligation to comply with the Declaration of Restrictions shall be subject to Borrower's compliance with all applicable laws, statutes and regulations, including, but not limited to the California Revenue and Taxation Code and federal law and regulations relating to HUD.

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

(a) 3.6 Distribution of Surplus Cash and Repayment of Principal. Until such time as the Community Commercial Loan is repaid in full, if the Borrower is in compliance with all applicable requirements and agreements under this Lease, Borrower shall use any Surplus Cash to make the following payments in the following order of priority:

(i) First, two-thirds (2/3) Surplus Cash to OCII to repay the Community Commercial Loan (or, upon transfer to MOHCD, for purposes consistent with Dissolution Law including 34176(e)(5)); and

(ii) Then, any remaining Surplus Cash may be used by Borrower for any purposes permitted under MOHCD's residual receipt policy or other policy governing the Project, as it may be amended from time to time.

Notwithstanding the foregoing, Borrower and Landlord agree that the distribution of Surplus Cash may be modified based on the requirements of other Mortgagees. Once the Community Commercial Loan has been repaid in full, subsections (d)(i) and (d)(ii) shall be replaced by the provisions for payment of Percentage Rent.

3.7 Repayment of Unused Portion of Principal. In addition to any other payment requirements, at the time of cost certification / 8609 form submittal by Transbay 2 Family, L.P.

for the Residential Component, the Borrower shall promptly repay to OCII any portion of the Loan previously disbursed to Borrower and not used for eligible costs as described in this Agreement. No interest shall accrue on the Loan amount repaid pursuant to this Section 3.7.

3.8 Reserved.

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

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

3.11 Repayment of Excess Development Proceeds. Borrower shall repay Excess Development Proceeds to OCII at the time of cost certification / 8609 form submittal by Transbay 2 Family, L.P. for the Residential Component, unless otherwise stated and approved by MOHCD Director and OCII Executive Director as part of the Final Financial Plan approval prior to the Loan Closing Date. Failure to so repay Excess Development Proceeds shall be a material Default of this Agreement.

3.12 Additional Borrower Covenants. Borrower hereby agrees to the following:

- (a) Borrower acknowledges that the MOHCD Director and OCII Executive Director may, prior to Loan Closing, collectively approve and include as part of this Agreement revisions to the Final Financial Plan for the benefit of the Project, and Borrower shall cooperate with OCII and MOHCD and their financial advisor in identifying such revisions.
- (b) Final construction costs after receipt of bids are subject to OCII review and approval prior to Loan Closing.
- (c) Assuming the Project does not experience significant hard-cost increases as a result of pricing estimates at Construction Documents completion, Construction Documents bid by the General Contractor, final plan check of all addenda, or any significant schedule delay preventing the Project from beginning construction in 2024, remaining design contingencies including the 5% Design Contingency, 5% Bid Contingency, 5% Plan Check Contingency, and the 3.5% Escalation Contingency will be eliminated from the Project budget. OCII's subsidy to the Project will be reduced by the total value of the eliminated subsidies (unless OCII approves allocation of some or all of eliminated subsidies for other costs in the Project budget as part of the Final Financial Plan).
- (d) Borrower agrees to provide notice to OCII in accordance with Section 21.1 of the occurrence of any change or circumstance that: (a) will have a material adverse effect on the physical condition or intended use of the Project; (b) causes the Loan to be out of balance; or (c) will have a material adverse effect on Borrower's operation of the Project or ability to repay the Loan.
- (e) Borrower shall comply with the following loan conditions based on OCII's requirements and the Loan Committee's recommendations in reviewing and approving the Block 2 East Project's Loan Evaluation on August 4, 2023.
 - a. Borrower shall continue to refine the commercial capital and operating budgets and, prior to the close of construction financing, Borrower shall (or shall cooperate with the developer of the Residential Project to):
 - i. Submit an updated commercial space plan that documents further outreach to prospective tenants, particularly Small Business Enterprises (especially those located in OCII project areas), describes racial equity efforts and expected outcomes, and outlines plans to achieve community benefits pursuant to the below-referenced community commercial services

agreement. The updated commercial space plan shall include a third-party prepared market study. In addition, the updated commercial space plan shall include an analysis of resources available to fund tenant improvements such as, but not limited to, programs from the San Francisco Office of Economic and Workforce Development.

- ii. Based on findings from the updated commercial space plan and market study as referenced above, provide a recommended tenant improvement allowance responsive to current market conditions and anticipated tenant uses and related improvement cost estimates for OCII review and approval. The final tenant improvement allowance will be included as an attachment to the OCII commercial loan agreement, subject to approval by the MOHCD Director and OCII Director as part of the Final Financial Plan.
 - iii. Make good faith efforts to secure letters of intent with Community Serving Use or Public Benefit Use tenants.
 - iv. To the extent required by MOHCD and/or OCII, enter into a community commercial services agreement (as referenced in the MOHCD Commercial Space Underwriting Guidelines) or similar agreement to establish the terms and annual community benefit reporting requirements for the commercial spaces.
 - v. Subject to OCII review and approval, execute a reciprocal easement agreement or similar document to establish the terms for access to spaces shared between the residential and commercial portions of the Project and the allocation of costs and responsibilities.
 - vi. Enter into a commercial space loan agreement and ground lease with OCII.
 - vii. In collaboration with OCII and MOHCD, explore alternative ownership, construction financing, and leasing structures for the childcare facility space with the intent of reducing or eliminating the OCII commercial loan for this space.
 - viii. Following initial lease-up and a period of stabilized commercial occupancy as mutually agreed upon by the Borrower, Mercy Commercial, and OCII, pursue a permanent commercial loan to reimburse OCII's commercial loan to the extent feasible.
- b. Borrower, in cooperation with OCII, shall continue to require the general contractor to exercise good faith efforts to select subcontractors who are either small business enterprises ("SBEs") or, if they are not

SBEs, are willing to create joint ventures or similar partnership opportunities with SBEs. In addition, Borrower will work closely with the general contractor and design team to monitor construction costs and identify opportunities for cost savings and efficiencies.

- c. Borrower shall submit, or shall ensure that Mercy Commercial submits, to OCII final permanent commercial sources and uses budget and operating budget, compliant with underwriting standards for OCII review and approval. The allocation of funds between the residential and commercial loans may be adjusted to optimize scoring and/or maximize tax credit basis. The final budgets will be incorporated into the Final Financial Plans of the respective loan agreements, subject to approval by OCII and MOHCD.
- d. Borrower shall comply with the MOHCD Commercial Underwriting Guidelines, as amended from time to time.

ARTICLE 4 CLOSING; DISBURSEMENTS.

4.1 Closing; Termination. In the event Borrower does not satisfy all of the conditions to Loan Closing contained in Section 4.1.1 within twenty-four (24) months of the date of this Agreement, OCII may terminate this Agreement and relieve the parties of all obligations that have not arisen prior to termination.

4.1.1 Conditions Precedent to Closing.

(a) OCII will authorize the Loan Closing upon satisfaction of the following preconditions:

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

- ii. Borrower must have delivered to OCII Borrower's Charter Documents.

- iii. Borrower must have delivered to OCII evidence of insurance (including required endorsements), acceptable to OCII, and, if requested by OCII, copies of policies for all insurance required under Exhibit F of this Agreement.

(b) Borrower will authorize the Loan Closing upon satisfaction of the following preconditions:

- i. The Ground Lease has been approved by Commission and Borrower and OCII shall have executed the Ground Lease and Borrower (subject to such limitations or

reservations as may be referenced in the Ground Lease) has accepted the condition of the Site.

4.1.2 Funding. Following satisfaction of the conditions in Section 4.1.1, OCII will authorize the Escrow Agent to Disburse Funds consistent with OCII 's escrow instructions.

4.2 Disbursements of Funds

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

4.2.2 Disbursement of Funding Amount After Loan Closing. As and when requested and in accordance with this Agreement (including the remainder of Article 4 below) and the approved line-item budget contained in the Table of Sources and Uses, OCII will make Disbursements to or for the account of Borrower in an aggregate sum not to exceed the Funding Amount.

Except reallocations of the Funding Amount from contingency line items to other line items within the Table of Sources and Uses, requests for Disbursement (or Expenditure Requests) that propose to reallocate Funds between the line items shown in the Table of Sources and Uses, or to change the budget limits for a line item shown therein, must be approved as follows: (i) a requested reallocation of Funds in an amount up to ten percent (10%) of the Funding Amount in the aggregate may be made with the express written approval of OCII's Housing Manager; and (ii) a requested reallocation of Funds in an amount that exceed ten percent (10%) of the Funding Amount may be made only with the express written approval of the OCII Executive Director. Any such approved changes will be considered amendments to the Table of Sources and Uses in the Final Financial Plan.

4.2.3 Conditions to Disbursement of Funding Amount. OCII's obligation to Disburse Funds available under Section 4.2.2 is subject to Borrower's satisfaction of the following conditions precedent:

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

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

(c) Borrower must have delivered to OCII current insurance endorsements and, if requested by OCII, copies of policies for all insurance required under Exhibit F of this Agreement.

(d) Borrower must have delivered to OCII an Expenditure Request in form

and substance satisfactory to OCII, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line-item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request.

(e) 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.

(f) With respect to any Expenditure Request for rehabilitation or construction costs, Borrower must have certified to OCII that all construction-related work on the Project complies with the labor standards set forth in Exhibit E, Section 1, if applicable.

(g) OCII shall use best efforts to either approve or disapprove each such Expenditure Request within ten (10) business days of receipt. In the event that OCII disapproves an Expenditure Request, OCII shall provide written notice thereof to Borrower specifying the reason for such disapproval. OCII shall use best efforts to fund all approved Expenditure Requests within ten (10) business days of approval.

4.3 Schedule of Performance. Borrower must perform in accordance with the Schedule of Performance (Exhibit L). The Schedule of Performance may be modified at the request of the Borrower; however, any modification to the Schedule of Performance shall be at the reasonable discretion of the OCII Executive Director. Any requests for modifications to the Schedule of Performance hereunder shall also include a conforming request for the Ground Lease Schedule of Performance.

4.4 Retention. In addition to the other conditions to Disbursements, Borrower acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line-item basis. OCII (or other entity approved in writing by OCII) will retain the remaining ten percent (10%) of hard costs or tenant improvement costs associated with rehabilitation or construction (the "**Retention**"), and no portion of the Retention may be released without OCII's prior written consent. Borrower may request Disbursement of the aggregate amount of the Retention only upon satisfaction of each of the following conditions, unless otherwise approved in writing by OCII: (a) completion of rehabilitation or construction of the Project in accordance with the plans and specifications approved by OCII, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection ("**DBI**"), and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Project.

After fifty percent (50%) of the construction of the Project is complete as determined by the OCII-assigned construction management staff, and upon Borrower's written request, OCII may elect to reduce the amount of Retention withheld to a level of no less than five percent (5%) of the hard costs or tenant improvement costs associated with rehabilitation or construction, provided that the following prerequisites have been met: (a) all work required to be performed by all parties for whom OCII agrees to release the Retention (the "**Early Retention Release Contractors**") has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the City and all applicable Laws; (b) the applicable Early Retention Release Contractors have filed unconditional lien waivers satisfactory to the OCII construction specialist; (c) no liens or stop notices have been filed against the Project that have not been released or bonded for according to construction mechanic's lien laws of the State of California or an appropriate title endorsement has been issued in a form reasonably satisfactory to OCII; (d) no claims against the Project are pending; (e) OCII determines that the contingency is in balance and adequate to complete the Project; and (f) the Project is on schedule.

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

ARTICLE 5 DEMOLITION, REHABILITATION OR CONSTRUCTION.

5.1 Contracting Requirements. In the selection of all contractors and professional consultants for the Project, Borrower must comply with OCII's contract compliance requirements as further set forth in Exhibit E of this Agreement.

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

5.3 Change Orders. Borrower may not approve or permit any change orders to the plans and specifications approved by OCII without OCII's prior written consent. Borrower acknowledges that OCII's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional Funds for the Project unless OCII agrees in its sole discretion to amend the Table of Sources and Uses or provide additional funds for that purpose. OCII shall endeavor to provide written approval or disapproval of each change order and any equivalent amendment to the Table of Sources and Uses within ten (10) business days of receipt for request therefor.

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

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

5.6 Commencement and Completion of Project. Unless otherwise extended in writing by OCII, Borrower must: (a) commence construction of the Project by July 2024; (b) complete construction of the Project by October 2026 substantially in accordance with the Approved Plans and Approved Specifications, as evidenced by a temporary certificate of occupancy or equivalent certification provided by DBI, and an architect's or engineer's certificate of completion (the "**Completion Date**"); and (c) achieve occupancy of two (2) of the Community Commercial Units by October 2028.

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

ARTICLE 6 MARKETING.

6.1 Marketing of Commercial Units. Borrower shall use commercially reasonable efforts to market, lease and re-lease the spaces within the Project to prospective tenants consistent with the covenants of this Agreement (including the Declaration of Restrictions) and shall provide bi-annual reports on marketing efforts to OCII for its review. Borrower shall also perform all other obligations under the Community Commercial Leasing Agreement, including obligations concerning marketing and leasing and re-leasing commercial units in the Block 2 West Project, as an obligation of this Agreement.

ARTICLE 7 LEASING RESTRICTIONS.

7.1 Term of Leasing Restrictions. Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect as provided in the Declaration of Restrictions attached hereto and recorded on the Loan Closing Date.

7.2 Tenant Leases.

(a) OCII Prior Approval. Prior to execution, Borrower shall provide to OCII, for its review and approval, all proposed commercial tenant leases for Community Commercial Units.

(b) Tenant Quality. Borrower shall ensure that all commercial tenant lessees are, for the term of the applicable lease, bona fide third-party tenants capable of performing their financial obligations under their leases.

(c) Permitted Uses. Uses allowed by the commercial tenant leases 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 Project, including providing an approximately 6,447 square-foot space for use as a childcare facility and the Courtyard. Each commercial tenant lease must restrict its use to Public Benefit Use or Community Serving Use except as permitted by OCII and the MOHCD Commercial Underwriting Guidelines.

(d) Lease Rents. Commercial tenant leases for Public Benefit Use or Community Serving Use may provide for below-market rental rates so long as Project Income meets approved cash flow requirements for the Project. Commercial tenant leases for all other uses shall provide for rental rates at then-current market rates for comparable space and tenants. Any use of Surplus Cash generated as a result of a market-rate lease of the Commercial Units will be subject to OCII approval. Surplus Cash generated by a market-rate lease must be directed toward repayment of the Loan, payments due under the Ground Lease, or to pay for Project losses in the event of a deficit. All Surplus Cash shall be subject to **Section 3.6**. Notwithstanding anything to the contrary herein, any market-rate commercial use shall be consistent with the MOHCD Commercial Underwriting Guidelines.

7.3 Nondiscrimination. Borrower covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through Borrower, and this Agreement is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Project nor shall Borrower, or any person claiming under or through Borrower, establish or permit any such practice or practices of

discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Project.

ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE 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 Project, including lease up of the Community Commercial Units, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower must maintain or cause to be maintained the 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 Site.

8.2 Contracting with Management Agent.

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

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

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

ARTICLE 9 GOVERNMENTAL REQUIREMENTS.

9.1 Borrower Compliance. Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of the Funds for the design,

construction, rehabilitation and/or operation of the Project, including the requirements of the CRL, OPA, and those Laws set forth in Exhibit E. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to Section 23.1, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

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

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all Funds, including all documents evidencing any Project Income and Expenses for a period of four years from the date of the termination of the Agreement; except that records that are the subject of audit findings shall be retained for four years or until such audit findings have been resolved, whichever is later. Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) Borrower must provide written notice of the replacement, consistent with Article 16, of: its sole member and manager or its executive director, director of property management and/or any equivalent position within the sole member and manager, within thirty (30) days after the effective date of such replacement.

(d) Except as requested by OCII, Borrower may provide reporting information required in this Article 10 together with information Borrower's affiliate compiles and submits for the Residential Component.

10.2 Monthly Reporting. Commencing upon the Loan Closing Date, Borrower must submit monthly reports (the "**OCII Monthly Project Update**") describing progress toward developing the Project with respect to obtaining necessary approvals from City departments, procuring architects, consultants and contractors, changes in scope, cost or schedule and Schedule of Performance or other significant milestones achieved in the past month and expected to be achieved in the coming month. The OCII Monthly Project Update must be submitted by email in substantially the form reasonably agreed to by the parties through submission of Forms 8609 by Transbay 2 Family, L.P. for the Residential Component.

10.3 Annual Reporting. Commencing upon the Completion Date, Borrower must file with OCII annual report forms (the "**Annual Monitoring Report**") that include audited financial statements with an income and expense statement for the Project covering the applicable reporting period, a statement of balances, deposits and withdrawals from all Accounts, line item statements of Project Expenses, Project Income, Project Fees (if any), Surplus Cash and any Distributions made, and evidence of required insurance, no later than one hundred fifty (150) days after the end of Borrower's fiscal year. The Annual Monitoring Report must be in substantially the form attached as Exhibit H or as later modified during the Compliance Term.

10.4 Capital Needs Assessment. Borrower must deliver to OCII, for review and approval, an updated CNA on or before the tenth (10th) anniversary of the Completion Date, and every five years thereafter. The updated CNA must include an analysis of Borrower's actual expenditures for capital needs compared to the most recently approved CNA, Borrower's 20-Year Proforma and initial Annual Operating Budget and its then-current Annual Operating Budget.

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

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

(b) within thirty (30) days after the Completion Date, a report on expenditures to third-party firms, including but not limited to consultants, contractors, and subcontractors, whether such firms are small business enterprises, the type of work and the dollar value of such work;

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

10.7 Delivery of Records. At the request of OCII, made through its agents, employees, officers or attorneys, Borrower must provide OCII within a reasonable period of time of no less than sixty (60) days from request therefor with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:

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

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

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

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

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

ARTICLE 11 USE OF INCOME FROM OPERATIONS.

11.1 Project Operating Account.

(a) Borrower must deposit all Project Income promptly after receipt into a segregated depository account (the "**Project Operating Account**") established exclusively for the Project. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget, as it may be revised from time to time with OCII's approval. Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses and Project Fees and payments and distributions of Surplus Cash in accordance with Section 3.6. Withdrawals from the Project Operating Account (including accrued interest) for any other purposes may be made only with OCII's express prior written approval.

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

ARTICLE 12 REQUIRED RESERVES.

12.1 Replacement Reserve Account.

(a) Commencing on the Conversion Date or any other date OCII designates in writing, Borrower shall establish or cause to be established a segregated interest-bearing

replacement reserve depository account (the "**Replacement Reserve Account**") with an initial amount equal to [\$43,025]. Borrower must make annual deposits from Project Income into the Replacement Reserve Account in the amount necessary to meet the requirements of this Section. OCII may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems reasonably necessary.

(b) At a minimum, Borrower shall make annual deposits of \$5,000 in the Project in accordance with the Loan Committee approval dated August 4, 2023, or such other amount as approved by MOHCD Director and OCII Executive Director as part of the Final Financial Plan, provided that should such approved amount be greater than \$5,000, such additional sum shall be made from available Surplus Cash.

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

12.2 Operating Reserve Account.

(a) Commencing upon the Conversion Date, Borrower must establish or cause to be established a segregated interest-bearing operating reserve depository account (the "**Operating Reserve Account**") with an initial amount equal to [\$254,288], or such other amount as approved by MOHCD Director and OCII Executive Director as part of the Final Financial Plan, consistent with the Market Study.

(b) Commencing four (4) years after the Conversion Date, Borrower must make additional deposits of \$10,000 annually until the Compliance Term has expired or such other amount as approved by MOHCD Director and OCII Executive Director as part of the Final Financial Plan, consistent with the Market Study, provided that should such approved amount be greater than \$10,000, such additional sum shall be made from available Surplus Cash.

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

12.3 Other Reserve Requirements. In addition to the reserve requirements set forth above, Borrower may establish the following reserve accounts:

(a) Commercial Leasing Reserve

- (b) Tenant Improvement Reserve
- (c) Vacancy Reserve

ARTICLE 13 DISTRIBUTIONS.

13.1 Definition. "**Distributions**" (including variants thereof) refers to cash or other benefits received as Project Income from the operation of the Project and available to be distributed to Borrower, its partners or any party having a beneficial interest in the Project as Surplus Cash, but does not include payments for services approved in the Annual Operating Budget including for property management, asset management, company management, and approved deferred Developer Fees.

13.2 Conditions to Distributions. The 20-Year Cash Flow Proforma attached hereto as Exhibit B-3 includes projections of annual Distributions of Surplus Cash. 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) OCII approval of the Annual Monitoring Report submitted for that year; (b) OCII's determination that Borrower is not in default under this Agreement or any other agreement entered into with the City or OCII for the Project; and (c) OCII's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement, including, but not limited to Section 3.6. OCII will be deemed to have approved Borrower's written request for approval of a proposed Distribution unless OCII delivers its disapproval or request for more information to Borrower within thirty (30) business days after OCII's receipt of the request for approval.

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

- (a) when a written notice of default has been issued to Borrower by any entity with an equitable or beneficial interest in the Project and the default is not cured within the applicable cure periods; or
- (b) when OCII has delivered a written notice of default to Borrower for a failure to comply with this Agreement and such default has not been remedied, or when OCII determines that Borrower's management agent has failed to comply with this Agreement and such failure has not been remedied; or
- (c) if required debt service on all loans secured by the Project and all operating expenses have not been paid current; or
- (d) if the Replacement Reserve Account, Operating Reserve Account or any other reserve account required for the Project is not fully funded under this Agreement; or

(e) if the Loan is to be repaid from Surplus Cash, Borrower failed to make a payment when due and the sum remains unpaid; or

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

13.4 Distributions of Surplus Cash. Distributions of Surplus Cash shall be made in accordance with Section 3.6.

ARTICLE 14 PERMANENT LOAN PROCEEDS.

14.1 Distribution and Use. If Borrower successfully converts the Loan to permanent financing, Borrower must notify OCII of the receipt and disposition of any such financing, and shall ensure that all proceeds of such conversion are distributed to the Project and reflected in the Project's Table of Sources and Uses.

ARTICLE 15 DEVELOPER FEES.

15.1 Amount. OCII has approved the payment of fees to the Developer in an aggregate amount not to exceed Four Hundred Twenty-Five Thousand Dollars (\$425,000) ("**Developer Fees**"), or such lower amount as approved by MOHCD Director and OCII Executive Director as part of the Final Financial Plan, to be paid in accordance with the Developer Fee Schedule.

ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) transfers of a controlling or manager's interest in Borrower approved in advance by OCII; (b) removal and thereafter replacement of the managing member of Borrower (and if necessary, the temporary replacement thereof with an affiliate of the Investor Limited Partner of Transbay 2 Family) as necessary to effectuate Investor Limited Partner's rights under Section 19.2 hereof, provided that within a period of one hundred eighty (180) days after said removal (or other longer duration approved by OCII in its sole discretion), Investor Limited Partner shall have replaced Borrower's managing member with an entity subject to OCII's prior reasonable approval; (c) leases, subleases or occupancy agreements with any permitted commercial tenants of the Project made in accordance with the Ground Lease; or (d) security interests for the benefit of lenders securing loans for the Project as approved by OCII on terms and in amounts as approved by OCII in its reasonable discretion. Any other transfer, assignment, encumbrance, lease of the Project or of controlling or manager's interest in Borrower without OCII's prior written consent will be voidable and, at OCII's election, constitute an Event of Default under this Agreement. OCII's consent to any specific assignment, encumbrance, lease or other transfer will

not constitute its consent to any subsequent transfer or a waiver of any of OCII's rights under this Agreement.

16.2 Assignment to MOHCD. Under Redevelopment Dissolution Law, the Board of Supervisors of the City and County of San Francisco has designated MOHCD as the Housing Successor to the former Redevelopment Agency. Therefore, upon OCII's issuance of a Certificate of Completion under the Ground Lease, OCII intends to assign its interest in the Project to MOHCD as described in the Memorandum of Understanding for the implementation of Affordable Housing Obligations under San Francisco Successor Agency Ordinance 215-12 between OCII and MOHCD (May 6, 2014). Neither Borrower nor any Lender shall have the right to object to such assignment and shall reasonably cooperate with OCII and MOHCD to facilitate such assignment.

ARTICLE 17 INSURANCE AND BONDS.

17.1 Borrower's Insurance. Subject to approval by OCII's risk manager of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in Exhibit F commencing with Loan Closing and thereafter for the term of the Ground Lease, at no expense to OCII.

ARTICLE 18 GOVERNMENTAL APPROVALS.

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

ARTICLE 19 DEFAULT.

19.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the OCII Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any OCII Document, including without limitation, Section 19.2 hereof, will constitute an "Event of Default," including the following:

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

(b) On or after the Loan Closing Date, any lien is recorded against all or any part of the Site or the Project (including for purposes of this provision Borrower's leasehold interest in the Site) without OCII's prior written consent, whether prior or subordinate to the lien of the Deed of Trust or Declaration of Restrictions, or suffers any levy or attachment, or any material supplier's or mechanic's lien or the attachment of any other unauthorized encumbrance

or lien, and the taxes or assessments have not been paid, or the encumbrance or lien removed or bonded over or otherwise discharged to the OCII's satisfaction within any time period provided in the Ground Lease; provided, however, that Borrower has the right to contest any tax or assessment on or before the contested tax or assessment otherwise comes due, or to contest any encumbrance or lien within thirty (30) days following written notice from OCII of the imposition of said, encumbrance or lien, as may be further provided in the Ground Lease; or

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

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

(e) On or after the Loan Closing Date, all or a substantial or material portion of the Project is damaged or destroyed by fire or other casualty, and, if the Borrower has elected to restore as provided in the Ground Lease, such restoration has not been completed as provided in and in accordance with the Ground Lease and Deed of Trust within two (2) years of the receipt of insurance proceeds (or such longer period as may be agreed by Borrower and OCII); or all or a substantial portion of the improvements is condemned, seized or appropriated by any non-City Governmental Agency which prevents the Project from being operated for its intended purpose;

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

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

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

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

(j) On or after the Loan Closing Date, either the Deed of Trust or the Declaration of Restrictions ceases to constitute a valid and indefeasible perfected lien on both or either the Project and/or Borrower's leasehold interest in the Site, subject only to Permitted Exceptions; or

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, Borrower's leasehold interest therein, the Project or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

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

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

(n) On or after the Loan Closing Date and before a certificate of occupancy is issued for the Project, Borrower ceases rehabilitation or construction of the Project for a period of fifteen (15) consecutive working days, and the cessation is not excused under Section 19.4; or

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

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

19.2 Notice and Cure Rights of Third Parties.

(a) Transbay 2 Family. If an Event of Default occurs, or an event occurs that, with notice or the passage of time, or both, could constitute an Event of Default, OCII shall give Transbay 2 Family the same written notice given to the Borrower as required in this Agreement. Transbay 2 Family shall have the right, but not the obligation, to cure defaults within the time periods provided to Borrower herein. With respect to any right of cure provided herein,

performance of a cure by Transbay 2 Family shall have the same effect as would like performance by Borrower. Unless OCII is otherwise notified, notices to Transbay 2 Family shall be sent to the address provided in Section 21.1 below.

(b) Transbay 2 Family Investor Limited Partner. If an Event of Default occurs, or an event occurs that, with notice or the passage of time, or both, could constitute an Event of Default, OCII shall give the Investor Limited Partner the same written notice given to the Borrower as required in this Agreement. The Investor Limited Partner shall have the right, but not the obligation, to cure defaults within the time periods provided to Borrower herein. With respect to any right of cure provided herein, performance of a cure by the Investor Limited Partner shall have the same effect as would like performance by Borrower. Unless OCII is otherwise notified, notices to the Investor Limited Partner shall be sent to the address provided in Section 21.1 below.

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

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

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

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

(d) OCII may terminate this Agreement.

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

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

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

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

19.4 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of OCII or Borrower to the extent the event(s) cause delays in the performance of a party's obligations under this Agreement and which delays are beyond the control of the party obligated to perform: 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; pandemics and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse Borrower's performance only in the event that Borrower has provided notice to OCII within thirty (30) days after the occurrence or commencement of the event or events and evidence of the resulting enforced delay(s), and Borrower's performance will be excused for so long as the conditions giving rise to the delay continue to reasonably result in delay to performance hereunder.

ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

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

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

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

(c) To Borrower's knowledge, no action, suit or proceeding is pending or threatened that might affect Borrower or the Project adversely in any material respect.

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

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

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

ARTICLE 21 NOTICES.

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

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

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

To Borrower: Transbay 2 Family Commercial LLC
c/o Mercy Housing Calwest
1256 Market Street
San Francisco, CA 94102
Attn: President

With a copy to: Gubb & Barshay
235 Montgomery Street, Suite 1110
San Francisco, CA 94104
Attn: [. . .]

To Transbay 2 Family: Transbay 2 Family, L.P.

c/o Mercy Housing Calwest
1256 Market Street
San Francisco, CA 94102
Attn: President

With a copy to: [to insert Investor Limited Partner information]

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. See Section 3.10.

ARTICLE 22 HAZARDOUS SUBSTANCES.

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

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

ARTICLE 23 INDEMNITY.

23.1 Borrower's Obligations. Borrower shall, to the fullest extent allowable by law, defend, indemnify and protect and hold harmless OCII, the City, and their respective boards, commissions, commissioners, departments, agencies, and other subdivisions, officers, agents and employees (individually or collectively, an "**Indemnitee**") against any and all Losses arising directly or indirectly, in whole or in part out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the OCII Documents (including those covenants set forth in Article 22 above); (b) any failure of any representation by Borrower to be correct when made; (c) injury or death to persons or damage to property or other Loss occurring on the Site or in connection with the Project, whether caused by the negligence or any other act or omission of Borrower or its contractors, agents, permittees or invitees (individually and collectively the "**Borrower Parties**") or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise, but only to the extent such event (x) occurs on or after Loan Closing and (y) arises directly or indirectly from Borrower's or Borrower's Parties' activities related to the Project; (d) any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements performed by Borrower or Borrower Parties; (e) any claim, demand or cause of action, or any action or other proceeding (including without limitation those made by third-parties), whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the OCII Documents, the Loan, Borrower's or Borrower's Parties' activities on the Site or Borrower's or Borrower's Parties' construction of the Project, or any transaction contemplated by, or the relationship between Borrower and OCII or Borrower and the City; (f) the occurrence, after the Loan Closing Date and before the expiration of the term of this Agreement, of any Environmental Activity arising directly or indirectly from Borrower's or Borrower's Parties' activities on the Site or any failure of Borrower or Borrower's Parties to comply with all applicable Environmental Laws relating to Borrower's or Borrower's Parties' activities on the Project or the Site; (g) the occurrence, after the termination of this Agreement, of any Environmental Activity resulting directly or indirectly from any act or failure to act caused or permitted by Borrower or Borrower's Parties occurring from the date of this Agreement until the termination of this Agreement; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under Sections 9.1, 18.1 and 22.1; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnitee will be entitled to indemnification under this Section for any Environmental Activity existing or occurring as of or prior to the date of this Agreement (unless aggravated or exacerbated by Borrower or Borrower's Parties), any Environmental Activity of a person or entity not caused or permitted by Borrower, or for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, upon written notice, Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at Borrower's sole expense.

Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement. Any indemnification obligation of the Borrower and/or its partners under the OCII Documents shall not extend to repayment of principal or interest in the Loan. The sole recourse of OCII under the OCII Documents for repayment of the Loan shall be the exercise by OCII of its rights against the Project.

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

ARTICLE 24 GENERAL PROVISIONS.

24.1 Subordination. The Deed of Trust and Declaration of Restrictions may be subordinated to other financing secured by and used for development of the Project or the Residential Component, but only if OCII determines in its sole discretion that subordination is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project. Following review and approval by OCII and approval as to form by the City Attorney's Office, the Executive Director of OCII or its 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 other than City. Nothing contained in this Agreement, nor any act of OCII, may be interpreted or construed as creating the relationship of third-party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between OCII and Borrower or Borrower's agents, employees or contractors; provided, however, Transbay 2 Family and the Investor Limited Partner shall be a third-party beneficiary of this Agreement with respect to Section 19.2. Notwithstanding the forgoing, OCII and Borrower hereby acknowledge and agree that as the intended assignee of OCII's rights under the OCII Documents, the City is a third-party beneficiary under the OCII Documents and that the Investor Limited Partner is a third-party beneficiary of the provisions in Sections 16.1 and 19.2 hereof.

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

24.4 Entire Agreement. This Agreement and its Exhibits incorporate the terms of all agreements made by OCII and Borrower with regard to the subject matter of this Agreement. No alteration or variation of the terms of this Agreement will be valid unless made in writing and

signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on OCII or Borrower.

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

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

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

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

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

24.10 Joint and Several Liability. If more than one person or entity signs this Agreement as Borrower or if Borrower consists of more than one person or entity, the obligations of such persons and entities shall be joint and several.

24.11 Successors. Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns. This provision does not relieve Borrower of its

obligation under the OCII Documents to obtain OCII's prior written consent to any assignment or other transfer of Borrower's interests in the Loan, the Site or the ownership interests in Borrower.

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

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

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

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

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

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

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

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

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

24.21 Ownership of Results. Any interest of Borrower or any sub-borrower, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or Publications prepared by or on behalf of Borrower or any sub-borrower in connection with this Agreement, the implementation of the Project, the services to be performed under this Agreement, or acquired through the use of any Loan proceeds ("**Work Product**"), is hereby pledged to OCII as security for Borrower's obligations under this Agreement and the Note, pursuant to that certain Assignment of Work Product attached hereto as Exhibit O, and upon an Event of Default, subject to all applicable notice and cure periods, shall become the property of and be promptly transmitted by Borrower to OCII. Notwithstanding the foregoing, Borrower may retain and use copies for reference and as documentation of its experience and capabilities.

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

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

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

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

EXHIBITS

- A MOHCD Commercial Underwriting Guidelines
- B-1 Table of Sources and Uses of Funds
- B-2 Annual Operating Budget
- B-3 20-Year Cash Flow Proforma
- C Intentionally omitted
- D Form of Promissory Note
- E Contract Compliance Policies
- F Insurance Requirements
- G Lobbying/Debarment Certification Form
- H Form of Annual Monitoring Report
- I Intentionally omitted
- J Form Deed of Trust
- K Form of Declaration of Restrictions
- L Schedule of Performance
- M OCII Monthly Project Update Form
- N Developer Fee Schedule
- O Assignment of Work Product
- P Consent to Assignment of Work Product
- Q Legal Description of the Site
- R Final Financial Plan Confirmation Letter

Signatures begin on following page

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

OCII:

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

By: _____
Thor Kaslofsky
Executive Director

APPROVED AS TO FORM:
James B. Morales
OCII General Counsel

By: _____

Authorized by OCII Resolution No. XX-2024, dated _____, 2024

[signatures continue on following page]

BORROWER:

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

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

By: _____
Ramie Dare
Vice President

EXHIBIT A

MOHCD Commercial Underwriting Guidelines

City and County of San Francisco
Mayor's Office of Housing and Community Development
Commercial Space Underwriting Guidelines
Effective March 3, 2023

The following Mayor’s Office of Housing and Community Development Commercial Space Underwriting Guidelines (these “Guidelines”) are intended to assist applicants (“Sponsors”) for capital financing to prepare financing requests to the City and County of San Francisco (the “City”), represented by the Mayor, acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD”). These Guidelines, along with MOHCD’s Underwriting Guidelines, will also be used by MOHCD staff to evaluate funding requests and present them to the Citywide Affordable Housing Loan Committee (“Loan Committee”) for consideration. The intent of these Guidelines is to support consistency of final loan terms across projects, and to ensure long-term affordability and physical and financial sustainability throughout a project’s loan term.

MOHCD’s Commercial Loans are designed to be paired with residential/affordable housing new construction loans. The Loan Committee maintains the right to set final terms and conditions for a commitment of funds based on the actual circumstances of each project. MOHCD may review and approve any requests for a waiver to these Guidelines in its sole and absolute discretion. These Guidelines will be updated from time to time.

Note: the income and rent limits referenced in these Guidelines are determined and published annually by MOHCD for all multifamily rental housing developments under MOHCD’s purview, including Small Sites, PASS and other rehabilitation-funded projects. All income and rent limits are expressed in MOHCD Area Median Income (AMI).

To the extent that commercial space is required in an affordable housing project, the following guidance is applicable.

A. Intent

1. To support culturally vibrant and inclusive neighborhoods by prioritizing Public Benefit Uses, Community Serving Uses, and other benefits that support the affordable housing residents and surrounding community.
2. To maximize benefit to residents of the affordable housing, followed by creation of benefit for the surrounding community. For example, where the housing is designed for families, seek to provide childcare.
3. Provide City resources to support the following areas:
 - a. Economic Development

- b. Community and Social Development
 - c. Sustainable Job Creation and Retention and Wealth Creation
 - d. Investment Diversification and Partnerships Development
 - e. Environmentally Sustainable Outcomes.
4. To align with the City's Consolidated Plan and the policy priorities outlined in the applicable procurement (RFQ, RFP, NOFA) related to anti-displacement measures for residents and businesses. This may include facilitating community and/or nonprofit ownership.
 5. To leverage commercial funding sources from other City departments, foundations, and financial institutions to support Public Benefit Uses and Community Serving Uses in an effort to remove barriers to successful business development in MOHCD-supported residential buildings.
 6. To maintain the financial viability of the affordable housing and vitality of the surrounding neighborhood by avoiding vacancies.

B. Project Eligibility/Applicability

These Guidelines apply to new construction projects only. 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 Section A and the same financing principles related to the use of MOHCD funds.

C. General Loan/Grant Terms

Please see the MOHCD Development Underwriting Guidelines for guidance on the interest rate, term, and other conditions generally associated with MOHCD financing for new construction. Section E provides further details according to the proposed use, funding type and deal structure.

D. 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. **Cold Shell:** Commercial Space improvements as defined in detail in Attachment A.
3. **Commercial Entity:** A legal entity, separate from the Housing Owner, that 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, defined below.
4. **Commercial Project Costs:** The total of all hard (construction) and soft costs associated with the development of the Commercial Space.

5. **Commercial Space:** An entire undifferentiated (ie. not divided into different spaces) 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 may intend different uses (for example, a space is finished to Warm Shell for Public Benefit Use, while another area is finished to Cold Shell and Commercial Use is intended). A Commercial Space may be demised (ie. physically divided into separately leased spaces) into more than one Individual Tenant Space as appropriate.
6. **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).
7. **Commercial Use:** A land use, typically retail or other sales and services use, with the sole or chief emphasis on financial gain and that is not a Public Benefit Use or Community Serving 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.
8. **Community Serving Use:** A land use, typically retail or other sales and services use, that provides a direct benefit to the community, as determined by MOHCD in its sole discretion. Such use to be documented through a Community Commercial Services Agreement and reported on annually through the MOHCD Annual Monitoring Report. Dimensions of benefit to include:
 - a. Economic Development
 - b. Community and Social Development
 - c. Sustainable Job Creation and Retention and Wealth Creation
 - d. Investment Diversification and Partnerships Development
 - e. Environmentally Sustainable Outcomes

Examples include:

- i. Early childhood education center,
- ii. Nonprofit office/services provision,
- iii. Food market with affordable and healthy produce and other goods,
- iv. Community banking,
- v. Restaurant offers low-cost meals,
- vi. Business hires low-income workers,
- vii. Business owned by underrepresented community, or
- viii. Other neighborhood serving uses that have a demonstrated benefit to the residents of the Project.

- 9. Housing Owner:** The owner, often a Limited Partnership entity, of the residential improvements at the Project.
- 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 (ie. physical boundary of space being leased) 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. These expenses may include utilities, insurance, equipment maintenance, security, fees (asset management, audit, taxes), debt service, and operating and replacement reserves, all subject to the approval of MOHCD.. **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, 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, office space for non-profit organizations, 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 (ie. not divided into different units/spaces) residential area for future demising (ie. physically dividing into separately leased spaces) 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 Improvements:** The Commercial Space improvements paid for by the Individual Commercial Tenant.
- 17. Warm Shell:** Commercial Space improvements as defined in detail in Attachment A.

E. Key Terms for Public Benefit and Community Serving Commercial Uses

In alignment with MOHCD's goals in Section A, MOHCD offers the following capital financing and below market terms for Commercial Space developed for Public Benefit or Community Serving Commercial Uses:

1. Eligible use of MOHCD funds. MOHCD funds may be used for the following Commercial Project Costs:
 - a. Hard Costs:
 - Commercial Warm Shell (see definition in Attachment A)
 - 5% hard cost contingency on *warm shell costs* and cold shell costs
 - May include a "Warm Shell Allowance" of up to \$1 million, for warm shell costs (see Attachment A) that are to be determined. Warm Shell Allowance funds must be spent within 2 years of main building permit TCO, and any unspent funds placed in a controlled bank account.
 - b. Soft Costs:
 - Architecture, construction management and consulting fees for coordination of Tenant Improvements with shell design and construction
 - Pro rata share of Project soft costs that should be split between residential and commercial, as calculated by Project financial consultant
 - Market study and broker fees
 - Permit fees
 - No furnishings, fixtures or equipment (FF&E)
 - c. Capitalized Commercial Reserve:
 - \$10,000 plus \$5/sf capitalized Commercial Reserve for lease up/operations period vacancy (eligible uses, for example, include utilities, real estate taxes, insurance), and/or replacement reserve needs (post-initial occupancy).
 - d. Commercial Tenant Planning Funds:
 - Up to \$50,000 (or 50% of Individual Commercial Tenant(s) annual operating revenue from the last completed fiscal year, whichever is less) per Commercial Tenant to Individual Commercial Tenant(s) to support their design and permitting process and fundraising strategy once MOHCD-approved Letter/s of Intent (LOI) has been executed. Professional fees are allowed and may include Construction Manager/Property Manager and Permit Coordinator.
 - e. Commercial Space Developer Fee:
 - Allowed in addition to Residential Developer Fee, so long as the sum of the Commercial Developer Fees and Residential Developer Fee do not exceed the developer fee limits allowed by TCAC or other funding agencies.

- Up to \$350,000 per Project, including Project Management and At-Risk fees.
- \$75,000 per Project in additional fee will be allowed for completing the condominium or air rights subdivision, subject to MOHCD approval of the subdivision and legal structure
- Milestones for disbursement are as follows:
 - \$75,000 – At subdivision completion, if applicable
 - \$175,000 – For Project Management, earned pro rata at milestones such as approval of the Commercial Space Plan, signing of Letter of Intent with Tenant and execution of Individual Commercial Tenant/s lease/s
 - \$175,000 – At-Risk earned at milestones that may include signing of tenant leases (up to half) and completion of Tenant Improvements and Tenant Occupancy (split pro-rata)
- Commercial Developer’s Responsibilities: Please see Attachment B for description of responsibilities related to commercial space development.

2. Due diligence.

a. Commercial Space Plan, Commercial Proforma, Tenant Improvement Build-out Summary:

- i. Commercial Plan: Developer must prepare and submit to MOHCD for approval prior to receipt of first installment of Project Management developer fee.
- ii. Commercial Proforma: Developer must prepare both a capital Sources and Uses Budget as well as a commercial operating budget.
- iii. Tenant Improvement Buildout Summary: Developer must provide an Excel matrix that includes all data points that will inform the LOI.

b. Market Study: A market study must be provided by a third party (e.g. a broker, appraiser, or market analyst). This should inform the setting of these terms:

- i. Rent, Rent Growth, Annual Rent Adjustments
- ii. Rent Concessions and/or Tenant Improvement Allowances
- iii. Vacancy Rate
- iv. Expenses and Expense Growth Rate
- v. Commercial Property Management Fees, Leasing Agent Fees
- vi. Reserves.

The Marketing Study should include:

- i. Analysis of neighborhood commercial rents including at least three (3) comparable transactions
- ii. Summary of market tenant improvement allowances

- iii. Summary of immediate submarket/vacancy
 - iv. Summary of businesses in the particular neighborhood / voids and concentration
 - v. Opinion on whether a certain business (type or name to be provided by client) will succeed in a particular area
- c. Commercial Costs in Basis: Evidence that Developer has analyzed whether commercial space is eligible to be included in eligible basis for use of LIHTC (e.g. whether located in a Qualified Census Tract and use is compliant)
3. Permitted legal structures.
- a. Direct Lease: Housing Owner leases directly to Individual Commercial Tenant(s).
 - 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).
 - c. Subdivision: 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 must be an Affiliated Entity or Individual Commercial Tenant (the latter per the terms below in Section D.7.). Subdivision is permissible only under certain circumstances – for example:
 - When there is more than 5,000 square feet of commercial space and multiple tenants
 - When doing so leverages additional/non-City sources to the project, to facilitate tenant ownership, or to increase competitiveness for non-City financing.
4. Use Restrictions. MOHCD will restrict the use, in the ground lease, of all Commercial Spaces for which the Borrower applies for financing under Section E. Any change in use requires MOHCD approval. MOHCD will also prohibit certain specific uses, such as bars and retail liquor sales, in the ground lease.
5. Letters of Intent (LOI) and Master Lease Terms. All LOIs and leases, including the Commercial Master Lease and Individual Commercial Tenant subleases and Direct Leases, are subject to review and approval by MOHCD, in accordance with these Guidelines.
- a. LOIs: LOIs should conform to the requirements below in subsection c.
 - b. Commercial Master Lease: For projects constructed on a single parcel (see below for subdivided parcels), Commercial Master Lease rent will be structured so that 40% of Net Commercial Cash Flow, if any, will be paid by Commercial Entity to Housing Owner, and 60% of Net Commercial Cash Flow is paid to the Commercial Entity

(ie. the Commercial Space Master Tenant). The Commercial Entity/Commercial Space Tenant must be an Affiliated Entity. (If 40% of Net Commercial Cash Flow is significant, MOHCD may establish an additional rent, based on 40% of Net Commercial Cash Flow projections, in the MOHCD residential ground lease.)

c. Direct Leases and Individual Commercial Tenant Subleases: Commercial rents and/or Common Area Maintenance (CAM) charges should be sized so as to cover the direct, shared, and allocated costs attributable to commercial use, including utilities payable by the property for the Commercial Space, commercial management fees, commercial reserves, and property taxes and insurance attributable to the Commercial Space. Rent adjustments, beyond typical annual escalations to cover expenses, at renewal periods are prohibited. Lease deposits are prohibited (although tenants may be required to pay for damages), assuming Individual Commercial Tenant/s are responsible for funding Tenant Improvements. The term of the lease between an Individual Commercial Tenant(s) and the Housing Owner or Commercial Space Master Tenant cannot exceed the term of the MOHCD financing on the Project (ie. typically, 55 years).

6. MOHCD Commercial Ground Lease and Loan Terms. When the Commercial Space has been subdivided from the Residential Space, MOHCD will convert the Commercial Space development costs funded by MOHCD into a MOHCD Commercial Loan which is executed at permanent conversion. Additionally, MOHCD will enter into a MOHCD Commercial Ground Lease with the Commercial Entity.

a. Commercial Loan Terms: 55-year term. 0% interest rate. Repayment through residual receipts from commercial space only.

b. Commercial Ground Lease Terms: 75-99-year term. Base rent equal to \$1/year. Residual rent will be 40% of Net Commercial Cash Flow to the City. For other key terms, please see the Underwriting Guidelines applicable to residential use. See the Ground Lease Policy.

7. Transfer of Commercial Space Ownership. Any transfer or sale of the Housing Owner's or Commercial Owner's interest in the Commercial Space parcel is subject to MOHCD approval. Under Section E, the ownership of the Commercial Space parcel may only be transferred to an Individual Commercial Tenant if a) the MOHCD Commercial Loan balance has been fully paid, or b) the MOHCD Commercial Loan has been assigned to the Individual Commercial Tenant. If the MOHCD Commercial Loan is assigned to the Individual Commercial Tenant that is a nonprofit, 501(c)(3) exempt organization, MOHCD may forgive 10% of the Loan each year to such Individual Commercial Tenant that is actively in business and contributing to Intent 1 in Section A. As discussed in Section E.4., MOHCD will continue to restrict the use of the Commercial Space through its Commercial Ground Lease.

F. Terms for Commercial Uses

MOHCD offers the following capital financing terms for Commercial Space developed for Commercial Uses not included in Section E:

1. Eligible use of MOHCD funds. MOHCD funds may be used for the following Commercial Project Costs:
 - a. Hard Costs:
 - Commercial Cold Shell (see definition in Attachment A)
 - 5% hard cost contingency on cold shell costs
 - b. Soft Costs:
 - Construction management and consulting fees for coordination of Tenant Improvements with shell construction
 - Pro rata share of Project soft costs that should be split between residential and commercial, as calculated by Project financial consultant
 - No furniture, fixtures or equipment (FF&E)
 - c. Reserves:
 - Capitalized commercial reserve for lease up, tenant improvements, and/or replacement reserve needs consistent with the Market Study (see Section E.2.a. below)
 - e. Commercial Space Developer Fee:
 - Allowed in addition to Residential Developer Fee, so long as the sum of the Commercial Developer Fees and Residential Developer Fee do not exceed the developer fee limits allowed by TCAC or other non-City funding sources.
 - \$200,000 per Project
 - \$75,000 in additional fee will be allowed for completing the condominium or air rights subdivision, subject to MOHCD approval of the subdivision and legal structure
 - Milestones for disbursement are as follows:
 - \$75,000 – At subdivision completion, if applicable
 - \$100,000 – For Project Management, earned pro rata at milestones such as approval of the Commercial Space Plan, signing of Letter of Intent with Tenant and execution of Individual Commercial Tenant/s lease/s
 - \$100,000 – At-Risk earned at milestones that may include signing of tenant leases (up to half) and completion of Tenant Improvements and Tenant Occupancy (split pro-rata)
2. Due diligence. Same as for Public Benefit.
3. Permitted legal structures. Same as for Public Benefit.
4. Use Restrictions. Same as for Public Benefit.
5. Letters of Intent (LOI) and Lease Terms. All LOIs and leases, including the Commercial Master Lease and Individual Commercial Tenant subleases and Direct Leases, are subject to review and approval by MOHCD, in accordance with these Guidelines.
 - a. LOIs: LOIs should conform to the requirements below in subsection c.

b. Commercial Master Lease: Commercial Master Lease rent will be structured so that 40% of Net Commercial Cash Flow, will be paid by Commercial Entity to Housing Owner, and 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. (If 40% of Net Commercial Cash Flow is significant, MOHCD may establish an additional rent, based on Net Commercial Cash Flow projections, in the MOHCD residential ground lease.)

c. Direct Leases and Individual Commercial Tenant Subleases: Commercial rents and/or Common Area Maintenance (CAM) charges should be based on the proposed use and market conditions consistent with the Market Study. Commercial rents charged must be sufficient to cover all direct, shared, and allocated costs attributable to commercial use. Commercial operating expenses shall include all utilities payable by the property for the Commercial Space, commercial property management fees, commercial reserves, and property taxes and insurance attributable to the Commercial Space. The term of the lease between an Individual Commercial Tenant(s) and the Housing Owner or Commercial Space Master Tenant should be consistent with the Market Study.

6. MOHCD Commercial Ground Lease and Loan Terms. When the Commercial Space has been subdivided from the Residential Space, MOHCD will convert the Commercial Space development costs funded by MOHCD into a MOHCD Commercial Loan which is executed at permanent conversion. Additionally, MOHCD will enter into a MOHCD Commercial Ground Lease with the Commercial Entity.

a. Commercial Loan Terms: 55-year term. 3% interest rate. Residual receipts, with 40% Net Commercial Cash Flow due to MOHCD.

b. Commercial Ground Lease Terms: 99-year term. Base rent equal to \$1/year. Residual rent based on residual receipts, with 40% Net Commercial Cash Flow due to MOHCD once MOHCD Commercial Loan balance has been fully paid.

7. Transfer of Commercial Space Ownership. Any transfer or sale of the Housing Owner's or Commercial Owner's interest in the Commercial Space parcel is subject to MOHCD approval. Under Section E, the ownership of the Commercial Space parcel may only be transferred to an Individual Commercial Tenant if the MOHCD Commercial Loan balance has been fully paid. As discussed in Section E.3., MOHCD will continue to restrict the use of the Commercial Space through its Commercial Ground Lease.

G. Applicability of Accessibility, Procurement, Prevailing Wage, and Workforce Requirements

For the scope of the Commercial Space that is being funded by MOHCD and/or is being built out under the Project's construction contract, all City accessibility, procurement, prevailing wage, and workforce requirements related to the Project will apply.

Tenant Improvements that are being built out under a construction contract separate from the Project's and are not funded by MOHCD, and executed on City or other government land, regardless of the source of financing, are subject to all applicable City

accessibility, procurement, prevailing wage and workforce requirements to which the housing Project was subject (with limited exceptions associated with funding sources and thresholds pertaining to construction contract value).

The Mayor's Office on Disability and the Department of Building Inspections are responsible for accessibility requirements. The Contract Monitoring Division is responsible for procurement, the Office of Economic and Workforce Development is responsible for workforce requirements, and the Office of Labor Standards Enforcement oversees the provision of prevailing wages.

If the Individual Commercial Tenant's Tenant Improvements are funded with money from other City agencies (ie. Office of Economic and Workforce Development grants awarded through Community Vision), all requirements pertaining to that funding source will apply.

If the Individual Commercial Tenant's Tenant Improvements are not funded by any public dollars, and not executed on government-owned land or leased land, please consult with MOHCD on the applicability of City accessibility, workforce and prevailing wage requirements.

H. Real Estate Resources for Nonprofit and Small Business Entities

Loans, grants, and technical assistance for nonprofits and small businesses:

- a. San Francisco Arts Commission – [Arts Commission](#)
- b. Office of Economic and Workforce Development – [Nonprofit sector business development](#)
- c. Office of Economic and Workforce Development – [Find a grant](#)
- d. Office of Economic and Workforce Development – Office of Small Business - <https://sf.gov/departments/office-economic-and-workforce-development/office-small-business>
- e. San Francisco Small Business Development Center (Small Business Administration) - <https://www.sfsbdc.org/>
- f. Community Vision - <https://communityvisionca.org/real-estate-solutions/>

I. WAIVER REQUESTS

All waiver requests are subject to the approval of MOHCD staff and the Citywide Affordable Housing Loan Committee, each at its own discretion. Any requests from the Sponsor to waive any part of these Underwriting Guidelines must be submitted in writing to the MOHCD project manager.

<u>ATTACHMENT A</u>		
<u>Scope/Trade</u>	<u>Cold Shell</u>	<u>Warm Shell (Cold Shell plus the following)</u>
Walls/Doors	<p>Exterior/perimeter walls and doors, including, where required, automatic door actuator(s) at entrance(s). Exterior/perimeter walls must be finished with gyp and fire taping to Code.</p> <p>No partition walls or corresponding doors within demised spaces.</p>	<p>Partition walls and doors demising Individual Tenant Space(s). Partition walls, doors and locks for restrooms and kitchenette based on Individual Commercial Tenants and Code requirements. No other partition walls or doors.</p>
Finish	<p>Exposed concrete slab with rough-in Plumbing, depressed to allow for anticipated use (floor sinks, drains). Temporary ramps for Certificate of Completion, as required.</p>	<p>Finished floor and base to minimum specification of Individual Commercial Tenant or exposed slab with clearance to install flooring to level landing at door. Provide wall, floor, and ceiling finish in restrooms. Kitchenette finishes not included.</p>
Specialties	<p>Code required signage. Exterior commercial signage program developed and approved by Planning and MOHCD. Exterior infrastructure (conduit to anticipated location, cabling, and bracket embeds).</p>	<p>Restroom accessories (soap dispenser, diaper changing station, hand dryer or towel dispenser, garbage receptacle, toilet partitions). Exterior signage (not including marquee or specialty) corresponding to Commercial Signage Program provided in Cold Shell graphics, shop drawings, fabrication, and installation. Kitchenette specialties (cabinets, countertops, lighting, appliances, and plumbing) not included. Drop ceilings.</p>
Structural	<p>Anchors for drop-ceiling. Anchors must be cast-in slab minimum 4' on center in each direction or per Code-required minimum details by licensed structural engineer. Coring or block-out for assumed HVAC rough-in. Steel embed brackets for exterior signage connection.</p>	<p>Code required ramps and railings to assumed final finish floor and level landing at entrance(s).</p>

Elevator / Lift	No	As required.
Mechanical	Stub out for heat-pump, space on roof for equipment, and waterproofed pad (or sidewall where possible). Condensate line installation if roof mounted system anticipated. Fire rated shaft for later ducting of restaurant hood(s); supply air / louver on exterior wall.	Exhaust venting of restroom(s) and kitchenette(s). Ductwork to connect location of mechanical equipment to exterior. Condensate line installation if roof mounted system anticipated. 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 (except for code required restrooms) and all other mechanical equipment.
Plumbing	Stub-out for domestic water supply and water meter in meter room. Storm sewer 4". Stub out all plumbing (supply and waste) to minimum Code-required restroom location(s), including floor drains. SFPUC water meters based on fixtures shown in base building permit drawings. Includes sub panel with breakers. No finish.	SFPUC water meters based on establishment of Individual Commercial Tenant/s. Distribution piping for domestic water (hot and cold), waste and vents to plumbing fixture locations within Individual Tenant Space(s). Floor drains and code-required restroom plumbing fixtures (lavatory(ies), water closet(s), urinal(s)). Does not include finish plumbing of stand-alone fixtures and water heating or garbage disposal (except for restroom fixtures).
Electrical	Provide main service. Dedicated meter in electrical room with service to Commercial Space, including sub-breaker panel. Stub out and conduit on ceiling for mechanical. Perimeter walls to have Code-required wall receptacles. Light fixtures in space connected to Commercial Space meter to meet Certificate of Completion requirements only. Emergency lighting back-up power, connect to Lift or	Installation of sub panel at Individual Tenant Space/s. Interior partition wall outlets as required by Code. Bathroom and kitchenette lighting GFCI outlets per Code. Provide outlets for kitchenette appliances, do not include garbage disposal.

	<p>Elevator (where applicable). Fire alarm distribution from panel, zoned and programmed. Exterior lighting for safety and continuity of design.</p> <p>Provide conduits (as needed for commercial HVAC units) from Commercial Space to roof.</p>	
<p>Telephone/Data</p>	<p>Two (2) 2" conduits from MPOE to space for telecom/data/security. Perimeter walls to have data receptacle rings and conduits to space above ceiling adjacent to required electrical wall receptacles. Temporary security camera connected to residential system until Commercial Space is occupied.</p>	<p>Conduit to IDF for data / fiber and telephone / security, as needed. 4' by 4' ¾" plywood backer board for telcom/data/security systems for each demised space. Interior partition walls to have data receptacle rings and conduits to space above ceiling adjacent to required electrical wall receptacles</p>
<p>Fire Protection/ Alarm</p>	<p>Building Fire Alarm shall be sized, zoned, programmed and tested 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. Sprinkler heads should be "arm-over" configuration to allow for coordination with future ceiling and lighting layout. Sprinkler system should have sufficient capacity and connection points to allow for additional heads required by future room layouts. Fire extinguishers and cabinets installed. Specialty restaurant fire suppression systems not included.</p>	<p>Zoning of Fire Alarm to Individual Tenant Space/s and re-configuration / programming and testing of main building fire panel. Specialty restaurant fire suppression systems not included. Code required bathroom and kitchenette fire alarm items as required. Sprinkler systems should have additional heads as required to conform to the layout of the demising partition(s), restroom(s) and kitchenette(s).</p>

Site Work	No	Where required by regulation or Code, consideration of site work within the Warm shell (e.g., fencing and gates, lighting, curb cuts, curb painting, parking).
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Attachment B

Commercial Developer's Responsibilities include:

1. Establishing the vision for any non-residential spaces that aligns with Section A as well as the applicable procurement (RFQ, RFP, NOFA) through which the developer was selected
2. Developing and iterating commercial objectives and strategies
3. Creating a Commercial Plan including working with brokers and partners to understand the projected market
4. Working with design team to determine designs for commercial units
5. Developing and iterating Commercial Proforma
6. Developing and iterating a Tenant Improvement Summary (final to be submitted upon completion)
7. Working with in-house asset management team and operations team to develop common area maintenance charges and specific property expenses including insurance, real estate taxes, and reserves.
8. Developing commercial marketing materials and distributing materials to various platforms
9. Consistent community engagement and stakeholder conversations and presentations
10. Working with legal teams to create and finalize documents including commercial tenant leases, master leases, CC&Rs, REAs, and Commercial Ground Leases
11. Cultivating relationships with potential commercial tenants
12. Showing commercial spaces to potential tenants
13. Reviewing commercial tenant applications
14. Creating Letters Of Intent (LOIs) and Leases (often requires multiple LOIs for each unit because tenants frequently back out)
15. Collecting required documents for construction
16. Overseeing tenant improvement buildout
17. Collecting required final documents after successful inspections
18. Regular (at least annual) reporting to MOHCD on satisfaction of goals outlined in Community Commercial Services Agreements and/or the loan agreement.

EXHIBIT B-1

Table of Sources and Uses of Funds

As approved by Loan Committee on August 4, 2023, to be updated in the Final Financial Plan.

Application Date: 7/1/23 # Commercial Spaces: 3
 Project Name: Transbay Block 2 East Family
 Project Address: 200 Folsom St
 Project Sponsor: Mercy Housing California

Don't forget to fill in D138:D140!

COMMERCIAL SPACE	Space 1					Space 2	Space 3	Space 4	Space 5	%age Total Building Costs in Commercial Budget
	Retail Space 1	Retail Space 2	Childcare Shell	Childcare Full Build					Total Commercial SF	
Gross SF	1190	768	6447						8,405	

SOURCES	Total Sources					Comments
Name of Sources:	1,352,868	939,922	6,383,891	3,000,000	-	11,676,682
OCII				Wu Yee		

USES:

ACQUISITION

Acquisition cost or value						0
Legal / Closing costs / Broker's Fee						0
Holding Costs						0
Transfer Tax						0
TOTAL ACQUISITION	0	0	0	0	0	0

CONSTRUCTION (HARD COSTS)

Unit Construction/Rehab						0	
Commercial Warm Shell Construction	699,855	451,671	4,696,218	3,000,000		8,847,744	
Commercial Cold Shell Construction		0	0			0	
Demolition						0	
Environmental Remediation	6,106	3,941	33,082			43,130	
Onsite Improvements/Landscaping	2,264	1,461	12,268			15,993	
Offsite Improvements		0	0			0	
Infrastructure Improvements	22,614	14,595	122,517			159,727	
Parking		0	0			0	
GC Bond Premium/GC Insurance/GC Taxes	46,150	29,784	250,027			325,962	3.3%
GC Overhead & Profit	19,974	12,891	108,212			141,077	1.4%
CG General Conditions	42,833	27,643	232,054			302,531	3.1%
Sub-total Construction Costs	839,798	541,987	5,454,378	3,000,000	0	9,836,163	
Design Contingency (remove at DD)	0	0	0			0	0.0%
Bid Contingency (remove at bid)	0	0	0			0	0.0%
Plan Check Contingency (remove/reduce during Plan Review)	18,796	10,840	90,995			118,630	1.2%
Hard Cost Construction Contingency	30,369	19,599	164,526			214,493	2.2%
Sub-total Construction Contingencies	47,164	30,439	255,520	0	0	333,124	
TOTAL CONSTRUCTION COSTS	886,962	572,426	5,709,898	3,000,000	0	10,169,287	

SOFT COSTS

Architecture & Design

Architect design fees	14,823	9,566	80,304			104,692	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	
Design Subconsultants to the Architect (incl. Fees)						0	
Architect Construction Admin						0	
Reimbursables						0	
Additional Services						0	
Sub-total Architect Contract	14,823	9,566	80,304	0	0	104,692	
Other Third Party design consultants (not included under Architect contract)	3,261	2,105	17,667			23,032	
Total Architecture & Design	18,084	11,671	97,970	0	0	127,725	

Engineering & Environmental Studies

Survey	65	42	353			461	
Geotechnical studies	939	606	5,085			6,629	
Phase I & II Reports	296	191	1,606			2,094	
CEQA / Environmental Review consultants	427	275	2,312			3,014	
NEPA / 106 Review						0	
CNA/PNA (rehab only)						0	
Other environmental consultants						0	Name consultants & contract amounts
Total Engineering & Environmental Studies	1,727	1,115	9,356	0	0	12,198	

Financing Costs

Construction Financing Costs							
Construction Loan Origination Fee						0	
Construction Loan Interest						0	
Title & Recording	711	459	3,855			5,025	
CDLAC & CDIAC fees						0	
Bond Issuer Fees						0	
Other Bond Cost of Issuance						0	
Other Lender Costs (specify)						0	
Sub-total Const. Financing Costs	711	459	3,855	0	0	5,025	
Permanent Financing Costs							
Permanent Loan Origination Fee						0	
Credit Enhance. & Appl. Fee						0	
Title & Recording						0	
Commercial Loan Origination Fee						0	
Sub-total Perm. Financing Costs	0	0	0	0	0	0	
Total Financing Costs	711	459	3,855	0	0	5,025	

Legal Costs

Borrower Legal fees	889	574	4,818			6,282	
Land Use / CEQA Attorney fees						0	
Tax Credit Counsel						0	
Bond Counsel						0	
Construction Lender Counsel						0	
Permanent Lender Counsel						0	
Other Legal (specify)						0	
Total Legal Costs	889	574	4,818	0	0	6,282	

Other Development Costs

Appraisal	89	57	482			628	
Market Study	3,000	3,000	803			6,803	
Insurance	11,858	7,853	64,243			83,754	
Property Taxes						0	
Accounting / Audit	237	153	1,285			1,675	
Organizational Costs						0	
Entitlement / Permit Fees	57,139	54,607	88,674			200,420	
Marketing / Lease-up	1,557	1,005	8,437			11,000	
Furnishings						0	
PGE / Utility Fees	2,668	1,722	14,455			18,845	
TCAC App / Alloc / Monitor Fees						0	
Financial Consultant fees	504	325	2,730			3,560	
Construction Management fees / Owner's Rep	1,266	817	6,861			8,945	
Security during Construction						0	
Relocation						0	
Administrative Expenses	3,610					3,610	
Other (specify)						0	
Other (specify)						0	
Total Other Development Costs	81,929	69,340	187,970	0	0	339,240	

Soft Cost Contingency

Contingency (Arch, Eng, Fin, Legal & Other Dev)	304	304	304			913	5%
TOTAL SOFT COSTS	103,645	83,463	304,274	0	0	491,382	0.2%

RESERVES

Operating Reserves						0	
Replacement Reserves	6,092	3,931	33,002			43,025	
Tenant Improvements Reserves	178,500	115,200				293,700	
Commercial Lease-Up Reserves	36,003	23,235	195,050			254,288	
Other (specify)						0	
TOTAL RESERVES	220,594	142,367	228,052	0	0	591,013	

DEVELOPER COSTS

Commercial Developer Fee - Cash-out Paid at Milestones	141,667	141,667	141,667			425,000	
Other (specify)						0	
Other (specify)						0	
TOTAL DEVELOPER COSTS	141,667	141,667	141,667	0	0	425,000	

TOTAL DEVELOPMENT COST

Development Cost/SF by Source	1,352,868	939,922	6,383,891	3,000,000	0	11,676,682	
Development Cost/Unit as % of TDC by Source	1,137	1,224	990				
Acquisition Cost/SF by Source	0	0	0			0	
Construction Cost (inc Const Contingency)/SF By Source	745	745	886				
Construction Cost (inc Const Contingency)/SF	745.35	745.35	885.67			50.67	

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

As approved by Loan Committee on August 4, 2023, to be updated in the Final Financial Plan.

Transbay Block 2 East Family LOSP Project

Drop down menu to the right controls how much Net Commercial Revenue is contributed to the Residential Operating Budget. (100% is default, select another choice only if allowed by MOHCD policy.) 0%

Total # Units:		Business Year																				
184		Year 1 2026	Year 2 2027	Year 3 2028	Year 4 2029	Year 5 2030	Year 6 2031	Year 7 2032	Year 8 2033	Year 9 2034	Year 10 2035	Year 11 2036	Year 12 2037	Year 13 2038	Year 14 2039	Year 15 2040	Year 16 2041	Year 17 2042	Year 18 2043	Year 19 2044	Year 20 2045	
COMMERCIAL INCOME	% annual increase	Comments																				
Commercial Space 1	3.0%	1,190 sf, \$2.75/sf/month +NNN (\$1.27 paf/month)	57,390	59,112	60,885	62,712	64,593	66,531	68,527	70,582	72,700	74,881	77,127	79,441	81,824	84,279	86,808	89,412	92,094	94,857	97,703	100,634
Commercial Space 2	3.0%	708 sf, \$2.75/sf/month +NNN (\$1.27 paf/month)	37,038	38,149	39,294	40,472	41,687	42,937	44,225	45,552	46,919	48,328	49,776	51,269	52,807	54,392	56,023	57,704	59,435	61,218	63,055	64,946
Commercial Space 3	3.0%	4542 sf, Wu, Yea ECE, NNN (\$1.42 paf/month)	79,040	81,411	83,854	86,369	88,960	91,629	94,378	97,209	100,128	103,129	106,223	109,410	112,692	116,073	119,555	123,142	126,836	130,641	134,560	138,597
Commercial Space 4	3.0%																					
Commercial Space 5	2.5%																					
Other Commercial Income	2.5%	Commercial Lease-up Reserve	128,923	51,439	3,011																	
Gross Potential Income			302,391	230,111	187,043	189,553	195,240	201,097	207,130	213,344	219,744	226,336	233,126	240,120	247,324	254,744	262,386	270,257	278,365	286,716	295,318	304,177
		Rent\$/SF/Month:	\$1.72	\$1.77	\$1.82	\$1.88	\$1.94	\$1.99	\$2.05	\$2.11	\$2.18	\$2.24	\$2.31	\$2.38	\$2.45	\$2.53	\$2.60	\$2.68	\$2.76	\$2.84	\$2.93	\$3.02
Vacancy Loss - Commercial	n/a	1st year assumes 100% for retail spaces & ECE. Year 2 assumes 100% on just retail spaces. Year 3 assumes 50% on just retail spaces. Years 4-20 assumes 25% on retail spaces. The vacancy rate doesn't mean we think 25% of the space will be vacant necessarily but it accounts for rent reductions	(173,468)	(97,261)	(50,089)	(25,796)	(26,570)	(27,367)	(28,186)	(29,034)	(29,905)	(30,802)	(31,726)	(32,678)	(33,658)	(34,668)	(35,708)	(36,779)	(37,882)	(39,019)	(40,189)	(41,395)
EFFECTIVE GROSS INCOME			128,923	132,850	136,954	163,757	168,670	173,730	178,942	184,310	189,839	195,535	201,401	207,443	213,666	220,076	226,678	233,479	240,483	247,697	255,128	262,782
COMMERCIAL OPERATING EXPENSES																						
Management																						
Commercial Management Fee	2.0%	Asset Management Fee	2,000	2,040	2,081	2,122	2,165	2,208	2,252	2,297	2,343	2,390	2,438	2,487	2,536	2,587	2,639	2,692	2,746	2,800	2,856	2,914
Sub-total Management Expenses			2,000	2,040	2,081	2,122	2,165	2,208	2,252	2,297	2,343	2,390	2,438	2,487	2,536	2,587	2,639	2,692	2,746	2,800	2,856	2,914
Utilities																						
Electricity	3.5%	We don't include utilities																				
Water	3.5%																					
Gas	3.5%																					
Sewer	3.5%																					
Sub-total Utilities																						
Taxes and Licenses																						
Real Estate Taxes	2.0%	Income Based Tax Approach (we're not promised this) NOI/Cap rate x Tax Rate	21,849	22,286	22,732	23,186	23,650	24,123	24,606	25,098	25,600	26,112	26,634	27,166	27,710	28,264	28,829	29,406	29,994	30,594	31,206	31,830
Payroll Taxes	2.0%	Special taxes	566	577	589	601	613	625	637	650	663	676	690	704	718	732	747	762	777	793	808	825
Miscellaneous Taxes, Licenses and Permits	0.0%	Air Rights Parcel Taxes and Audit	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500
Sub-total Taxes and Licenses			30,915	31,363	31,821	32,287	32,763	33,248	33,743	34,248	34,763	35,288	35,824	36,370	36,928	37,496	38,076	38,668	39,271	39,886	40,514	41,154
Insurance																						
Property and Liability Insurance	7.0%	Property Insurance	18,685	19,993	21,392	22,890	24,492	26,207	28,041	30,004	32,104	34,352	36,756	39,329	42,082	45,028	48,180	51,553	55,161	59,022	63,154	67,575
Fidelity Bond Insurance	3.5%																					
Worker's Compensation	3.5%																					
Director's & Officers' Liability Insurance	3.5%																					
Sub-total Insurance			18,685	19,993	21,392	22,890	24,492	26,207	28,041	30,004	32,104	34,352	36,756	39,329	42,082	45,028	48,180	51,553	55,161	59,022	63,154	67,575
Maintenance & Repair																						
Payroll	3.5%																					
Supplies	3.5%																					
Contracts	3.5%																					
Garbage and Trash Removal	3.5%																					
Security Payroll/Contract	3.5%																					
HVAC Repairs and Maintenance	3.5%																					
Vehicle and Maintenance Equipment Operation and Repairs	3.5%																					
Miscellaneous Operating and Maintenance Expenses	3.5%	Common Area Maintenance (CAM)	51,612	53,418	55,288	57,223	59,226	61,299	63,444	65,665	67,963	70,342	72,804	75,352	77,989	80,719	83,544	86,468	89,494	92,627	95,869	99,224
Sub-total Maintenance & Repair Expenses			51,612	53,418	55,288	57,223	59,226	61,299	63,444	65,665	67,963	70,342	72,804	75,352	77,989	80,719	83,544	86,468	89,494	92,627	95,869	99,224
Reserves/Ground Lease Base Rent/Bond Fees																						
Replacement Reserve Deposit		Capital Replacement Reserve	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Operating Reserve Deposit		Retail Leasing Reserve (every 10 years/6% commission)	4,265	4,393	4,525	4,660	4,800	4,944	5,093	5,245	5,403	5,565	5,732	5,904	6,081	6,263	6,451	6,645	6,844	7,049	7,261	7,479
Other Required Reserve 1 Deposit		Incident Reserve (10,000 per year for insurance deductible) and T1 Reserves (\$10 paf every 5 years for retail, \$2 paf every 10 years for ECE)	10,000	10,000	10,000	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844
Other Required Reserve 2 Deposit		Property Management Fees (5% of revenue)	6,446	6,643	6,848	7,063	7,288	7,524	7,771	8,029	8,298	8,578	8,869	9,171	9,484	9,808	10,143	10,489	10,846	11,214	11,593	11,983
Sub-total Reserves/Ground Lease Base Rent/Bond Fees			25,711	26,035	26,372	32,692	33,078	33,475	33,884	34,305	34,739	35,186	35,646	36,120	36,608	37,111	37,629	38,163	38,712	39,278	39,861	40,462
TOTAL COMMERCIAL OPERATING EXPENSES			128,923	132,850	136,954	147,215	151,724	156,436	161,364	166,519	171,912	177,557	183,468	189,658	196,144	202,941	210,068	217,543	225,384	233,614	242,255	251,329
NET OPERATING INCOME (INCOME minus OP EXPENSES)			(0)	0	(0)	16,542	16,946	17,293	17,577	17,791	17,927	17,977	17,933	17,785	17,522	17,135	16,610	15,936	15,098	14,083	12,874	11,453
DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized loans)																						
Hard Debt - First Lender																						
Hard Debt - Second Lender																						
Hard Debt - Third Lender																						
Hard Debt - Fourth Lender																						
TOTAL HARD DEBT SERVICE																						
CASH FLOW (NOI minus DEBT SERVICE)			(0)	0	(0)	16,542	16,946	17,293	17,577	17,791	17,927	17,977	17,933	17,785	17,522	17,135	16,610	15,936	15,098	14,083	12,874	11,453
REPLACEMENT RESERVE - RUNNING BALANCE																						
Replacement Reserve Starting Balance				5,000	10,000	15,000	20,000	25,000	30,000	35,000	40,000	45,000	50,000	55,000	60,000	65,000	70,000	75,000	80,000	85,000	90,000	95,000
Replacement Reserve Deposits			5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Replacement Reserve Withdrawals (Ideally tied to CNA)																						
Replacement Reserve Interest																						
RR Running Balance																						

EXHIBIT B-3

20-Year Cash Flow Proforma

As approved by Loan Committee on August 4, 2023, to be updated in the Final Financial Plan.

Transbay Block 2 East Family LOSP Project

Drop down menu to the right controls how much Net Commercial Revenue is contributed to the Residential Operating Budget. (100% is default, select another choice only if allowed by MOHCD policy.) 0%

Total # Units:		Business Year																				
184		Year 1 2026	Year 2 2027	Year 3 2028	Year 4 2029	Year 5 2030	Year 6 2031	Year 7 2032	Year 8 2033	Year 9 2034	Year 10 2035	Year 11 2036	Year 12 2037	Year 13 2038	Year 14 2039	Year 15 2040	Year 16 2041	Year 17 2042	Year 18 2043	Year 19 2044	Year 20 2045	
COMMERCIAL INCOME	% annual increase	Comments																				
Commercial Space 1	3.0%	1,190 sf, \$2.75/sf/month +NNN (\$1.27 paf/month)	57,390	59,112	60,885	62,712	64,593	66,531	68,527	70,582	72,700	74,881	77,127	79,441	81,824	84,279	86,808	89,412	92,094	94,857	97,703	100,634
Commercial Space 2	3.0%	708 sf, \$2.75/sf/month +NNN (\$1.27 paf/month)	37,038	38,149	39,294	40,472	41,687	42,937	44,225	45,552	46,919	48,328	49,776	51,269	52,807	54,392	56,023	57,704	59,435	61,218	63,055	64,946
Commercial Space 3	3.0%	4642 sf, Wu, Yee ECE, NNN (\$1.42 paf/month)	79,040	81,411	83,854	86,369	88,960	91,629	94,378	97,209	100,128	103,129	106,223	109,410	112,692	116,073	119,555	123,142	126,836	130,641	134,560	138,597
Commercial Space 4	3.0%																					
Commercial Space 5	2.5%																					
Other Commercial Income	2.5%	Commercial Lease-up Reserve	128,923	51,439	3,011																	
Gross Potential Income			302,391	230,111	187,043	189,553	195,240	201,097	207,130	213,344	219,744	226,336	233,126	240,120	247,324	254,744	262,386	270,257	278,365	286,716	295,318	304,177
		Rent\$/SF/Month:	\$1.72	\$1.77	\$1.82	\$1.88	\$1.94	\$1.99	\$2.05	\$2.11	\$2.18	\$2.24	\$2.31	\$2.38	\$2.45	\$2.53	\$2.60	\$2.68	\$2.76	\$2.84	\$2.93	\$3.02
Vacancy Loss - Commercial	n/a	1st year assumes 100% for retail spaces & ECE. Year 2 assumes 100% on just retail spaces. Year 3 assumes 50% on just retail spaces. Years 4-20 assumes 25% on retail spaces. The vacancy rate doesn't mean we think 25% of the space will be vacant necessarily but it accounts for rent reductions	(173,468)	(97,261)	(50,089)	(25,796)	(26,570)	(27,367)	(28,186)	(29,034)	(29,905)	(30,802)	(31,726)	(32,678)	(33,658)	(34,668)	(35,708)	(36,779)	(37,882)	(39,019)	(40,189)	(41,395)
EFFECTIVE GROSS INCOME			128,923	132,850	136,954	163,757	168,670	173,730	178,942	184,310	189,839	195,535	201,401	207,443	213,666	220,076	226,678	233,479	240,483	247,697	255,128	262,782
COMMERCIAL OPERATING EXPENSES																						
Management																						
Commercial Management Fee	2.0%	Asset Management Fee	2,000	2,040	2,081	2,122	2,165	2,208	2,252	2,297	2,343	2,390	2,438	2,487	2,536	2,587	2,639	2,692	2,746	2,800	2,856	2,914
Sub-total Management Expenses			2,000	2,040	2,081	2,122	2,165	2,208	2,252	2,297	2,343	2,390	2,438	2,487	2,536	2,587	2,639	2,692	2,746	2,800	2,856	2,914
Utilities																						
Electricity	3.5%	We don't include utilities																				
Water	3.5%																					
Gas	3.5%																					
Sewer	3.5%																					
Sub-total Utilities																						
Taxes and Licenses																						
Real Estate Taxes	2.0%	Income Based Tax Approach (we're not promised this) NOI/Cap rate x Tax Rate	21,849	22,286	22,732	23,186	23,650	24,123	24,606	25,098	25,600	26,112	26,634	27,166	27,710	28,264	28,829	29,406	29,994	30,594	31,206	31,830
Payroll Taxes	2.0%	Special taxes	566	577	589	601	613	625	637	650	663	676	690	704	718	732	747	762	777	793	808	825
Miscellaneous Taxes, Licenses and Permits	0.0%	Air Rights Parcel Taxes and Audit	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500
Sub-total Taxes and Licenses			30,915	31,363	31,821	32,287	32,763	33,248	33,743	34,248	34,763	35,288	35,824	36,370	36,928	37,496	38,076	38,668	39,271	39,886	40,514	41,154
Insurance																						
Property and Liability Insurance	7.0%	Property Insurance	18,685	19,993	21,392	22,890	24,492	26,207	28,041	30,004	32,104	34,352	36,756	39,329	42,082	45,028	48,180	51,553	55,161	59,022	63,154	67,575
Fidelity Bond Insurance	3.5%																					
Worker's Compensation	3.5%																					
Director's & Officers' Liability Insurance	3.5%																					
Sub-total Insurance			18,685	19,993	21,392	22,890	24,492	26,207	28,041	30,004	32,104	34,352	36,756	39,329	42,082	45,028	48,180	51,553	55,161	59,022	63,154	67,575
Maintenance & Repair																						
Payroll	3.5%																					
Supplies	3.5%																					
Contracts	3.5%																					
Garbage and Trash Removal	3.5%																					
Security Payroll/Contract	3.5%																					
HVAC Repairs and Maintenance	3.5%																					
Vehicle and Maintenance Equipment Operation and Repairs	3.5%																					
Miscellaneous Operating and Maintenance Expenses	3.5%	Common Area Maintenance (CAM)	51,612	53,418	55,288	57,223	59,226	61,299	63,444	65,665	67,963	70,342	72,804	75,352	77,989	80,719	83,544	86,468	89,494	92,627	95,869	99,224
Sub-total Maintenance & Repair Expenses			51,612	53,418	55,288	57,223	59,226	61,299	63,444	65,665	67,963	70,342	72,804	75,352	77,989	80,719	83,544	86,468	89,494	92,627	95,869	99,224
Reserves/Ground Lease Base Rent/Bond Fees																						
Replacement Reserve Deposit		Capital Replacement Reserve	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Operating Reserve Deposit		Retail Leasing Reserve (every 10 years/6% commission)	4,265	4,393	4,525	4,660	4,800	4,944	5,093	5,245	5,403	5,565	5,732	5,904	6,081	6,263	6,451	6,645	6,844	7,049	7,261	7,479
Other Required Reserve 1 Deposit		Incident Reserve (10,000 per year for insurance deductible) and T1 Reserves (\$10 paf every 5 years for retail, \$2 paf every 10 years for ECE)	10,000	10,000	10,000	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844
Other Required Reserve 2 Deposit		Property Management Fees (5% of revenue)	6,446	6,643	6,848	7,063	7,288	7,524	7,771	8,029	8,298	8,578	8,869	9,171	9,484	9,808	10,143	10,489	10,846	11,214	11,593	11,983
Sub-total Reserves/Ground Lease Base Rent/Bond Fees			25,711	26,035	26,372	32,692	33,078	33,475	33,884	34,305	34,739	35,186	35,646	36,120	36,608	37,111	37,629	38,163	38,712	39,278	39,861	40,462
TOTAL COMMERCIAL OPERATING EXPENSES			128,923	132,850	136,954	147,215	151,724	156,436	161,364	166,519	171,912	177,557	183,468	189,658	196,144	202,941	210,068	217,543	225,384	233,614	242,255	251,329
NET OPERATING INCOME (INCOME minus OP EXPENSES)			(0)	0	(0)	16,542	16,946	17,293	17,577	17,791	17,927	17,977	17,933	17,785	17,522	17,135	16,610	15,936	15,098	14,083	12,874	11,453
DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized loans)																						
Hard Debt - First Lender																						
Hard Debt - Second Lender																						
Hard Debt - Third Lender																						
Hard Debt - Fourth Lender																						
TOTAL HARD DEBT SERVICE																						
CASH FLOW (NOI minus DEBT SERVICE)			(0)	0	(0)	16,542	16,946	17,293	17,577	17,791	17,927	17,977	17,933	17,785	17,522	17,135	16,610	15,936	15,098	14,083	12,874	11,453
REPLACEMENT RESERVE - RUNNING BALANCE																						
Replacement Reserve Starting Balance				5,000	10,000	15,000	20,000	25,000	30,000	35,000	40,000	45,000	50,000	55,000	60,000	65,000	70,000	75,000	80,000	85,000	90,000	95,000
Replacement Reserve Deposits			5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Replacement Reserve Withdrawals (Ideally tied to CNA)																						
Replacement Reserve Interest																						
RR Running Balance			5,000																			

EXHIBIT C

Intentionally omitted

EXHIBIT D
Form of Promissory Note

PROMISSORY NOTE

Principal Amount: \$ _____

San Francisco, CA

Date: _____

FOR VALUE RECEIVED, the undersigned, TRANSBAY 2 FAMILY COMMERCIAL LLC, a California limited liability company ("**Maker**"), hereby promises to pay to the order of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California (commonly referred to as the Office of Community Investment and Infrastructure ("**OCII**" or "**Holder**"), the principal sum of [Eight Million Six Hundred Seventy Six Thousand Six Hundred Eighty Two Dollars (\$8,676,682)] (the "**Funding Amount**"), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement described in Section 1 below, together with interest thereon, as provided in this Note.

1. Agreement. This Secured Promissory Note ("**Note**") is given under the terms of a Loan Agreement by and between Maker and Holder (the "**Agreement**") dated as of the date set forth above, which Agreement is incorporated herein by reference. Unless otherwise specified herein, definitions and rules of interpretation set forth in the Agreement apply to this Note. In the event of any inconsistency between the Agreement and this Note, this Note will control.

2. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of zero percent (0%) per annum, simple interest, from the date of disbursement of funds by OCII through the date of full payment of all amounts owing under the OCII Documents.

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

4. Repayment of Funding Amount. Maker must repay all amounts owing under the OCII Documents in accordance with Section 3.3 of the Agreement.

All payments will be applied in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The unpaid principal balance of the Loan, together with all accrued and unpaid interest and unpaid costs and fees incurred, will be due and payable on the Maturity Date. Any Payment Date, including the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

5. Security. Maker's obligations under this Note are secured by (i) prior to the Maker's obtaining a leasehold interest in the Site, the pledge of Work Product given in the Assignment of Work Product, or (ii) on the date that the Maker obtains a leasehold interest in the Site, by the Deed of Trust.

6. Terms of Payment.

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

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

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

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

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

6.6 This Note may be prepaid in whole or in part at any time, and from time to time, without penalty provided that notice is given to Holder no later than sixty (60) days prior to prepayment.

7. Default.

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

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

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

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

8. Waivers.

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

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

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

9. Miscellaneous Provisions.

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

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

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

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

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

9.6 Assignment to MOHCD. Under Dissolution Law, the Board of Supervisors of the City and County of San Francisco has designated MOHCD as the Housing

Successor to the former Redevelopment Agency. Therefore, upon OCII's issuance of a Certificate of Completion under the Lease, OCII intends to assign its interest in the Agreement, this Note, the Site and the Project to MOHCD as described in the Memorandum of Understanding for the implementation of Affordable Housing Obligations under San Francisco Successor Agency Ordinance 215-12 between OCII and MOHCD (May 6, 2014). Neither Maker nor any Lender shall have the right to object to such assignment and shall reasonably cooperate with OCII and MOHCD to facilitate such assignment.

"MAKER"

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

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

By: _____
Ramie Dare
Vice President

EXHIBIT E
Contract Compliance Policies

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

- (i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 7-2022, March 22, 2022)
- (ii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985);
- (iii) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997);
- (iv) Health Care Accountability Policy (adopted by Resolution No. 168-2001); and
- (v) Minimum Compensation Policy (adopted by Resolution No. 168-2001).

Copies of the aforementioned policies are available on the OCII website at

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

3. Conflict of Interest.

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

(b) Borrower represents that it is familiar with the provisions of Sections 1090 through 1097 and 87100 et seq. of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Borrower certifies that

it knows of no facts that constitute a violation of any of these provisions and agrees to notify OCII immediately if Borrower at any time obtains knowledge of facts constituting a violation.

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

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

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

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

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

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

(b) **Non-Discrimination in Benefits.** Borrower does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for OCII or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with

a Governmental Agency under state or local law authorizing such registration, subject to the conditions set forth in the Agency's Nondiscrimination in Contracts Policy, adopted by Agency Resolution 175-97, as amended from time to time.

8. Public Disclosure.

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

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

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

EXHIBIT E-1

SMALL BUSINESS ENTERPRISE AGREEMENT

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

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

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

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

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

IV. TRAINEE HIRING GOAL. In addition to the goals set forth above in Section III, there is a trainee hiring goal for all design professionals (architects, engineers, planners, and environmental consultants) on contracts or subcontracts over \$100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional’s contract as follows:

<u>V. Trainees</u>	<u>Design Professional Fees</u>
0	\$ 0 – \$99,000
1	\$ 100,000 – \$249,999
2	\$ 250,000 – \$499,999
3	\$ 500,000 – \$999,999
4	\$1,000,000 – \$1,499,999
5	\$1,500,000 – \$1,999,999
6	\$2,000,000 - \$4,999,999
7	\$5,000,000 - \$7,999,999
8	\$8,000,000 – or more

A. Procedures For Trainee Hires

1. Compliance with the Trainee Hiring Goal

Design professionals will be deemed in compliance with this Agreement by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. **Execution and Incorporation of this Agreement to Sub-agreements**

The Agency-Assisted Contractor shall execute this Agreement and shall incorporate by reference or attach this Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of this Agreement. The Agency-Assisted Contractor and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. **Contact Educational Institutions**

Each design professional shall call the City and County of San Francisco Office of Economic and Workforce Development (OEWD) or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution or OEWD to make the referral. The minimum duration of assignment is part-time for one semester. However, design professionals are strongly encouraged to offer longer trainee employment periods to allow a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) or OEWD may require the design professionals to send a confirming letter or complete its form(s). Each design professional is required to timely provide all of the information requested by the OEWD or educational institution(s) in order to get the referrals.

4. **Response from Educational Institutions**

Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

5. **Action by Design Professionals When Referrals Available**

The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency strongly encourages the design professional to hire a qualified San Francisco resident referred by the educational institution(s). The design professional shall notify the educational institution in writing of the hiring decision.

6. **Action by Design Professionals When Referrals Unavailable**

If after contacting two or more educational institutions the design professional is informed that no San Francisco residents are currently available, then the design professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco residents are currently available for hire as trainees. If no qualified San Francisco residents are currently available after the second request, then the design professional has fulfilled its obligation under this Agreement, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with this Section IV and submit a copy of its file to the Agency Compliance Officer upon request.

7. **Action by Design Professional When No Response From Educational Institutions**

If a design professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals, then the design professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the design professional within five (5) business days of the Agency Compliance Officer being notified. If the design professional still has not received a response from the educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section IV, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with this Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

8. **Termination of Trainee for Cause**

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Agreement and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth above.

B. Reporting Requirements For Trainee Hires

1. **Reporting**

Upon completion of the Term of the Agreement or the term of the design professional's contract with the Agency-Assisted Contractor, whichever is less, the design professional (i.e. Employer) shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. **Report on Terminations**

In the event a San Francisco resident hired pursuant to this Agreement is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); and (4) whether the design professional replaced the trainee(s).

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

VII. FIRST CONSIDERATION. First consideration will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: (1) Project Area SBEs, (2) San Francisco-based SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-San Francisco-based SBEs. Non-San Francisco-based SBEs should be used to satisfy participation

goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-San Francisco-based SBEs.

VIII. ASSOCIATIONS AND JOINT VENTURES (JV). OCII will recognize JVs and Associations between non-SBE firms and SBE firms where the SBE partner performs at least 35% of the work defined in the JV or Association agreement, and receives at least 35% (or a proportionate share, whichever is higher) of the dollars to be earned by the JV or Association. Under this arrangement, OCII will deem the JV or Association to be an SBE for the purposes of meeting the SBE goal. Due to the technical nature of the disciplines and the various standards of each industry, OCII will not require a standardized agreement. However, each JV and Association agreement must be in writing and contain, at a minimum, the following terms:

- Define the management of the agreement between the parties;
- Define the technical and managerial responsibilities of each party;
- Define the scope of work to be performed by each party, and where possible identify the percentage and break-down of scope of work for each party;
- Identify any additional subcontractors or consultants that will perform the work under the agreement;
- Define the schedule, duration, and deliverable of the agreement;
- Detail the fee schedule, fee breakdown, or division of compensation;
- Specify insurance requirements and/or if each party shall maintain its own insurance;
- Specify how additional work or changes in scope shall be negotiated or determined and which party shall be responsible for notifying OCII of the changes;
- Specify how claims and disputes will be resolved.

A copy of the JV or Association agreement must be provided to OCII for approval in order for the JV or Association to be recognized.

IX. CERTIFICATION. The Agency no longer certifies SBEs but instead relies on the information provided in other public entities' business certifications to establish eligibility for the Agency's program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency's SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the SBE Policy.

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

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

Affiliates means an affiliation with another business concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indicators of affiliation. Power to control exists when a party or parties have 50 percent or more ownership. It may also exist with

considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Affiliated business concerns need not be in the same line of business.

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

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

Agency Contract means personal services contracts, purchase requisitions, and other similar contracts and operations agreements that the Agency executes with for-profit or non-profit entities.

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

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

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

Association means an agreement between two parties established for the purpose of completing a specific task or project. The associate agreement shall provide the SBE associate a significant project management role and the SBE associate shall be recognized in marketing and collateral material. The Association shall be distinguished from traditional subcontracting arrangements via a written Association agreement that defines the management of the agreement, technical and managerial responsibilities of the parties, and defined scopes and percentages of work to be performed by each party with its own resources and labor force. Unlike the more formal Joint Venture, an Association does not require formation of a new business enterprise between the parties. The Associate agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

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

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

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

Joint Venture means an entity established between two parties for the purposes of completing a venture or project. The Joint Venture agreement typically creates a separate business entity and requires acquisition of additional insurance for the newly created joint business entity. The Joint Venture agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

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

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

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

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

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

Small Business Enterprise (SBE) means an economically disadvantaged business that is certified by another public entity (either municipal, State, or federal agency) that considers the certification criteria stipulated in this Policy. In general, such criteria shall include a determination by the public entity as to whether an economically disadvantaged business is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; and has average gross annual receipts in at least the three years (and no more than five years, if practiced by the public entity) immediately preceding its application for certification as a SBE that do not exceed the following limits:

Industry	OCII SBE Size Standard
Construction Contractors	\$24,000,000
Specialty Construction Contractors	\$14,000,000
Suppliers (goods/materials/ equipment and general services)	\$12,000,000
Professional Services	\$5,000,000
Trucking	\$5,000,000

In addition, an economically disadvantaged business shall meet the other certification criteria described in Exhibit I of the SBE Policy in order to be considered an SBE by the Agency.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations) to calculate the firm's average annual gross receipts. In addition, the calculation of a firm's size shall include the receipts of all affiliates.

Once a business reaches the average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

Specialty Construction Contractor means a contractor licensed by the Contractors State License Board under the "C" classification license pursuant to California Business and Professions Code Section 7058.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XIII. ADDITIONAL PROVISIONS

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

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

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

“Amounts for work performed by a subcontractor shall be paid within seven (7) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq.* Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity.”

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

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

XIV. PROCEDURES

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

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

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

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

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

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

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

business enterprises.

4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.
5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.
6. A description of the assistance provided to SBEs with respect to bonding, lines of credit, etc.
7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.
8. A description of any divisions of work undertaken to facilitate SBE participation.
9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.
10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.
11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

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

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

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

G. Agency Investigation. Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or

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

XV. ARBITRATION OF DISPUTES.

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

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

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

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

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

F. Setting of Arbitration Hearing. A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date,

time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

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

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

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

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

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

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

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

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

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

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

Party.

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

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

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

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

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

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

ARBITRATION PROVISION IS VOLUNTARY.

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

Agency

Agency-Assisted Contractor

XVI. AGREEMENT EXECUTION

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

Signature

Date

Print Your Name

Title

Company Name and Phone Number

EXHIBIT E-2

CONSTRUCTION WORK FORCE AGREEMENT

I. PURPOSE. This Agreement is entered into between the Borrower (“Borrower or “Owner”) and the Office of Community Investment and Infrastructure (“OCII” or “Agency”), as successor agency to the San Francisco Redevelopment Agency for the purposes of ensuring participation of San Francisco residents and equal employment opportunities in the construction work force involved in constructing any of the phases upon the Site covered by the underlying agreement to which this Agreement is attached hereto.

II. DEFINITIONS.

The following definitions apply to this Agreement.

- A. “CityBuild” means the construction employment program of the Workforce Development Division of the San Francisco Office of Economic and Workforce Development (OEWD).
- B. "Contract" means any agreement in excess of \$10,000 between the Owner, its Contractors and a person to provide or procure labor, materials or services for the construction of the Owner Improvements, including a purchase order that requires installation of materials.
- C. "Contractor" means the Owner's general contractor, all prime contractors and all subcontractors (regardless of tier) having a Contract or subcontract in excess of \$10,000 and who employ persons in a Trade for construction of the Owner Improvements.
- D. "Owner Improvements" means improvements constructed by the Owner.
- E. “Project Area Resident” means a San Francisco Resident who resides in the Transbay Project Area or within the 94105 ZIP code.
- F. "San Francisco Resident" in the case of a new hire shall mean an individual who has lived in San Francisco for at least one week prior to submitting his/her initial application for employment to work on the Owner Improvements. In the case of a person employed by the Owner or its Contractor or Consultant prior to assignment to the Owner Improvements, this term shall mean a person who has lived in San Francisco for at least six months prior to the date he/she applied for a transfer to a position at the Owner Improvements or the date he/she was assigned to work on the Owner Improvements, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that he/she lived in San Francisco prior to applying for or being considered for a position with the Owner, Contractor or Consultant.

III. WORK FORCE GOALS.

The Owner agrees and will require each Contractor and all subcontractors to use good faith efforts to employ 50 percent of its construction workforce hires by trade and by hours from qualified San Francisco Residents with first consideration given to Project Area Residents.

Owner and Contractors will be deemed in compliance with this Agreement and the Policy by meeting or exceeding the goal or by demonstrating good faith efforts toward compliance.

IV. GOOD FAITH EFFORTS.

A. Submission of Labor Force Projections and Other Data

The Contractor shall submit, to the extent available, labor force projections to the OCII Compliance Officer, or its agent, within two (2) weeks of contract award.

B. Submit Subcontractor Information Form

The Contractor shall submit to the Compliance Officer, or its agent, the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Compliance Officer upon request.

C. Preconstruction Meeting

The Contractor shall hold a preconstruction meeting which shall be attended by the Compliance Officer, CityBuild, all prime contractor(s) and all subcontractor(s). The preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this Agreement and to explore any anticipated problems in complying with the Agreement. All questions regarding how this Agreement applies to the Owner, Contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of the Policy and this Agreement that may result in the Agency ordering a suspension of work until the breach has been cured. Suspension under this provision is not subject to arbitration.

D. Submit Construction Worker Request Form

For the Term of the Agreement, each time the Owner or Contractor seeks to hire workers for the construction or rehabilitation of improvements, they must first submit, by fax, email or hand delivery, an executed construction worker request form to CityBuild. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The construction worker request form is available from the Compliance Officer upon request.

E. Response from CityBuild

CityBuild shall respond, in writing, via fax, email or hand delivery to each request for construction workers. The response shall state that CityBuild was able to satisfy the request in full, in part or was unable to satisfy the request. CityBuild shall look to their own referral lists, as well as confer with CBOs in an attempt to find qualified

Project Area Residents and San Francisco Residents. If CityBuild is able to satisfy the request in full or in part, it shall direct the qualified Project Area Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If CityBuild is unable to satisfy the request, then CityBuild shall send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

F. Action by Contractor When Referrals Available

The Owner or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the Project Area Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified Project Area Residents or San Francisco Residents referred by CityBuild. However, if the Contractor finds the Project Area Residents or San Francisco Residents are not qualified, then the Contractor shall send the Project Area Residents or San Francisco Residents back to CityBuild. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to CityBuild stating in detail the reason(s) the Project Area Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the Project Area Residents or San Francisco Residents. CityBuild shall, within one (1) business day of receipt of the fax or email, send new qualified Project Area Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

G. Action by Contractor When Referrals Unavailable

If a Contractor receives a response from CityBuild stating that no qualified Project Area Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request.

H. Action by Contractor When No Response From CityBuild

If a Contractor has not received a response to its construction worker request from CityBuild within two (2) business days, then the Contractor should immediately advise the Compliance Officer by phone, fax or email. The Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from CityBuild within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods,

giving first consideration to Project Area Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request. This Policy is intended to provide qualified Project Area and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

I. Action by Contractor When No Response From Union

The Contractor should immediately advise the Compliance Officer by phone, fax or email when the Contractor has sent a qualified Project Area Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified Project Area or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this Policy. Nothing in this Policy shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements.

J. Hiring Apprentices

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

K. Termination and Replacement of Referrals

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Policy, the Contractor shall notify CityBuild in writing via fax or email and submit a report of termination pursuant to Section (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Policy beginning at Section (A)(6).

V. **REPORTING REQUIREMENTS.**

A. Submission of Certified Payroll Reports

Each Contractor subject to this Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Owner is ultimately responsible for the submission of these reports by the Contractors. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses an online Project Reporting System (PRS) for submission of certified payroll reports. This system is available at no cost to the

Contractor. Training and educational materials for PRS are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using PRS. However, a waiver may be granted to any Contractors who do not have a computer or online access.

B. Additional Information

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Policy and may be addressed as set forth in the arbitration provisions included in Agency contracts.

C. Report on Terminations

In the event a Project Area Resident or San Francisco Resident hired pursuant to this Policy is terminated for cause, the responsible Contractor shall within two (2) days fax or email a termination report to CityBuild with a copy to the Compliance Officer stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) were Project Area Resident(s) or San Francisco Resident(s).

D. Inspection of Records

The Owner and each Contractor shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency and its designated Compliance Officer, and shall permit such representatives to interview construction workers and apprentices during working hours on the job.

E. Failure to Submit Reports

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Agreement and the Policy, and may be addressed under arbitration provisions pursuant to Article VII (Arbitration of Disputes) of this Agreement.

F. Submission of Good Faith Effort Documentation

If the Owner's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency or its designated Compliance Officer with the documentation of its efforts to comply with this Policy and the Agreement. The Owner or Contractor must maintain a current file of the names, addresses and telephone numbers of each Project Area Resident or San Francisco Resident applicant referral (whether a self-referral or a referral from a union, CBO or CityBuild referral) and what action was taken with respect to each such individual.

G. Coding Certified Payrolls

Each Contractor shall include, on the weekly payroll submissions, the proper job

classification (as approved by the California Department of Industrial Relations), apprentice's craft (if applicable), skill level, protected class status, and domicile of each construction worker.

VI. RECORDKEEPING REQUIREMENTS.

Contractor shall comply with the requirements of California Labor Code Section 1776, as amended, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its subcontractors of all tiers.

In addition, each Contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of Owner Improvements, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Owner Improvements. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident or disadvantaged worker, and the referral source or method through which the Contractor hired or retained that worker for work on the Owner Improvements (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method). Contractor may verify that a worker is a local resident through the worker's possession of a valid SF City ID Card or other government-issued identification. OCII may require additional records to be kept with regard to Contractor's compliance with this Agreement. All records described in this section shall at all times be open to inspection and examination by the duly authorized officers and agents of OCII, including representatives of the OEWD.

VII. ARBITRATION OF DISPUTES.

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

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

C. **Parties' Participation.** The Agency and all persons or entities that have a

contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Owner made an initial timely Demand for Arbitration pursuant to Section VII.B. above.

- D. **Agency Request to AAA.** Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.
- E. **Selection of Arbitrator.** One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.
- F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.
- G. **Discovery.** In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.
- H. **Burden of Proof.** The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.
- I. **California Law Applies.** Except where expressly stated to the contrary in this Construction Work Force Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.
- J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:
 - 1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.
 - 2. Require any Arbitration Party to refrain from entering into new contracts

related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.
 4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Construction Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.
 5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.
- K. **Arbitrator's Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.
- L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.
- M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter

the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.

- N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.
- O. **Exculpatory Clause.** Owner expressly waives any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Construction Work Force Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.
- P. **Severability.** The provisions of this Construction Work Force Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Construction Work Force Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Construction Work Force Agreement or the validity of their application to other persons or circumstances.
- Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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

Agency

Owner

I, hereby certify that I have authority to execute this Construction Work Force Agreement on behalf of the Owner listed below and that Owner agrees to diligently exercise good faith efforts to comply with this Agreement to meet or exceed the construction work force participation goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

Signature

Date

Print Your Name

Title

Company Name

Phone Number

Signature

Date

Print Your Name

Title

Company Name

Phone Number

EXHIBIT E-3
PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

1. **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as “Labor Standards”) apply to any and all construction of the Project Improvements as defined in the underlying agreement between the Borrower and the Office of Community Investment and Infrastructure (OCII) of which this Exhibit E and these Labor Standards are a part.

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

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

3. **Definitions.** The following definitions shall apply for purposes of this Exhibit E:
 - a. “Contractor” is the Borrower if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Project.

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

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

4. **Prevailing Wage.**
 - a. All Laborers and Mechanics employed in the construction of the Project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the “Wage Determination”) made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics.

A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of escrow closing the Agency shall provide the Borrower with a copy of the applicable Wage Determination.

- b. All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- d. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Borrower that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §8. The Executive Director of the Agency may require the Borrower to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.
- e. Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

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

- a. Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- b. Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
- c. Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- d. Any contribution on behalf of the employee, to funds established by the Contractor,

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

- (i) The deduction is not otherwise prohibited by law; and
 - (ii) It is either:
 - 1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - 2) Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
 - (iii) No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
 - (iv) The deduction shall serve the convenience and interest of the employee.
- e. Any authorized purchase of United States Savings Bonds for the employee.
 - f. Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
 - g. Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
 - h. Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

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

7. **Overtime.** No Contractor contracting for any part of the construction of the Project which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.
8. **Payrolls and Basic Records.**
- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Project and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Project. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.
 - b. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Project was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Borrower acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.
 - c. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.
 - d. The Contractor shall make the records required under this §8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.
9. **Occupational Safety and Health.** No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.
10. **Equal Opportunity Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in Exhibit E of

the Agreement including Schedules A and B. Any conflicts between the language contained in these Labor Standards and Exhibit I shall be resolved in favor of the language set forth in Exhibit I, except that in no event shall less than the prevailing wage be paid.

11. **Nondiscrimination Against Employees for Complaints.** No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.
12. **Posting of Notice to Employees.** A copy of the Wage Determination referred to in subsection (a) of §4 together with a copy of a “Notice to Employees,” in the form appearing on the last page of these Labor Standards, shall be given to the Borrower at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Project before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.
13. **Violation and Remedies.**
 - a. **Liability to Employee for Unpaid Wages.** The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
 - b. **Stop Work--Contract Terms, Records and Payrolls.** If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Project to contain the Labor Standards as required by §2 (“Non-Conforming Contract”); or by reason of any failure to submit the payrolls or make records available as required by §8 (“Non-Complying Contractor”), the Executive Director of the Agency may, after written notice to the Borrower with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.
 - c. **Stop Work and Other Violations.** For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Contractor, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Contractor shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Contractor, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Contractor fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.
 - d. Upon receipt of the Notice of Dispute and withhold advice, any stop work which the

Executive Director has ordered shall be lifted, but the Contractor shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14. Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Borrower shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14.

- e. Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the Project provided for in this agreement, for any violations of these Labor Standards until such violation has been cured.
- f. General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

14. Arbitration of Disputes.

- a. Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office (“AAA”) in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.
- b. The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- c. The arbitration shall take place in the City and County of San Francisco.
- d. Arbitration may be demanded by the Agency, the Borrower or the Contractor.
- e. With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Borrower, or as appropriate to one or the other if the Borrower or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §4) and copies of all notices sent or received by the Agency pursuant to §13. Such material shall be made part of the arbitration record.
- f. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.
- g. Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of

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

- h. Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Borrower shall pay the Contractor from money withheld.
- i. Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

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

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

***EQUAL
OPPORTUNITY
NON-DISCRIMI-
NATION***

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

***PREVAILING
WAGE***

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

OVERTIME

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

APPRENTICES

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

PROPER PAY

If you do not receive proper pay, write the Office of Community Investment and Infrastructure, OCII
1 South Van Ness Ave. 5th Floor
San Francisco, CA 94103
or call **(415) 749-2546** and ask for
Mr. George Bridges
Contract Compliance Specialist

EXHIBIT E-4
Nondiscrimination in Contracts and Benefits

	<p align="center">OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (OCII) (SUCCESSOR TO THE SAN FRANCISCO REDEVELOPMENT AGENCY) DECLARATION FORM Nondiscrimination in Contracts and Benefits</p>
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Section A

Is your company/organization currently certified by the City and County of San Francisco in compliance with Administrative Code 12B Equal Benefits Ordinance and will your company/organization ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts? If yes, please indicate below, skip Section B, and execute the Declaration in Section C. If no, please skip Section A and complete Sections B and C.

- My company/organization is certified and compliant with the 12B Equal Benefits Ordinance of the City and County of San Francisco and there has been no change in our 12B Declaration since certification. My company/organization agrees to ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts. (Please check box to affirm, if applicable)

Section B

1. Nondiscrimination—Protected Classes

a. Is it your company/organization’s policy that you will not discriminate against your employees, applicants for employment, employees of the Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency) (Agency), or City and County of San Francisco (City), or members of the public for the following reasons:

- | | | |
|---------------------------|------------------------------|-----------------------------|
| • Race | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • color | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Creed | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Religion | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • ancestry | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • national origin | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Age | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sex | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sexual orientation | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • gender identity | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • marital status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • domestic partner status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Disability | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • AIDS or HIV status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?
 Yes No

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

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?
 Yes No

b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?
 Yes No

If you answered "no" to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered "yes" to Question 2a or 2b, continue to 2c.

c. If "yes," please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Pension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee assistance programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation and travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company discounts, facilities, events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d. If you answered "yes" to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

- (1) Have you taken all reasonable measures? Yes No
- (2) Do you provide a cash equivalent? Yes No

H. 3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered "yes" to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated "yes" in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered "yes" to Question 2d(1) complete and attach form SFRA/CC-103, "Nondiscrimination in Benefits—Reasonable Measures Affidavit," which is available from the Agency. You need not document your "yes" answer to Question 1a or Question 1b.

Section C

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this ____ day of _____, 20____, at _____, _____.
(City) (State)

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

Remittance Address (if different from above): _____

Name of Signatory: _____ Title: _____
(Please Print)

Signature: _____

Phone Number: _____ Federal Tax Identification Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____
(if known)

- Check here if your address has changed.
- Check here if your organization is a non-profit.
- Check here if your organization is a governmental entity.

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

Please return this form to: Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency), One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103

EXHIBIT E-5
MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (Successor Agency to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy (“MCP”), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to pay Covered Employees a minimum hourly wage and to provide 12 compensated and 10 uncompensated days off per year. The Minimum Compensation rate adjusts automatically to match the wage rate required by the City and County of San Francisco’s Minimum Compensation Ordinance. Contractor is obligated to keep informed of the then-current requirements, which are published at <https://sfgov.org/olse/minimum-compensation-ordinance-mco>.

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

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

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

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same.

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

For more information, please see the complete text of the MCP, available from the OCII Contract Compliance Department at (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

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

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

Signature

Date

Print Name

Company Name

Phone

EXHIBIT E-6
HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (as Successor Agency to the Redevelopment Agency) adopted the San Francisco Health Care Accountability Policy (the “HCAP”), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to offer health plan benefits to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits established by the San Francisco Department of Public Health (“SFPDH”), as approved by the OCII Commission; (2) pay OCII an amount equivalent to the current fee established by the SFPDH for each hour the employee works on the covered contract or subcontract or on property covered by a lease and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured; or (3) participate in a health benefits program developed and offered by SFPDH. The minimum health plan standards and fees established by SFPDH are published at <https://sfgov.org/olse/health-care-accountability-ordinance-hcao>.

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

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

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

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII’s contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same.

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

For more information, please see the complete text of the HCAP, available from the OCII’s Contract Compliance Department at: (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contact Compliance Department, Office of Community Investment and Infrastructure, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

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

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

Signature

Date

Print Name

Company Name

Phone

EXHIBIT F

Insurance Requirements

Subject to approval by the OCII Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth in this Exhibit F throughout the Compliance Term of this Agreement, or in accordance with the timeframes stated herein, at no expense to OCII.

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

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Commercial General Liability (see Section B.1)	\$1,000,000 per occurrence/ \$2,000,000 aggregate*	Borrower’s design and professional contractors; and Borrower (prior to start of construction)	Additional insured (see Section G)
	\$10,000,000 per occurrence/ \$10,000,000 aggregate*	Borrower (upon construction start), general contractor, and subcontractors to the general contractor	Completed Operations Coverage endorsement (on construction stage policy) (see Section G)
Automobile Liability (see Section B.2)	\$1,000,000 per accident*	Borrower and Borrower’s contractors	Additional insured (see Section G)
	\$10,000,000 per accident*	Upon construction start – general contractor and subcontractors to the general contractor	
Worker’s Compensation and Employer’s Liability (see Section B.3)	As per statute for Workers Comp; \$1,000,000 per accident; \$1,000,000 per employee; and in aggregate for bodily injury by disease as respects Employers Liability*	Borrower and Borrower’s contractors	Waiver of subrogation
Professional Liability (see Section B.4)	\$2,000,000 per claim/ \$2,000,000 aggregate	Borrower if engaged in any eligible design-related activities; and Borrower’s design and professional contractors	None
Crime/Dishonesty (see Section B.5)	\$1,000,000 per loss	Borrower	Loss payee endorsement

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Pollution Liability/Asbestos – During Construction (see Section B.6)	\$1,000,000 per claim/ \$2,000,000 aggregate	Borrower or Borrower’s construction contractor(s)	Additional insured (see Section G)
Builder’s Risk – During Construction (see Section B.7a)	100% of replacement value	Borrower	Loss payee endorsement
Property Insurance – After Construction Completion (see Section B.7b)	100% of replacement value	Borrower or Borrower’s property manager	Loss payee endorsement
Performance and Payment Bonds (see Section B.8)	100% of contract value (excluding the Modular Work)	Borrower’s construction contractors	OCII and Borrower named as dual obligees
Modular Factory Performance Insurance (see Section B.9)	100% of Supply Agreement value	Modular manufacturer	General contractor named as loss payee

* *Umbrella, excess liability policy, contractor controlled insurance program (CCIP), or owner controlled insurance program (OCIP) may be used to meet limits (see Section D)*

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

1) **Commercial General Liability** coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by OCII, with additional insured endorsement (form CG 20 10 or equivalent) (see Section G). Limits set forth below. Coverage must be included for contractual liability; explosion, collapse and underground (XCU); products and completed operations. Umbrella, Excess Liability, or an Owner Controlled Insurance Policy may be used to meet the terms of this section.

a. Before the start of demolition/construction if the Site is unoccupied, Borrower and Borrower’s Contractors will maintain coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit. These limit requirements apply to Borrower’s design and professional contractors throughout the required coverage period;

b. During demolition/construction and occupancy of the Site and ongoing operations of the Project, Borrower and its Construction Contractors and/or Property Manager will maintain coverage of not less than Ten Million Dollars (\$10,000,000) combined single limit per occurrence and Ten Million Dollars (\$10,000,000) general aggregate limit. For subcontractors to the Construction General Contractor and the Property Manager, the Borrower, in consultation with the Construction

General Contractor and the Property Manager, as appropriate, is required to assess the risks associated with such contractors and determine, authorize, and verify the appropriate level of coverage provided by the subcontractor or consultant;

c. The construction period general liability policy must include completed operations coverage for a minimum of ten (10) years. Borrower must provide a completed operations coverage endorsement (form CG 20 37 or equivalent) and OCII must be named as an additional insured pursuant Section G below.

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

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

- 5) Crime Policy or Fidelity Bond (Employee Dishonesty Coverage) covering Borrower and Developer's officers and employees against employee dishonesty, forgery & alteration, theft of money & securities, and theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees with respect to the Funding Amount. One Million Dollars (\$1,000,000) each loss, with any deductible not to exceed Fifty Thousand Dollars (\$50,000). Borrower must provide an endorsement naming OCII as an additional obligee or loss payee.

Application of Crime Insurance Proceeds. Borrower shall promptly notify OCII of any claim under the required Crime Insurance Policy. OCII may retain from the proceeds of the required Crime Insurance Policy, a sufficient amount of the proceeds to pay the Funding Amount, if any, and shall pay the balance to Borrower. For the avoidance of doubt, OCII shall have no right or claim to the proceeds of the required Crime Insurance Policy in excess of the Funding Amount.

- 6) Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) aggregate per policy aggregate, this coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Borrower's construction contractor to maintain these minimum limits for no less than three (3) years beyond completion of the Project.
- 7) Property Insurance
 - a. Builder's Risk Insurance during the course of any construction, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and OCII property in the care, custody and control of Borrower or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss, including OCII as loss payee. Builder's Risk must be maintained by the Borrower or the Borrower must cause its general contractor to maintain this insurance.
 - b. Property Insurance after completion of construction, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, and including boiler and machinery insurance, for one hundred percent (100%) of the replacement value of all furnishings, fixtures, equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Twenty Five Thousand Dollars (\$25,000) each loss, including OCII as a loss payee. A waiver of subrogation naming OCII is required (also known as "transfer of rights of recovery against others to us").
- 8) Performance and Payment Bonds for eligible construction contractors during construction and/or rehabilitation, each in the amount of one hundred percent (100%) of contract amounts (excluding the Modular Work), naming OCII and Borrower as dual obligees, or other completion security approved by OCII in its sole discretion. OCII has approved issuance of a Completion Guaranty by an affiliate of Borrower to Borrower's institutional lender as completion security. This requirement shall not apply to modular manufacturer.
- 9) Performance Insurance. Borrower shall require its general contractor to obtain performance insurance that insures against delay in delivery of modules, up to the amount of Borrower's or

Borrower's general contractor's contract amount for the delivery of modules for the construction of the Project. Borrower shall limit general contractor's use of proceeds from the performance insurance policy to be used to solely to reduce cost overruns in the construction of the Project related to or caused by delay in the delivery of modules, and Borrower shall, and shall require general contractor, to obtain OCII's approval prior to expending such proceeds.

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

- 5) Approval of Borrower's insurance by OCII will not relieve or decrease the liability of Borrower under this Agreement.
- 6) OCII and its officers, agents and employees will not be liable for any required premium under any policy maintained by Borrower.
- 7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

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

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

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

EXHIBIT G

Lobbying/Debarment Certification Form

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

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

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

3. Neither the undersigned nor its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Loan Closing 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.

TRANSBAY 2 FAMILY COMMERCIAL LLC, a California limited liability company

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT H

Form of Annual Monitoring Report

(may be substituted or combined as allowed in Article 10)

**Owner Compliance Certification and Insurance & Tax Certification Form
2020 Annual Monitoring Report
San Francisco Mayor’s Office of Housing and Community Development**

***** This form must be completed by Project Owner or authorized agent. *****

Complete this form, sign and date it, scan it along with current liability and property insurance certificates into a single PDF file, then email the file along with AMR_RY2020 – project name.xlsx, audited financial statements, and current waiting list to moh.amr@sfgov.org.

Project Name: _____

Project Street Address: _____

Reporting Period – Start Date: _____ End Date: _____

Owner Compliance Certification

The undersigned owner, having received housing development funds pursuant to a housing development program funding agreement/s entered into with the City and County of San Francisco (“CCSF”) for the purpose of purchasing, constructing and/or improving low-income housing, does hereby certify as follows:

*Initial all statements below, and supply data to make the statement complete where needed (look for underlined blanks; e.g.: ____). **For any statements that are not true or require additional clarification, you must supply a detailed explanation on the Annual Monitoring Report Narrative Worksheet.** The failure to provide a conforming response to all statements below will render incomplete the entire Annual Monitoring Report (“AMR”) submission for this project, which may result in a default condition under the funding agreement/s, and also subject the owner to scoring penalties in future efforts to obtain funding from MOHCD for this project and any other project.*

	True	False	
1			The CCSF Mayor’s Office of Housing and Community Development (“MOHCD”) has been alerted by the owner prior to any actions taken by the owner that affect the value of the property associated with this project, including but not limited to the establishment of any liens or encumbrances on the property; and, where required, the owner has obtained written authorization from MOHCD prior to taking any such actions.
2			The undersigned is not in default of the terms of any Agreements with CCSF for this project, nor has it been in default on any other loans, contracts or obligations on this property during the reporting period.
3			The undersigned has not been the subject of any actions relating to any other loans, contracts or obligations on this property which might have a material adverse financial impact on the property.

	True	False	
4			The owner has not lost or failed to renew funding for supportive services for the project during the reporting period and has made available (or caused to be made available through another party) all supportive services that are required by existing, applicable funding and regulatory agreements.
5			The owner has not lost or failed to renew funding for operating subsidy/ies for the project during the reporting period.
6			For any existing operating subsidies supporting the project, during the reporting period, the owner submitted a request for the maximum increase possible.
7			The owner has paid all taxes due for the reporting period and prior reporting periods.
8			The undersigned has marketed the units in the manner set forth in the marketing and resident selection provisions of the funding agreement/s entered into with CCSF.
9			The project has met affordability and other leasing provisions set forth in the funding agreement/s entered into with CCSF during the entire reporting period. As of the end date of the reporting period, _____ units (<i>supply exact number</i>) were occupied or held vacant and available for rental by low-income tenants meeting the income qualifications pursuant to the funding agreement/s entered into with CCSF.
10			The undersigned has obtained a tenant income certification and/or third party documentation to support that certification from each tenant household occupying a unit restricted to occupancy by income-qualified tenants. All income certifications are maintained onsite with respect to each qualified tenant who resides in a unit or resided therein during the immediately preceding business year.
11			The total charges for rent and a utility allowance to each income-qualified tenant in a restricted unit do not exceed the maximum rent specified in the funding agreement/s entered into with CCSF as adjusted by the most recent HUD income and rent figures, which have been taken from the figures that are supplied by MOHCD on its website.
12			All withdrawals from the replacement and operating reserve accounts have been made in accordance with the MOHCD funding agreement/s, unless approved in writing by MOHCD.
13			Security deposits required of tenants of the project are in accordance with applicable laws and the funding agreement/s entered into with CCSF.
14			The undersigned has obtained and will maintain insurance policies in accordance with requirements of the funding agreement/s entered into with CCSF as may be reasonably updated from time to time, and has supplied with this AMR certificates of insurance that are current through the end of the reporting period.
15			The undersigned has maintained the units and common areas in a decent, safe and sanitary manner in accordance with all local health, building, and housing codes and in accordance with the HUD Housing Quality Standards.
16			The data submitted in Section 1A – Property & Residents of the Annual Monitoring Report regarding any violation/s of any health, building, or housing codes is complete and accurate; all required copies of violations/citations that were not resolved by the end of the reporting periods are also included with this AMR submission.

	True	False	
17			The undersigned has made best efforts to: (a) keep the units in good repair and available for occupancy; (b) keep the Project fully rented and occupied; and (c) maximize rental revenue at the Project by increasing tenant rents, and if applicable, contract rents and commercial rents, the maximum amount permitted under all current regulatory agreements, contracts, regulations and leases, without causing undue rent burden on residential tenants.
18			All questions in the Annual Monitoring Report submitted for this reporting period have been answered fully and truthfully; answers have been supplied for all of questions requiring detailed responses on the Annual Monitoring Narrative Worksheet and any related documents have been submitted as attachments.
19			The project has received additional equity proceeds in the amount of \$_____ (<i>supply amount</i>) from low-income housing tax credit investors during the reporting period.
20			Accurate information has been provided in Worksheet 2 - Fiscal Activity about any Federal Program Income earned by this project during the reporting period.
21			Any amounts charged as Asset Management Fees are reflected accurately under Income & Expenses in Worksheet 2 - Fiscal Activity of the Annual Monitoring Report, and all such amounts have been used exclusively toward asset management of this project. Asset Management Fees taken beyond pre-approved levels have been documented as required in response to question 7 in Section 4 - Narrative.
22			The calculation of cash flow in Worksheet 2 - Fiscal Activity accurately reflects all expenses incurred and income earned, and the proposed distribution of any Residual Receipts would be in accordance with all relevant agreements and policies.
23			The Waiting List that has been submitted with the 2020 Annual Monitoring Report is an accurate and correct record as of the last day of the reporting period of the households who have applied to live at the Project, including the name of the head-of-household (or a suitable alternative), date of application, number of people in the household, stated household income and desired unit size.

Property and Liability Insurance

Enter the information requested below, and attach a current copy (each) of the Property and Liability Insurance Certificates. SCAN the documents and send them as an attachment along with the complete AMR to MOHCD via e-mail to: moh.amr@sfgov.org.

Property Insurance		
	Property Street Address:	
	Policy Number:	
	Policy Effective Date:	
	Policy Expiration Date:	
Liability Insurance		
	Property Street Address:	
	Policy Number:	
	Policy Effective Date:	
	Policy Expiration Date:	

Tax Certification

Enter the information requested below. You do **NOT** need to submit copies of the invoice or checks used to pay the tax.

Property Tax	
	Tax Year:
	Amount of Tax Paid:
	Date Paid:
	Amount outstanding from taxes due for Reporting Period:
	Amount outstanding from taxes due prior to Reporting Period:

***** This form must be completed by Project Owner or authorized agent. *****

The undersigned, acting under authority of the ownership of this project, executes this Certification, subject to the pains and penalties of perjury, and certifies that the foregoing is true and correct in all respects.

Signature: _____ Date: _____

Name: _____ Title: _____

EXHIBIT I

Intentionally omitted

EXHIBIT J

Form of Deed of Trust

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §27383 & 27388.1 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

WHEN RECORDED RETURN TO:
The Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco, One South Van Ness Avenue,
5th Floor, San Francisco, California 94103
Attn: Jane Suskin

Space above for Recorder

(Assessor's Block _____, Lot ____)

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

(Transbay Block 2 East)

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of _____, by TRANSBAY 2 FAMILY COMMERCIAL LLC, a California limited liability company ("**Trustor**"), whose address is _____, to _____ ("**Trustee**"), whose address is _____, for the benefit of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California ("**Beneficiary**"). This Deed of Trust is executed pursuant to a Loan Agreement by and between Trustor and Beneficiary dated as of _____, as it may be amended from time to time (the "**Agreement**"), the provisions of which are incorporated herein by reference. Unless otherwise specified, definitions and rules of interpretation set forth in the Agreement apply to this Deed of Trust.

1. Grant in Trust. For valuable consideration, Trustor hereby grants, transfers and assigns to Trustee, in trust, with power of sale, for the benefit of Beneficiary, all right, title and interest Trustor now has or may have in the future in the following (all or any part of the following, or any interest in all or any part of it, as the context requires, the "**Property**"):

a. Its leasehold interest in that real property situated in the City and County of San Francisco, State of California, described in **Exhibit A** attached hereto and incorporated herein by reference (the "**Land**"), on which Trustor intends to construct the

commercial shells of a childcare facility and two commercial spaces for community-serving retail and an approximately {xxx} square-foot interior courtyard (the “**Project**”) as part of a larger mixed use development also containing a 184-unit multifamily rental housing (including two unrestricted manager’s units) affordable to low-income households; and

b. all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the “**Improvements**”); and

c. all existing and future leases, subleases, tenancies, subtenancies, licenses, occupancy agreements and concessions (“**Leases**”) relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the Leases; and

d. all of Trustor’s interest in and under that certain Ground Lease dated as of _____, by and between Beneficiary, as lessor, and Trustor, as lessee, including any options of any nature whatsoever; and

e. except for personal property and removable fixtures installed by tenants or subtenants, all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which will be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; and

f. all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; and

g. all undisbursed Loan funds, and all funds now or in the future on deposit in the Replacement Reserve Account, the Operating Reserve Account and any other account required or authorized for the Project; and

h. all proceeds, including proceeds of all present and future fire or property insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements; and

i. all books and records pertaining to any and all of the property described above, including records relating to tenants under any Leases, the qualifications of any tenants and any certificates, vouchers and other documents in any way related thereto and records relating to the application and allocation of any federal, state or local tax credits or benefits; and

j. all rents, revenues, issues, royalties, proceeds and profits, including prepaid rent and security deposits ("**Rents**"), from the Land and the Improvements, subject to: (i) Trustor's right to collect and retain the same as they become due and payable; and (ii) Beneficiary's rights under Section 5(d); and

k. all proceeds of, interest accrued on, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

This Deed of Trust constitutes a security agreement under, and a fixture filing in accordance with, the California Uniform Commercial Code, as it may be amended from time to time. The filing of a financing statement pertaining to personal property may not be construed in any way as derogating from or impairing the lien of, or the rights or obligations of the parties under, this Deed of Trust.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing the following (collectively, the "**Secured Obligations**"):

a. performance of all present and future obligations of Trustor set forth in the Agreement, specifically compliance with certain restrictions on the use of the Property recited in that certain Declaration of Restrictions executed by Trustor, dated as of the date of and being recorded concurrently with this Deed of Trust, as it may be amended from time to time, and the promissory note dated _____ made by Trustor to the order of Beneficiary (as it may be amended from time to time, the "**Note**") and performance of each agreement incorporated by reference, contained therein, or entered into in connection with the Agreement;

b. payment of the indebtedness evidenced by the Agreement and the Note in the original principal amount of _____ DOLLARS (\$ _____), according to the terms of the Agreement and the Note; and

c. payment of any additional sums Trustor may borrow or receive from Beneficiary, when evidenced by another note (or any other instrument) reciting that payment is secured by this Deed of Trust.

3. Trustor's Covenants. To protect the security of this Deed of Trust, Trustor agrees as follows:

- a. to perform the Secured Obligations in accordance with their respective terms;
- b. to keep the Land and the Improvements in good condition and repair, normal wear and tear and acts of God excepted; not to remove or demolish any Improvements without Beneficiary's prior written consent; to complete or restore promptly and in good and workmanlike manner any Improvement constructed, damaged or destroyed on the Land subject to available insurance proceeds; to pay when due all claims for labor performed and materials furnished therefor, subject to Trustor's right to contest any claim in good faith; to comply with all laws affecting the Project, subject to Trustor's right to contest any claim in good faith; not to commit or permit waste with respect to the Land or the Improvements; not to commit, suffer or permit any act upon the Land or the Improvements in violation of law, including Environmental Laws; and to do all other acts made reasonably necessary by the character or use of the Land and the Improvements;
- c. to provide, maintain and deliver to Beneficiary property insurance as required under the Agreement and apply any insurance proceeds as provided below;
- d. to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees and costs incurred in any such action or proceeding in which Beneficiary or Trustee may appear and in any suit brought by Beneficiary to foreclose this Deed of Trust following an Event of Default;
- e. to pay in accordance with the Agreement, but in each case prior to delinquency: (i) all taxes and assessments affecting the Property, including assessments on appurtenant water stock; and (ii) all encumbrances, charges and liens, with interest, on the Property or any part thereof that appear to be prior or superior hereto;
- f. should Trustor fail to make any payment or to do any act as herein provided, then, without: (i) obligation to do so; (ii) notice to or demand upon Trustor; or (iii) releasing Trustor from any obligation hereof, Beneficiary or Trustee may: (A) make or do the same in any manner and to the extent as it deems necessary to protect the security hereof; (B) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (C) pay, purchase, contest or compromise any encumbrance, charge or lien that in its judgment appears to be prior or superior hereto; and (D) in exercising these powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees and costs, and Trustor consents to Beneficiary's and/or Trustee's entry upon the Land and Improvements for any purpose set forth in this Subsection, including Beneficiary's exercise of its rights under California Code of Civil Procedure Section 564(c); and
- g. to reimburse within five (5) days of demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest at an annual rate of interest

equal to the lesser of: (i) ten percent (10%); or (ii) the maximum lawful rate from date of expenditure to the date of payment.

4. Insurance and Condemnation Proceeds.

- Trustor hereby assigns to Beneficiary any award of damages arising from the condemnation of all or any part of the Property for public use and any insurance proceeds arising from injury to all or any part of the Property or the Project.

- Any condemnation award or builders risk or property insurance proceeds must be paid to Beneficiary or, if Beneficiary has consented to subordinate the lien of this Deed of Trust to the lien of another lender for the Project, according to the provisions in the senior lender's loan documents.

- If a condemnation award or insurance proceeds are paid to Beneficiary, Beneficiary will release or authorize the release of funds to Trustor, provided that the funds will be used for the reconstruction or repair of the Project in accordance with: (i) projections demonstrating that reconstruction is economically feasible; and (ii) Trustor's construction budget, each of which must be satisfactory to Beneficiary in its reasonable discretion. In all other cases, Beneficiary may choose in its discretion to apply funds to Trustor's obligations under the Note and the Agreement or to any senior obligations, in accordance with the respective priorities of the approved lienholders as their interests may appear of record, with the remaining funds, if any, released to Trustor.

- Trustor agrees that Beneficiary's application or release of funds pursuant to this Section will not cure or waive any default or Notice of Default (as defined below) or invalidate any act by Beneficiary performed following a default pursuant to any OCII Document unless the default has been cured by the application or release of funds.

5. Further Agreements. Trustor further acknowledges and agrees as follows:

Beneficiary does not waive its right either to require prompt payment when due of all other sums secured by this Deed of Trust or to declare Trustor in default for failure to pay timely by accepting payment of any sum secured hereby after its due date.

Trustee may reconvey any part of the Property at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement without affecting the liability of any entity or person for payment of the indebtedness secured hereby.

Upon: (i) written request of Beneficiary stating that all obligations secured hereby have been paid or performed; (ii) Beneficiary's surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole

discretion may choose; and (iii) payment of its fees, if any, Trustee shall reconvey the Property then held hereunder without covenant or warranty.

As additional security, and subject to the rights of senior lenders, Trustor hereby irrevocably, absolutely and unconditionally assigns to Beneficiary all Rents, whether now due, past due or to become due, subject to Beneficiary's grant to Trustor of a license to collect and retain Rents as they become due and payable so long as Trustor has not defaulted in performance of the Secured Obligations.

Any voluntary or involuntary conveyance, sale, encumbrance, pledge or other transfer of all or any interest in the Property or in Trustor, including a security interest, in violation of the Agreement will constitute an Event of Default (as defined below) giving Beneficiary the right to exercise its remedies at law or in equity.

For the purposes of this Deed of Trust, Beneficiary from time to time may substitute a successor or successors to Trustee named herein or acting hereunder by instrument in writing executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of San Francisco County, which instrument shall be conclusive proof of proper substitution of a successor trustee or trustees. Without conveyance from Trustee, any successor or substitute trustee will succeed to all title, estate, rights, powers and duties of Trustee. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the recording information for this Deed of Trust and the name and address of the new Trustee.

This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, provided that this subsection does not constitute Beneficiary's consent to any transfer in violation of this Deed of Trust. The term Beneficiary shall mean the holder of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

Trustee accepts this Trust when this duly executed and acknowledged Deed of Trust is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

6. Beneficiary's Rights Following Default. Upon any default by Trustor in performance of the Secured Obligations following expiration of any applicable notice and cure periods including such notice and cure periods provided to the Investor Limited Partner ("**Event of Default**"):

- a. Trustor's license to collect and retain Rents will terminate automatically.

b. Trustor consents to Beneficiary's entry upon and taking possession of the Property or any part thereof, at any time after the occurrence of an Event of Default without notice, either in person, by agent or by a receiver to be appointed by a court without regard to the adequacy of any security for the indebtedness hereby secured to sue for or otherwise collect and apply Rents, less costs and expenses of operation and collection, including those of the Property, in its own name or in the name of Trustor. Beneficiary's collection and application of Rents shall not cure or waive any Event of Default or Notice of Default or invalidate any act done pursuant to any notice.

c. Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property ("**Notice of Default**"), and:

i. Trustee shall cause the Notice of Default to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

ii. After the lapse of time then required by law following the recordation of a Notice of Default, and notice of sale ("**Notice of Sale**") having been given as then required by law, Trustee without demand on Trustor may sell the Property at the time and place fixed in the Notice of Sale either as a whole or in separate parcels in any order at public auction to the highest bidder for cash in lawful money of the United States payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to any purchaser a trustee's deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the trustee's deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale.

iii. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (A) all sums expended under the terms of this Deed of Trust not then repaid, with accrued interest at the highest rate allowed by law in effect at the date hereof; (B) all other sums then secured hereby; and (C) the remainder, if any, to the person or persons legally entitled thereto.

7. Notice of Default to Trustor. The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at its address set forth above or any succeeding address given by notice in accordance with the Agreement. A copy of all notices delivered to Trustor hereunder shall be delivered to Trustor's limited partner at the address provided in the Agreement.

"TRUSTOR:"

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Ramie Dare
Vice President

[ALL SIGNATURES MUST BE NOTARIZED.]

EXHIBIT A
(Legal Description of the Property)

The Site referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

EXHIBIT K

FORM DECLARATION OF RESTRICTIONS

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §27383 & 27388.1 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

WHEN RECORDED RETURN TO:
The Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco, One South Van Ness Avenue,
5th Floor, San Francisco, California 94103
Attn: Jane Suskin

Space above for Recorder

(Assessor’s Block _____, Lot ____)

**DECLARATION OF RESTRICTIONS
(Commercial and Childcare Spaces)**

Transbay Block 2 East

THIS DECLARATION OF RESTRICTIONS ("Declaration") is made as of _____, 2024, by TRANSBAY 2 FAMILY COMMERCIAL LLC, a California limited liability company ("**Declarant**") owner of a leasehold interest in the land described in Exhibit A attached hereto (the "**Property**"), in favor of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California, commonly referred to as the Office of Community Investment and Infrastructure ("**OCII**", including any successors or assigns). The restrictions and covenants stated herein shall bind Declarant and its successors and assigns and shall be enforceable by OCII and its successors and assigns.

RECITALS

A. OCII and Declarant have entered into that certain Ground Lease dated _____ (the "**Ground Lease**") and a Loan Agreement dated _____, 2024 ("**Loan Agreement**"). The Ground Lease and Loan Agreement obligate Declarant to develop the Property with three commercial spaces primarily intended for occupancy by Community Serving Uses and/or Public Benefit Uses, including one space intended for use as a childcare facility, as well as an approximately [xxx] square-foot private interior courtyard (the "**Project**"). Definitions and rules of interpretation set forth in the Loan Agreement apply to this Declaration, unless otherwise noted.

OCII and Declarant entered into the Loan Agreement to finance costs associated with the development of the Project. The Loan Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration.

B. Pursuant to the Ground Lease and the Loan Agreement, Declarant has agreed to comply with certain use and occupancy restrictions contained herein commencing on the date on which a certificate of occupancy is issued for the Project and continuing for the Life of the Project even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed.

AGREEMENT

Now, therefore, in consideration of OCII's agreement to fund in accordance with the OCII Documents, Declarant agrees as follows:

A. Declarant must comply with the following regulatory obligations contained in this Section 1 (the “**Regulatory Obligations**”) for the Life of the Project, regardless of any reconveyance of the Deed of Trust. Specifically, Declarant agrees as follows, subject to additional terms as set forth in the Agreement:

1. Use Requirements. Declarant agrees that leases of Community Commercial Units within the Project, and as consistent with the Loan Agreement, will only be entered into consistent with the requirements of Section 7.2 – Tenant Leases in the Loan Agreement, including for Public Benefit Uses that include activities or programs that primarily benefit low-income persons, are implemented by one or more nonprofit 501(c)(3) public benefit organizations, or have been identified by a City agency or a community planning process as a priority need in the Project and the larger Transbay Redevelopment Project Area. Further, such uses shall be consistent with the definition of Public Benefit Use and Community Serving Use as defined in the MOHCD Commercial Underwriting Guidelines and as provided below (and said definitions as may be amended from time to time through amendment to the MOHCD Commercial Underwriting Guidelines):

a. 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 OCII or community as a priority use. Examples include, but are not limited to, childcare centers, adult day health centers, office space for non-profit organizations, 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.

b. Community Serving Use. A land use, typically retail or other sales and services use, that provides a direct benefit to the community, as determined by OCII in its sole discretion. Such use to be documented through a Community Commercial Services Agreement and reported on annually through the MOHCD Annual Monitoring Report. Dimensions of benefit to include:

- i. Economic Development
- ii. Community and Social Development
- iii. Sustainable Job Creation and Retention and Wealth Creation
- iv. Investment Diversification and Partnerships Development

v. Environmentally Sustainable Outcomes

Examples include:

- i. Early childhood education center,
- ii. Nonprofit office/services provision,
- iii. Food market with affordable and healthy produce and other goods,
- iv. Community banking,
- v. Restaurant offers low-cost meals,
- vi. Business hires low-income workers,
- vii. Business owned by underrepresented community, or
- viii. Other neighborhood serving uses that have a demonstrated benefit to the residents of the Project.

2. Declarant hereby subjects the Property to the covenants, reservations and restrictions set forth in this Declaration including the Regulatory Obligations. This Declaration, including the Regulatory Obligations, constitute covenants running with the land, including the leasehold interest and bind successors and assigns of Declarant and any non-borrower owner and lessee of the Property and will pass to and be binding upon Declarant's successors in title to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof will conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions in this Declaration, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. These covenants, reservations and restrictions shall survive the termination of the Ground Lease and the Loan Agreement, even if the loan under the Loan Agreement is repaid or otherwise satisfied or the Deed of Trust is reconveyed. These covenants, reservations and restrictions shall remain in first position and shall not be subordinated to the lien of any deed of trust or other financing, unless OCII determines, in its sole discretion, that subordination is necessary to secure adequate financing to ensure the viability of the Project.

3. If Declarant fails to (i) comply with this Declaration or the Regulatory Obligations to OCII's satisfaction, in its sole discretion, and (ii) cure such default as set forth in Section 19.1 of the Loan Agreement, OCII will have the right to pursue any available remedy at equity or in law to enforce this Declaration or any Regulatory Obligations. During the Compliance Term, OCII may rely on the Deed of Trust and/or this Declaration, in OCII's discretion, to enforce any of OCII's rights under the OCII Documents. Declarant will pay OCII's reasonable costs in connection with OCII's enforcement of the terms of this Declaration or the Regulatory Obligations, including, without limitation, OCII's attorneys' fees and costs.

(document continues on following page)

Declarant has executed this Declaration as of the date first written above.

DECLARANT:

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Ramie Dare
Vice President

EXHIBIT A

(Legal Description of the Property)

The Site referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

EXHIBIT L

SCHEDULE OF PERFORMANCE

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
1.	Commercial Space		
a.	Commercial Space Plan submission (preliminary)	May 2023	Complete
b.	Commercial Space Plan submission (updated)	January 2024	March 2024
c.	LOIs executed (target)	[May 2024]	N/A
d.	2 out of 3 Commercial Spaces Occupied	October 2027	October 2028
2.	Closing		
a.	Construction Loan Closing	May 2024	July 2024
b.	Conversion of Construction Loan to Permanent Financing	December 2026	April 2027
3.	Construction		
a.	Notice to Proceed	May 2024	July 2024
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	May 2026	October 2026
4.	Cost Certification/8609 (Residential Component)	December 2027	March 2028
5.	Close Out MOH/OCII Loan(s)	December 2027	March 2028

EXHIBIT M

RESERVED

EXHIBIT N

Developer Fee Schedule

Total Developer Fee:	\$425,000	
Milestones for disbursement of that portion of Developer Fee remaining and payable for Project Management	Amount Paid at Milestone	Percentage Project Management Fee
Completion of commercial parcel mapping (parcel map issuance)	\$75,000	20%
Signed letters of intent for all commercial spaces	\$175,000	40%
Signed leases for all commercial spaces	\$87,500	20%
100% commercial occupancy	\$87,500	20%

EXHIBIT O

Assignment of Work Product

FOR VALUE RECEIVED, TRANSBAY 2 FAMILY COMMERCIAL LLC, a California limited liability company (“Borrower”) does hereby sell, assign, pledge, transfer and set over to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, (“Agency”) all of its rights, title and interest in and to that certain architect’s agreement (“Agreement”) entered into by and between Borrower and Kennerly Architecture and Planning and any other contracts entered into between Borrower and any licensed design profession or engineer (“Architect” or “Engineer”), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto (“Plans”) prepared by the Architects and Engineers for the account of Borrower in connection with the development of three community-serving commercial spaces at Transbay Block 2 East (“Project”). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amount of \$_____.

Borrower and Architect or Engineer, by executing the Consent to this assignment, agree that Agency does not assume any of Borrower’s obligations or duties concerning the Agreement and the Plans, including, but not limited to, the obligation to pay for the preparation of the Agreement and the Plans, until and unless Agency shall exercise its right hereunder.

Borrower hereby irrevocably constitutes and appoints Agency as its attorney-in-fact to demand, receive, and enforce Borrower’s rights with respect to the Agreement and the Plans, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Agency with the same force and effect as Borrower could do if this Assignment had not been made.

Borrower hereby represents and warrants to Agency that no previous assignment of its interest in the Agreement and the Plans has been made, and Borrower agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Agreement and the Plans so long as this Assignment is in effect.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, or successors in interest of the Borrower and Agency.

(document continues on following page)

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed on _____, 2024.

BORROWER:
TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Ramie Dare
Vice President

EXHIBIT P

Consent to Assignment

FOR VALUE RECEIVED, **TRANSBAY 2 FAMILY COMMERCIAL LLC**, a California limited liability company, ("Borrower") does hereby sell, assign, pledge, transfer and set over to the Successor Agency to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, ("Agency") all of its rights, title and interest in and to that certain architect's agreement ("Agreement") entered into by and between Borrower and Kennerly Architecture and Planning ("Architect") and any other contracts entered into between Borrower and any licensed design professional or engineer ("Architect" or Engineer"), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto ("Plans") prepared by the Architect(s), Engineer(s) and others for the account of Borrower in connection with the development of three community-serving commercial spaces at Transbay Block 2 East ("Project"). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amounts of \$_____.

The undersigned has prepared the Plans, hereby consents to the above Assignment hereby waives his/her lien rights, if any, for services rendered to date with respect to the Plans. The undersigned also agrees that in the event of a breach by Borrower of any of the terms and conditions of the Agreement or any other agreement entered into with the undersigned in connection with the Plans, that so long as Borrower's interest in the Plans is assigned to Agency, it will give written notice to Agency of such breach. Agency shall have sixty (60) days from the receipt of such notice of default to remedy or cure said default; however, nothing herein shall require the Agency to cure said default, but only gives it the option to do so.

The undersigned also agrees that in the event of default by Borrower under any of the documents or instruments entered into in connection with said Note, the undersigned, at Agency's request, shall continue performance under the Agreement in accordance with the terms hereof, provided that the undersigned shall be reimbursed in accordance with the Agreement for all services rendered on Agency's behalf including all services rendered on Borrower's behalf.

Dated: _____, 2024

ARCHITECT:

Kennerly Architecture and Planning

By: _____

Name: _____

Title: _____

(signatures continue on following page)

ENGINEER:

By: _____

Name: _____

Title: _____

(signatures continue on following page)

ENGINEER:

By: _____

Name: _____

Title: _____

EXHIBIT Q

Legal Description of the Site

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

[to be provided – commercial air space parcel]

EXHIBIT R

Final Financial Plan Confirmation Letter

To be attached on or before the Loan Closing Date

GROUND LEASE AGREEMENT

TRANSBAY BLOCK 2 EAST CHILDCARE AND COMMUNITY COMMERCIAL AIR
SPACE PARCEL

by and between

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND
COUNTY OF SAN FRANCISCO

and

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

for

TRANSBAY BLOCK 2 EAST CHILDCARE AND COMMUNITY COMMERCIAL SPACES
[ADDRESS]

San Francisco, CA 94105

DATED AND EXECUTED AS OF [], 2024

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CHILDCARE/COMMUNITY COMMERCIAL GROUND LEASE AGREEMENT

TRANSBAY BLOCK 2 EAST
CHILDCARE/COMMUNITY COMMERCIAL AIR SPACE PARCEL

THIS CHILDCARE AND COMMUNITY COMMERCIAL GROUND LEASE AGREEMENT (“**Lease**”) is entered into as of [_____], 2024 by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California (commonly known as the Office of Community Investment and Infrastructure and referred to herein as “**OCII**” or “**Landlord**”), and TRANSBAY 2 FAMILY COMMERCIAL LLC, a California limited liability company (consisting of Mercy Housing Calwest), as tenant (“**Tenant**”). The “**Effective Date**” of this Lease is the date of recordation of the Memorandum of this Lease in the Official Records of the City and County of San Francisco.

RECITALS

A. OCII is the fee owner of certain real property described in Exhibit 1 attached hereto (the “**Site**”).

B. In furtherance of the objectives of the Community Redevelopment Law of the State of California, the former Redevelopment Agency of the City and County of San Francisco (the “**Former Agency**”) undertook programs to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area (“**Project Area**”).

C. In 2003, the Transbay Joint Powers Authority (“**TJPA**”), the City and County of San Francisco (“**City**”) and the State of California (“**State**”) entered into a Cooperative Agreement setting forth the process for the transfer of certain State-owned parcels in the Project Area to the City and the TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1, which requires that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households (“**Transbay Affordable Housing Obligation**”). In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“**Implementation Agreement**”) which incorporates the affordable housing requirements of AB 812 and requires the Former Agency (now OCII) to prepare and sell certain formerly State-owned parcels, to construct and fund new infrastructure improvements (such as parks and streetscapes), and to meet affordable housing obligations.

D. The Board of Supervisors of the City and County of San Francisco (“**Board of Supervisors**”) approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006, filed in the Office of the Recorder of the City and County of San Francisco (“**Official Records**”) as Document No. 2006-I224836, as amended by Ordinance No. 84-15 (June 16, 2015) as Document No. 2015-K135871, as amended by Ordinance No. 62-16 (April 26, 2016) as Document No. 2016-K333253,

and as amended by Ordinance No. 09-23 (January 24, 2023) as Document No. 2023041529 (and as it may be further amended from time to time, the “**Redevelopment Plan**”).

E. The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the land use controls of the Redevelopment Plan and the Development Controls and Design Guidelines for the Transbay Redevelopment Project (2005) (and as currently amended “**Development Controls**”) are applicable and administered by the Former Agency (now OCII), and Zone Two in which the San Francisco Planning Code is applicable and administered by the City Planning Department.

F. On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency, by operation of law pursuant to California Health and Safety Code Section 34170 et seq. (“**Redevelopment Dissolution Law**”). Under the authority of the Redevelopment Dissolution Law and San Francisco Ordinance No. 215-12 (October 4, 2012) (establishing the Successor Agency Commission (“**Commission**”) and delegating to it state authority under the Redevelopment Dissolution Law), OCII is administering the enforceable obligations of the Former Agency. The Redevelopment Plan, Development Controls, Transbay Affordable Housing Obligation, Implementation Agreement and other relevant Project Area documents remain in effect and OCII retains all affordable housing obligations in the Project Area.

G. Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5(a). On April 15, 2013, the California Department of Finance (“**DOF**”) finally and conclusively determined that the Transbay Affordable Housing Obligation and the Implementation Agreement is a continuing enforceable obligation of OCII under the Redevelopment Dissolution Law. DOF has confirmed that “any sale, transfer, or conveyance of property related to [the Transbay Final and Conclusive Determination] is authorized.” Email from Justyn Howard, Assistant Program Budget Manager, DOF, to Tiffany Bohee, Executive Director, OCII (September 10, 2013, 09:17 am).

H. In accordance with its obligations under the Redevelopment Plan, the Transbay Affordable Housing Obligation and the Implementation Agreement, OCII intends to fund the development of two affordable housing developments on Block 2 as said block is depicted in the Redevelopment Plan (“**Block 2**”), by subdividing Block 2 into two vertical subdivisions (“**Block 2 West**” and “**Block 2 East**”), providing a subsidy for development and operation of mixed-use residential and ground-floor community commercial developments on Block 2 West and Block 2 East, and entering into ground lease agreements with affordable housing developers to cause the construction and operation of the two developments. OCII anticipates that its subsidy will facilitate additional public and private financing necessary to make the development and operation of the Block 2 financially feasible.

I. On April 6, 2021, by Resolution No. 09-2021, the Commission affirmed the selection of the development team for Block 2, including Mercy Housing California (“**Mercy**”, the sole member of Tenant) and co-developer Chinatown Community Development Center (“**CCDC**”) and approved an Exclusive Negotiations Agreement (“**ENA**”). In accordance with Mercy and CCDC’s development proposal and their Joint Development Agreement dated as of March 30, 2021 (“**JDA**”), which defines the roles and responsibilities of Mercy and CCDC in

developing Block 2, including requiring commercial affiliates of Mercy and CCDC to enter into a retail leasing agreement, reasonably reviewed and approved by OCII, providing Mercy commercial affiliate Mercy Commercial California (“**Mercy Commercial**”) with control over the marketing and leasing of community commercial spaces developed on the Block 2 Site (“**Community Commercial Leasing Agreement**”), subject to the requirements of this Lease and of any similar agreement between OCII and Mercy or an affiliate of CCDC.

J. On November 1, 2022, by Resolution Nos. 39-2022 through 44-2022, the Commission recommended an amendment to the Redevelopment Plan authorizing additional height and bulk for Block 2, conditionally approved schematic designs and related actions modifying the scope of development for Block 2 to include approximately 335 affordable residential units and approximately 11,351 square feet of community commercial space in two separate buildings on Block 2 comprised of 151 residential units, amenities and open space, and 2,945 square feet of commercial space on Block 2 West (“**Block 2 West Project**”) and 184 residential units, amenities and open space, and 8,406 square feet of community commercial space (“**Block 2 East Project**”). On February 3, 2023, by Ordinance No. 09-23, the City adopted amendments to the Redevelopment Plan permitting the modified scope for the development of Block 2.

K. To maximize the ability of the residential portion of the Block 2 East Project (the “**Residential Component**”) to obtain affordable housing financing, Mercy determined that the Project (as defined in Recital N below) should be constructed separately from the Residential Component by an affiliate of Mercy and within a separate air rights parcel under a separate ground lease and loan agreement. Mercy succeeded in obtaining a State affordable housing bond and tax credit allocations for the Residential Component on December 6, 2023.

L. The Project and the Residential Component are integrated portions of the overall Block 2 East Project, with the Project providing community-focused uses that are beneficial to residents of the Residential Component and the surrounding community, and the Residential Component providing a stable base of customers for the goods and services provided in the Project.

M. The Development Controls and Design Guidelines for the Transbay Redevelopment Project (2005) (“**DCDG**”) states that “[g]round floor commercial spaces are required along the Folsom Boulevard frontage.” DCDG at p. 24, section C.3. of Zone One-Transbay Downtown Residential. The Block 2 East Project includes frontage along Folsom Boulevard and therefore must include commercial space.

N. Tenant intends to construct a commercial space consisting of three (3) community-serving commercial units, including one approximately 6,447 square-foot unit intended for use as a childcare facility, finished to a warm shell condition (in compliance with the Mayor’s Office of Housing and Community Development (“**MOHCD**”) Commercial Guidelines) totaling approximately 8,406 square feet (each, a “**Community Commercial Unit**”) and an approximately 600 square-foot ground floor private internal courtyard, and an approximately 1,200 square foot second floor patio for childcare use (“**Courtyard**”), on Block 2 East, all as more particularly set forth in the Schematic Design conditionally approved on November 1, 2022 by Commission Resolution No. 44-2022, and as further set forth in Design Development Documents

approved by OCII on October 4, 2023 and as may be further revised in accordance with Redevelopment Requirements (collectively, the “**Project**”).

O. On August 4, 2023, the Citywide Affordable Housing Loan Committee approved a total OCII subsidy for the development of the Block 2 East Project in an aggregate amount not to exceed Seventy-Two Million Nine Hundred Seventy Two Thousand One Hundred Seventy Nine Dollars (\$72,972,179) comprised of (i) an approximately \$8,676,682 permanent loan to fund construction of the Project (“**Community Commercial Loan**”); (ii) an approximately \$61,961,845 permanent loan for the construction and operation of the Residential Component (as defined in Recital N, below); and (iii) approximately \$2,333,653 to reimburse costs associated with site preparation.

P. On _____, 2024, by Resolution No. __-2024, the Commission authorized a Community Commercial Loan Agreement by and between OCII and Tenant for disbursement of the Community Commercial Loan for development and operation of the Project (“**Community Commercial Loan Agreement**”), and this Lease by and between OCII and the Tenant for development and operation of the Project on the Site. Also on _____, 2024, the Commission separately approved a loan and residential ground lease for the purpose of constructing and thereafter operating on Block 2 East approximately one eighty two (182) units of low-income rental housing and two unrestricted managers’ units (“**Residential Component**”).

Q. In furtherance of the foregoing, OCII has subdivided Block 2 by Final Subdivision Map No. 11541 (recorded in the Official Records on December 1, 2023 as Document No. 2023097238 in Book 53 of Parcel Maps at Pages 160 to 163, “**Final Map**”), creating two vertical subdivisions of roughly equal size (Parcels 015 and 016 of the Final Map constituting Block 2 West and Parcels 017 and 018 of the Final Map constituting Block 2 East). The Project will be constructed within the Site, which is Parcel 018 of the Final Map. The Residential Component of Block 2 East will be constructed within Parcel 017 of the Final Map (the “**Residential Parcel**”).

R. OCII now intends to lease the Site to Tenant for the purposes of constructing and maintaining the Project on the Site, in accordance with the terms of this Lease.

S. Upon completion of the Project, OCII intends to assign its rights and obligations under this Lease and the Loan Documents (as defined herein), together with conveyance of fee title to Block 2 East (including the Site and the Residential Component) as a mixed-use housing assets to MOHCD, which is the designated Housing Successor of the City and County of San Francisco under Board of Supervisors Resolution 11-12 (January 24, 2012), as required by Redevelopment Dissolution Law, Health & Safety Code § 34176 (a), and OCII’s approved Long-Term Property Management Plan dated December 2015.

T. As a mixed-use asset under Section 34176 (f) of the Health and Safety Code, the Residential Component and the Project will be transferred to MOHCD as an affordable housing asset because of the overall value to the community and the benefit to taxing entities of keeping these uses together.

NOW, THEREFORE, in consideration of the mutual promises and covenants, the purposes stated in the above Recitals, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant (each a “**Party**” and collectively the “**Parties**”) hereby agree as follows:

ARTICLE 1 PREMISES; TERMS; EXTENSION OPTIONS; DEFINITIONS

1.01 Premises.

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Site together with all appurtenant rights, privileges, and licenses as of the Effective Date, for and in consideration of the ground rents and the covenants and agreements contained in this Lease.

1.02 Initial Term.

The Term of this Lease (the “**Term**”) will commence on the Effective Date and will be coterminous with the term of any ground lease for the Residential Component.

1.03 Notice of Extension.

Provided that the Tenant is not in default under the terms of this Lease or the Loan Documents beyond any notice, grace or cure period either at the time of giving of an Extension Notice (defined below) or on the Termination Date, not later than one hundred eighty (180) days before the Termination Date, the Tenant may notify Landlord in writing that it wishes to exercise its option to extend the term of this Lease (an “**Extension Notice**”). The Term will be extended for twenty-four (24) years from the Termination Date upon Tenant’s exercise of this option, for a total Term not to exceed ninety-nine (99) years; provided, however, that in all circumstances, the Term of this Lease will be coterminous with the term of any ground lease for the Residential Component.

1.04 Termination Concurrent with Ground Lease for Residential Component.

Notwithstanding anything to the contrary herein or in the Loan Documents, this Lease will automatically terminate upon the termination of any ground lease for the Residential Component, unless specified in writing by Landlord prior to the termination of said Residential Component ground lease. Tenant will have no right to cure any default under any Residential Component ground lease or otherwise object to a termination of this Lease based on termination of any Residential Component ground lease.

1.05 Definitions and Exhibits.

All capitalized terms used herein have the meanings given them when first defined or as set forth in this Section 1.05, unless the context clearly requires otherwise. Whenever an article, section, subsection, or paragraph is referenced, it is a reference to this Lease unless otherwise

specifically referenced. Whenever an “Exhibit” is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Attachments are incorporated herein.

“**Additional Ground Rent**” means all sums (other than Ground Rent) that may be or become payable by Tenant to Landlord under this Lease.

“**Annual Statement**” is defined in Section 3.01(e).

“**Base Rent**” is defined in Section 3.01(a).

“**Block 2**” is defined in Recital H.

“**Block 2 East**” is defined in Recital H.

“**Block 2 West**” is defined in Recital H.

“**Block 2 East Project**” is defined in Recital J.

“**Books and Records**” is defined in Section 3.01(f).

“**Business Day**” means a day in which normal business is transacted. Generally, Monday through Friday but not weekends or holidays.

“**Carrying Costs**” is defined in Section 3.02.

“**Certificate of Occupancy**” means a Temporary Certificate of Occupancy or a Final Certificate of Occupancy as issued by the San Francisco Department of Building Inspection.

“**CCDC**” is defined in Recital I.

“**Change**” is defined in Section 8.01(b).

“**Certificate of Completion**” is defined in Section 7.01.

“**City**” means the City and County of San Francisco, a municipal corporation.

“**Claim(s)**” is defined in Section 20.01.

“**Commercial Use**” has the meaning set forth in the MOHCD Commercial Underwriting Guidelines.

“**Common Interest Agreements**” is defined in Section 5.04.

“**Community Commercial Loan**” is defined in Recital O.

“**Community Commercial Spaces Operating Agreement**” has the meaning set forth in Recital I.

“Community Commercial Unit” is defined in Recital M.

“Community Serving Use” has the meaning set forth in the MOHCD Commercial Underwriting Guidelines.

“Condemnation” means the taking of all or any part of any property or the possession thereof under the power of eminent domain or voluntary sale of all or any part of any property to any person having the power of eminent domain, provided that the property or such part thereof is then under the threat of condemnation.

“Condemnation Date” means the earlier of: (a) the date when possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

“Construction Documents” is defined in Section 6.02.

“Courtyard” is defined in Recital N.

“Declaration of Restrictions” means the restrictions and covenants substantially in the form of Exhibit K to the Loan Documents.

“Effective Date” is defined in the introductory paragraph hereof.

“Environmental Law” is defined in Section 20.02(b)(ii).

“Event of Default” is defined in Section 25.01.

“Extension Notice” is defined in Section 1.03.

“Facilities Condition Report” has the meaning set forth in Section 15.03.

“Final Financial Plan” has the meaning set forth in the Loan Documents.

“Force Majeure” is defined in Section 25.02.

“Former Agency” is defined in Recital B.

“Ground Rent” is defined in Section 3.01.

“Hazardous Substance” is defined in Section 20.02(b)(i).

“Implementation Agreement” is defined in Recital C.

“Impositions” is defined in Section 11.01(b).

“**Improvements**” means all physical construction, buildings (or portions thereof), structures and anything else to be erected, built, placed, installed or constructed upon or within the Site (exclusive of personal property, and furniture, fixtures and equipment).

“**Indemnified Party or Parties**” is defined in Section 20.01.

“**Landlord**” is defined in the introductory paragraph hereof.

“**Laws**” shall mean all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, or the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to the Premises or any part thereof, including, without limitation, any vault space, sidewalks, curbs or alleyways, use thereof and the buildings and improvements thereon, and similarly the phrase “**Law and Ordinance**” shall be construed to mean the same as the above in the singular as well as the plural.

“**Lease**” is defined in the introductory paragraph hereof, and means this ground lease agreement.

“**Lease Year**” means each calendar year during the Term, beginning on January 1 and ending on December 31, provided that the “**First Lease Year**” will commence on the Effective Date and continue through December 31st of that same calendar year. Furthermore, the “**Last Lease Year**” will commence on January 1 and end upon the expiration of the Term.

“**Leasehold Estate**” means the estate held by the Tenant created by and pursuant to this Lease.

“**Leasehold Mortgage**” means any mortgage, deed of trust, trust indenture, letter of credit or other security instrument, and any assignment of the rents, issues and profits from the Premises, or any portion thereof, which constitute a lien on the Leasehold Estate.

“**Loan Documents**” means those certain loan agreements, notes, deeds of trust, declarations, and any other documents executed and delivered in connection with the predevelopment, construction, and permanent financing for the Project.

“**Memorandum of Ground Lease**” has the meaning set forth in Article 50. A form of the Memorandum of Ground Lease is included as Exhibit 4.

“**MOHCD**” means the San Francisco Mayor’s Office of Housing and Community Development, the Housing Successor to the Redevelopment Agency of the City and County of San Francisco, as designated under Board of Supervisors Resolution No. 11-12 (January 26, 2012).

“MOHCD Commercial Underwriting Guidelines” means MOHCD’s Commercial Underwriting Guidelines effective March 3, 2023, as they may be amended from time to time, or any similar guidance later promulgated by MOHCD.

“Mortgagee” means the holder of a Leasehold Mortgage.

“Net Commercial Cash Flow” means Commercial Income minus Commercial Expenses for a given period.

“Occupant” or **“Occupants”** means any Community Commercial Unit subtenant, licensees, concessionaire, or other person, firm or entity entitled to use and occupy any area within the Premises under Tenant.

“OCII” means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California and commonly referred to the Office of Community Investment and Infrastructure, Landlord under this Lease.

“Official Records” is defined in Recital D.

“Percentage Rent” means forty percent (40%) of annual Net Commercial Cash Flow.

“Permitted Exceptions” means liens in favor of the Landlord, real property taxes and assessments that are not delinquent, any leasehold liens created in accordance with Article 23, and any other liens and encumbrances the Landlord expressly approves in writing.

“Personal Property” means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other personalty that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

“Premises” means the Site and all Improvements.

“Prime Rate” as reported by the Wall Street Journal’s bank survey.

“Prohibited Use” is defined in Section 9.02.

“Project” is defined in Recital N. If indicated by context, Project means the Leasehold Estate and the fee interest in the Improvements on the Site.

“Project Area” is defined in Recital B.

“Project Expenses” means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (a) all charges incurred

in the operation of the Project for utilities, maintenance, common area maintenance (“CAM”) charges and other fees due and payable under Common Interest Agreements, Carrying Costs, Impositions, audits, income taxes, franchise taxes, real estate taxes and assessments, asset management fees, and premiums for insurance required under this Lease or by other Mortgagees providing secured financing for the Project; (b) all other expenses actually incurred by Tenant to cover operating costs of the Project, including maintenance, repairs, and turnover expenses; (c) required, or necessary, deposits to the Replacement Reserve Account, Operating Reserve Account, Leasing Reserve Account, Tenant Improvements Reserve Account, and any other reserve account required under the Loan Documents or required by another Mortgagee or regulatory agency, each as approved by OCII and MOHCD pursuant to the Final Financial Plan; (d) annual Ground Rent payments and Percentage Rent payments (if any); and (e) any extraordinary expenses approved in advance by OCII (other than expenses paid from any reserve account). Project Expenses excludes depreciation, amortization, depletion, other non-cash expenses or expenditures from reserve accounts.

“**Project Fees**” means any fees established in the Final Financial Plan and/or consistent with the limitations set out in the MOHCD Commercial Guidelines.

“**Project Income**” means all revenue, income, receipts in any form, and other consideration received by Tenant from the operation of the Project, including without limitation: all rents, fees, deposits, accrued interest disbursed from any reserve account required under the Loan Documents for a purpose other than that for which the reserve account was established; reimbursements and other charges paid to Tenant in connection with the Project; and the proceeds of business interruption or similar insurance. Project Income does not include interest accruing on any portion of the Community Commercial Loan.

“**Public Benefit Use**” is 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.

“**Redevelopment Dissolution Law**” is defined in Recital F.

“**Redevelopment Plan**” is defined in Recital D.

“**Redevelopment Requirements**” means Redevelopment Plan and Plan Documents (as defined in the Redevelopment Plan).

“**Release**” is defined in Section 20.02(b)(iii).

“**Residential Component**” is defined in Recital O.

“**Residential Parcel**” is defined in Recital P.

“**Schedule of Performance**” is attached hereto as Exhibit 2.

“**Significant Change**” is defined in Section 19.01.

“**Site**” is defined in Recital A.

“**Space Sublease**” means any lease, sublease, license, concession or other agreement by which any Tenant leases, subleases, demises, licenses or otherwise grants to any person, firm or corporation, in conformity with the provisions of this Lease, the right to occupy portions of the Premises to the exclusion of others.

“**Space Subtenant**” means any person, firm or corporation, including its agents, subtenants, assignees, licensees, and concessionaires, that leases, occupies or has the right to occupy under and by virtue of a Space Sublease or otherwise occupies and/or conducts any operation of any kind in the Project.

“**Subtenant Improvements**” means any fixtures, furniture, furnishings, equipment, machinery, supplies and other personalty of a quantity and quality necessary for the occupancy of any Space Subtenant.

“**Successor Agency**” means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure or OCII, and its successors and/or assigns.

“**Surplus Cash**” means all Project Income in any given Lease Year remaining after payment of Project Expenses and Project Fees. The amount of Surplus Cash will be based on figures contained in audited financial statements. All permitted uses and distributions of Surplus Cash will be governed by Section 5.03(d) of this Lease.

“**Tenant**” is defined in the introductory paragraph hereof.

“**Term**” means the period of time during which this Lease is effective, commencing as of the Effective Date and ending upon expiration or termination in accordance with Section 1.02.

“**Termination Date**” is defined in Section 1.02.

“**Transbay Affordable Housing Obligation**” is defined in Recital C.

ARTICLE 2 CONDITION OF SITE – “AS-IS”

2.01 As-Is Condition.

Tenant acknowledges and agrees that Tenant is familiar with Block 2 and the Site, the Site is an air rights parcel created by vertical subdivision of Block 2, and the Site is being leased and accepted in its “AS IS” condition, without any improvements or alterations by Landlord, without representation or warranty of any kind, and subject to all applicable Laws governing their use, development, occupancy and possession, and Tenant agrees to take possession of the Premises in its “AS IS” condition on the Effective Date, subject to the provisions of this Lease. Tenant represents and warrants to Landlord that Tenant has investigated and inspected, either

independently or through agents of Tenant's own choosing the condition of Block 2 East and the Site and the suitability of the Site for Tenant's business and intended use (including without limitation the Phase I and Phase II Environmental Site Assessment Reports prepared by AEW Engineering, Inc., dated November 3, 2020 and December 4, 2023 respectively, the contents of which shall be considered disclosed to and acknowledged by Tenant for purposes of compliance with any applicable Laws). Tenant acknowledges and agrees that neither Landlord nor any of its agents have made, and Landlord hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Site, the physical or environmental condition of Block 2 East or the Site, the present or future suitability of the Site for Tenant's business, or any other matter whatsoever relating to Block 2 East or the Site, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose; it being expressly understood that the Site is being leased in an "AS IS" condition with respect to all matters.

2.02 Accessibility Disclosure.

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

ARTICLE 3 RENT AND FINANCIAL ACCOUNTING

3.01 Ground Rent During Term.

Tenant shall pay Landlord per lease year (i) Base Rent as defined in subsection (a) below, and (ii) if applicable, Percentage Rent, as defined in subsection (b), below, without offset of any kind and without necessity of demand, notice or invoice from Landlord (together, "**Ground Rent**").

(a) Base Rent.

(b) "**Base Rent**" means, One and No/100 Dollars (\$1.00) for any given Lease Year (or, as applicable, for any partial Lease Year, an amount prorated to the duration of the partial Lease Year). Base Rent shall be due and payable in arrears on January 31st following the Lease Year for which it is owed; provided, however, that at Tenant's election, Tenant may prepay the cumulative Base Rent for the entire Term in one lump sum in the First Lease Year.

(c) Percentage Rent. Commencing immediately upon full repayment of the Community Commercial Loan, Tenant shall owe Percentage Rent (if any) to Landlord, payable to Landlord in accordance with this subsection. "**Percentage Rent**" means forty percent (40%) of the "**Net Commercial Cash Flow**," being Project Income minus Project Expenses and Project Fees (if any) for the applicable Lease Year (or portion thereof).

(i) Payments of Percentage Rent.

(1) Except for the Last Lease Year, Percentage Rent shall be paid to OCII in arrears on June 30th following the Lease Year for which it is owed. For the Last Lease Year, Percentage Rent shall be paid on or before the [sixtieth (60th) day immediately following the end of the Term (which obligation shall survive the expiration of the Term, including by early termination).]

(2) Landlord's acceptance of any sums paid by Tenant as Percentage Rent as shown by the applicable Annual Statement (defined below) will not be an admission of the accuracy of the Annual Statement or the amount of the Percentage Rent payment. Landlord's receipt of a portion of Percentage Rent will be deemed strictly as rental and nothing in this Lease will be construed to create the legal relation of a partnership or joint venture between Landlord and Tenant.

(3) Tenant will maintain adequate accounting systems and controls reasonably satisfactory to OCII to ensure that Project Income collected and all Project Expenses incurred are properly accounted for and recorded on a cash basis.

(4) Any provision to the contrary notwithstanding, it will be a material breach of this Lease if, at any time, Tenant takes any action or enters into any arrangement or agreement with any Space Subtenant of any portion of the Site, or Tenant's employees, creditors, officers or any other person which arrangement or agreement is intended to understate or to conceal Tenant's Percentage Rent under this Lease.

(d) Annual Statements.

(i) On or before May 30th immediately following each anniversary of the Effective Date, Tenant will deliver a complete statement (each, an "**Annual Statement**") showing the computation of the Project Income, Project Expenses and Project Fees for the immediately preceding Lease Year in a form approved by OCII. Each Annual Statement must show in reasonable detail (i) the Project Income for the immediately preceding Lease Year, including an itemized list of any and all deductions or exclusions from Project Income that Tenant may claim and that are expressly permitted under this Lease, (ii) the Project Expenses and Project Fees for the immediately preceding Lease Year, and (iii) a computation of the Percentage Rent for the immediately preceding Lease Year. Each Annual Statement must be certified as accurate, complete, and current by an independent certified public accounting firm acceptable to OCII. Tenant may submit its Annual Statement as part of a joint annual statement with lessee of the Residential Parcel.

(ii) If Tenant fails to deliver any Annual Statement within the time period set forth in this subsection 3.01(c), (regardless of whether any Percentage Rent is actually paid or due to Landlord for the preceding Lease Year) and that failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of the failure from Landlord, Landlord will have the right, among its other remedies under this Lease, to employ a certified public accountant to make an examination of Tenant's Books and Records (defined below) (and the Books and Records of any other occupant of the Community Commercial Units) as may be necessary to certify the amount of the Project Income, Project Expenses and [Project Fees] for the period in question. The certification will be binding upon Tenant and Tenant will promptly pay to

Landlord the total reasonable cost of the examination and Landlord's other reasonable costs (including attorneys' fees) in exercising its examination rights, together with the full amount of Percentage Rent due and payable for the period in question. Tenant acknowledges that the late submittal of any Annual Statement will cause Landlord increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Landlord will incur by reason of Tenant's lateness, but Landlord's acceptance of any such amount will not limit Landlord's rights or remedies under this Lease for Tenant's failure to perform its obligations under this Section.

(e) Books and Records; Audit.

(i) **"Books and Records"** means all of Tenant's books, records, and accounting reports or statements relating to the business at or use of the Project, this Lease, the tenant improvements, any alterations, and the operation and maintenance of the Project, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the business in or use of the Project, and any other bookkeeping documents Tenant utilizes in its business operations for the Project. Tenant must maintain a separate set of accounts to allow a determination of all Project Expenses, Project Fees, all Project Income generated directly from the Project, and all exclusions therefrom.

(ii) Tenant agrees, and agrees to require, that the business conducted in the Project will be operated with a non-resettable register and so that a duplicate dated sales slip or such other recording method reasonably acceptable to Landlord is issued with each sale, whether for cash, credit, or exchange. Furthermore, Tenant will keep (and will cause its agents, Space Subtenants, assignees, licensees, and concessionaires, or otherwise to keep) at the Project, at all times between the Effective Date and the expiration or earlier termination of this Lease, complete and accurate Books and Records that contain all information required to permit Landlord to verify Project Income, deductions and exclusions therefrom, and Project Expenses that are in accordance with this Lease and with generally accepted accounting practices consistently applied from period to period with respect to all operations of the business to be conducted in or from the Project. Tenant will retain (and will cause its agents, Space Subtenants, assignees, licensees, and concessionaires, or otherwise to retain) such Books and Records for a period (the **"Audit Period"**) that is the later of (i) four (4) years after the end of each Lease Year (or portion thereof) to which such Books and Records apply, or (ii) if an audit is commenced or if a controversy arises between the parties regarding the Percentage Rent payable, until such audit or controversy is terminated.

(iii) Tenant will make its Books and Records available to Landlord, any City auditor, or any auditor or representative designated by Landlord (each referred to in this subsection as **"Landlord's Audit Representative"**), on [a rolling basis] no less than fifteen (15) Business Days' prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after an Annual Statement is delivered to Landlord. Tenant will cooperate with Landlord's Audit Representative during the course of any audit, provided, however, such audit will occur at Tenant's business office, or at such other location in San Francisco where the Books and Records are kept, and no books or records may be removed by Landlord's Audit Representative without prior express written consent of Tenant (but copies may be made by Landlord's Audit Representative on site), and once commenced, with Tenant's cooperation, the

audit will be diligently pursued to completion by Landlord within a reasonable time, so long as Tenant makes available to Landlord's Audit Representative all relevant Books and Records in a timely manner. If an audit is made of the Books and Records and Landlord claims that errors or omissions have occurred, the Books and Records will be retained by Tenant and made available to Landlord's Audit Representative until those matters are expeditiously resolved with Tenant's cooperation. If Tenant operates the Project through one or more Space Subtenants or agents or otherwise, Tenant will require each such Space Subtenant or agent or other party to provide Landlord with the copy of this audit right. Upon completion of the audit, Landlord will promptly deliver a copy of the audit report to Tenant.

(iv) If an audit reveals that Tenant has understated its Net Commercial Cash Flow for the applicable audit period, Tenant will pay OCII, promptly upon demand, the difference between the Percentage Rent payment Tenant has paid and the Percentage Rent payment it should have paid to OCII, plus, if the difference is a material amount and if required by OCII, interest from the date of the error in the payment equal to ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under applicable law, if OCII elects to charge such interest. If an audit reveals that Tenant has overstated its Net Commercial Cash Flow for the applicable audit period, Tenant shall be entitled to a credit equal to the difference between the amount Tenant has paid and the amount it should have paid to OCII against the next installment of Percentage Rent owed by Tenant. If Tenant understates the Net Commercial Cash Flow for any audit period by three percent (3%) or more, Tenant will pay the reasonable cost of the audit. A second understatement of three percent (3%) or more within any three (3) Lease Year period will be a material default of this Lease.

(f) Tenant's Compliance with City Business and Tax Regulations Code. Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment OCII is required to make to Tenant under this Lease is withheld, then OCII will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

3.02 Tenant's General Obligation to Pay Carrying Costs.

In addition to other provisions of this Lease governing Tenant's obligation to pay certain costs, Tenant acknowledges and agrees that it is responsible for, and shall pay upon due (except as provided in Article 12) all taxes, maintenance and other costs, charges, impositions and obligations attributed to the Premises, any Subtenant Improvements, and Tenant's leasehold interest under this Lease ("**Carrying Costs**"). Failure to pay the Carrying Costs shall be a default under this Lease, subject to Landlord's remedies provided in Articles 14 and 26, including the ability to pay any Carrying Costs left unpaid after providing at least fifteen (15) days prior written notice to Tenant (unless for immediate safety reasons or to prevent cancellation of required insurance policies or to avoid the imposition of penalties if earlier payment is required, in which cases Landlord may act immediately and shall provide written notice to Tenant as soon as possible). If Landlord pays any

Carrying Costs, whether to cure a default or otherwise protect its interests hereunder, and provided Landlord has provided Tenant with notice and an opportunity to cure required in this subsection, Tenant shall reimburse Landlord the Carrying Costs as Additional Ground Rent on the Ground Rent payment date immediately following the date of Landlord's payment of Carrying Costs. Tenant is responsible for all of Tenant's expenses, and Tenant shall, in accordance with ARTICLE 20, indemnify, defend, and hold harmless Landlord and the other Indemnified Parties against all Claims (as such terms are defined in ARTICLE 20 below) arising in connection with Tenant's failure to pay Carrying Costs.

ARTICLE 4 LANDLORD COVENANTS

OCII is duly created, validly existing and in good standing under the Law, and has full right, power and authority to enter into and perform its obligations under this Lease. Landlord covenants and warrants that the Tenant and its tenants will have, hold and enjoy, during the Term, peaceful, quiet and undisputed possession of the Site leased without hindrance or molestation by or from anyone so long as the Tenant is not in default under this Lease.

ARTICLE 5 TENANT COVENANTS

Tenant covenants and agrees for itself and its successors and assigns to or of the Premises, or any part thereof, that:

5.01 Authority.

Tenant is a California limited liability company and has full rights, power, and authority to enter into and perform its obligations under this Lease.

5.02 Financial Assurance.

Tenant will submit for Landlord's approval, on the dates specified in the Schedule of Performance, evidence satisfactory to Landlord that Tenant has sufficient equity capital and commitments for construction and permanent financing, and/or such other evidence of capacity to proceed with the construction of the Improvements in accordance with this Lease as is acceptable to Landlord. Landlord acknowledges that as of the Effective Date Tenant has met this requirement.

5.03 Use of Site and Rents.

During the Term of this Lease, Tenant and its successors and assigns will comply with the following requirements:

(a) **Permitted Uses.** Tenant will devote the Site to, exclusively and in accordance with, the uses specified in the Declaration of Restrictions and this Lease, including as specified in ARTICLE 9 below, which are the only uses permitted by this Lease. Tenant acknowledges that a prohibition on the change in use contained in Section 9.01 is expressly authorized by California Civil Code section 1997.230 and is fully enforceable.

(b) **MOHCD Commercial Underwriting Guidelines.** Tenant shall comply with the MOHCD Commercial Underwriting Guidelines, as amended from time to time, for the

purpose, among others, of establishing and maintaining that the overall value to the community and benefit to taxing entities is keeping the Project and the Residential Project intact as an affordable housing asset under Redevelopment Dissolution Law.

(c) Nondiscrimination. The Tenant herein covenants by and for itself its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the Tenant, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(d) Access for Persons with Disabilities. Tenant will comply with all applicable Laws providing for access for persons with disabilities, including, but not limited to, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

(e) Permitted Uses of Surplus Cash. Until such time as the Community Commercial Loan is repaid in full, if the Tenant is in compliance with all applicable requirements and agreements under this Lease, Tenant shall use any Surplus Cash to make the following payments in the following order of priority:

(i) First, to replenish the Replacement Reserve Account and Operating Reserve Account, if necessary, up to the amount required by Mortgagees;

(ii) Second, two-thirds (2/3) of remaining Surplus Cash to OCII to repay the Community Commercial Loan; and

(iii) Then, any remaining Surplus Cash may be used by Tenant for any purposes permitted under MOHCD's residual receipt policy or other policy governing the Project, as it may be amended from time to time.

Notwithstanding the foregoing, Tenant and Landlord agree that the distribution of Surplus Cash may be modified based on the requirements of other Mortgagees. Once the Community Commercial Loan has been repaid in full, subsections (d)(ii) and (d)(iii) shall be replaced by the provisions for payment of Percentage Rent.

5.04 Reciprocal Easements; Covenants, Conditions and Restrictions.

Subject to OCII review and approval, Tenant shall cooperate with the lessee of the Residential Parcel to prepare and execute a reciprocal easement agreement, covenants, conditions and restrictions and/or other similar document(s) ("**Common Interest Agreements**") to establish the terms for access, use, maintenance, repair, replacement to and of spaces, structural supports and all other components of the Block 2 East Project shared between or common or mutually

necessary to the development and/or operation of improvements on the Commercial Parcel and the Residential Parcel.

5.05 Landlord Deemed Beneficiary of Covenants.

In amplification and not in restriction of the provisions of the preceding subsections, it is intended and agreed that Landlord will be deemed beneficiary of the agreements and covenants provided in this Article 5 for in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Those agreements and covenants will run in favor of Landlord for the entire term of those agreements and covenants, without regard to whether Landlord has at any time been, remains, or is an owner of any land or interest therein, or in favor of, to which such agreements and covenants relate. Landlord or its successor will have the exclusive right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

ARTICLE 6 CONSTRUCTION OF IMPROVEMENTS

6.01 Schedule of Performance.

Tenant shall undertake and complete all physical construction of the Project, in accordance with the Schedule of Performance, Exhibit 2.

6.02 General Requirements and Rights of Landlord.

All construction documents for the construction of the Improvements by Tenant (the “**Construction Documents**”) must be prepared by a person registered in and by the State of California to practice architecture and shall be in conformity with this Lease, including any limitations established in OCII’s approval of the schematic drawings, preliminary construction documents, and final construction documents for the Project, and all applicable Federal, State, and local laws and regulations. The architect will use, as necessary, members of associated design professions, including engineers and landscape architects. All Improvements shall be owned, for federal income tax purposes, by Tenant, subject to the rights of Landlord upon expiration or early termination of the Lease.

6.03 OCII Approvals and Limitation Thereof.

The Construction Documents must be approved by OCII in the manner set forth below:

(a) Compliance with Redevelopment Plan and Lease. OCII’s approval with respect to the Construction Documents is limited to determination of their compliance with the Redevelopment Requirements, Schematic Design, this Lease and the Loan Documents. The Construction Documents will be subject to general architectural review and guidance by OCII as part of this review and approval process.

(b) Approval of Construction Documents by OCII. Tenant will submit and OCII will approve or disapprove the Construction Documents referred to in this Lease within the times established in the Schedule of Performance, so long as each set of the applicable Construction Documents are complete and properly submitted within the time frames set forth in the Schedule of Performance. Failure by OCII either to approve or disapprove within the times established in the schedule of Performance will entitle Tenant to a day for day extension of time for completion of any activities delayed as a direct result of OCII's failure to timely approve or disapprove the Construction Documents.

(c) Disapproval of Construction Documents by OCII. If OCII disapproves the Construction Documents in whole or in part as not being in compliance with Redevelopment Requirements or this Lease, Tenant will submit new or corrected Construction Documents which are in compliance within thirty (30) days after written notification to it of disapproval, and the provision of this section relating to approval, disapproval and re-submission of corrected Construction Documents will continue to apply until the Construction Documents have been approved by OCII; provided, however, that in any event Tenant must submit satisfactory Construction Documents (*i.e.*, approved by OCII) no later than the date specified therefor in the Schedule of Performance.

(d) OCII Does Not Approve Compliance with Construction Requirements. OCII's approval is not directed to engineering or structural matters or compliance with local building codes and regulations, the Americans with Disabilities Act, or any other applicable Law relating to construction standards or requirements. Nothing in this Lease will limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, OCII is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable Laws.

6.04 Construction of Improvements to be in Compliance with Construction Documents and Law.

(a) Compliance with Approved Documents. Construction of the Improvements must be in compliance with all OCII-approved Construction Documents.

(b) Compliance with Local, State and Federal Law. Construction of the Improvements must be in strict compliance with all applicable Laws, including all laws relating to accessibility for persons with disabilities and all applicable mitigation measures identified in the Final Environmental Impact Statement/Environmental Impact Report for the Transbay Redevelopment Project Area. Tenant understands and agrees that Tenant's use of the Premises and construction of the Improvements permitted under this Lease will require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, City agencies. Tenant will be solely responsible for obtaining any and all such regulatory approvals. Tenant will bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and will be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Project or OCII's interest therein must first be approved by OCII in its sole discretion. Any fines or penalties levied

as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval will be immediately paid and discharged by Tenant, and Landlord will have no liability, monetary or otherwise, for any such fines or penalties. Tenant will indemnify, defend, and hold harmless OCII and the other Indemnified Parties hereunder against all Claims (as such terms are defined in ARTICLE 21 below) arising in connection with Tenant's failure to obtain or failure by Tenant, its agents, or invitees to comply with the terms and conditions of any regulatory approval except to the extent such Claims are caused by gross negligence or willful misconduct of the party seeking indemnification.

6.05 Issuance of Building Permits.

(a) Tenant will have the sole responsibility for obtaining all necessary building permits and will make application for such permits directly to the City's Department of Building Inspection. Landlord understands and agrees that Tenant may use the Fast Track method of permit approval for construction of the Improvements. Tenant shall report permit status every thirty (30) days to OCII. Failure to timely file and to diligently pursue issuance of permits shall be a breach of this Lease.

(b) The Tenant is advised that the Central Permit Bureau will forward all building permits to OCII for approval of compliance with Redevelopment Requirements. OCII's approval under this Section 6.05(b) is limited to its determination of compliance with Redevelopment Requirements and does not include Section 6.03(d) matters. OCII evidences such compliance by signing the permit and returning the permit to the Central Permit Bureau for issuance directly to the Tenant. Approval of any intermediate permit, however, is not approval of compliance with all Redevelopment Requirements necessary for a full and final building permit.

6.06 Performance and Payment Bonds.

Except as provided elsewhere in this Lease or the Loan Documents, before commencement of construction of the Improvements, and subject to the reasonable approval of OCII, Tenant will deliver to OCII performance and payment bonds, each for the full value of the cost of construction of the Improvements, which bonds will name OCII as co-obligee, or such other completion security which is acceptable to OCII. The payment and performance bonds may be obtained by Tenant's general contractor and name Tenant and OCII as co-obligees.

6.07 OCII Approval of Changes after Commencement of Construction.

Tenant may not approve or permit any change to the Construction Documents approved by OCII without OCII's prior written consent, except as may be permitted under the Loan Documents.

6.08 Times for Construction.

Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any part thereof, that Tenant and such successors and assigns will promptly begin and diligently prosecute to completion the construction of the Improvements upon the Site, and that such construction will be completed no later than the dates specified in the Schedule of Performance, subject to Force Majeure, unless such dates are extended by Landlord.

6.09 Reports.

Commencing when construction of the Improvements commences and continuing until completion of construction of the Improvements, Tenant will make a report in writing to OCII every month, in such detail as may reasonably be required by OCII, as to the actual progress of the Tenant with respect to the construction. During such period, the work of the Tenant shall be subject to inspection by representatives of OCII, at reasonable times and upon reasonable advance notice.

6.10 Notice of Completion.

Promptly upon completion of the construction of the Improvements in accordance with the provisions of this Lease, Tenant will file a Notice of Completion (“**NOC**”) and record the NOC in the San Francisco Recorder’s Office. Tenant will provide OCII with a copy of the recorded NOC.

6.11 Completion of Improvements by New Developer.

In the event a Holder or a successor thereto forecloses, obtains a deed in lieu of foreclosure, or otherwise realizes upon the Premises and undertakes construction of the Improvements (“New Developer”) (a) the New Developer will not be bound by the provisions of the Schedule of Performance with respect to any deadlines for the completion of the Improvements but will only be required to complete the Improvements with due diligence and in conformance with a new Schedule of Performance as agreed upon by the New Developer and OCII, (b) the New Developer will only be required to complete the Improvements in accordance with all applicable building codes and ordinances, and the OCII-approved Construction Documents with such changes that are mutually agreed upon by OCII and the New Developer under the following clause (c); and (c) OCII and New Developer will negotiate in good faith such reasonable amendments and reasonable modifications to the Schedule of Performance and Article 6 of this Lease as the parties mutually determine to be reasonably necessary based upon the financial and construction conditions then existing.

ARTICLE 7 COMPLETION OF IMPROVEMENTS

7.01 Certificate of Completion—Issuance.

After completion of the construction of the Improvements in accordance with the provisions of this Lease, if requested by Tenant together with reasonable supporting documentation, including an architect’s certification of completion, OCII will furnish Tenant with an appropriate instrument so certifying (the “**Certificate of Completion**”). OCII’s Certificate of Completion will be a conclusive determination of satisfaction and termination of the agreements and covenants of this Lease regarding Tenant’s obligation to construct the Improvements in accordance with approved Construction Documents. The Certificate of Completion will include the dates of the beginning and completion of construction of the Improvements, but the Certificate of Completion will not constitute evidence of compliance with or satisfaction of Tenant’s obligations to any Mortgagee, or any insurer of a Leasehold Mortgage, securing money loaned to finance the construction or any part thereof; provided further, that OCII’s issuance of a Certificate of Completion does not relieve Tenant or any other person or entity from any and all OCII

requirements, regulatory approvals, or conditions relating to construction or occupancy of the Improvements, which requirements or conditions must be complied with separately.

OCII may elect to issue Tenant a Certificate of Completion if no events of default by Tenant are then existing under this Lease or the Loan Documents, and Tenant has completed the Improvements in accordance with this Lease, except for: (1) punch list items; and (2) other items that do not adversely affect or impair Tenant's use and occupancy of the Improvements for the purposes contemplated by this Lease and that do not preclude the City's issuance of a Certificate of Occupancy or other certificate or authorization of Tenant's use and occupancy of the Improvements. However, OCII will not be obligated to issue a Certificate of Completion in these circumstances unless and until Tenant has provided to OCII, at OCII's request, a bond, letter of credit, certificate of deposit, or other security reasonably acceptable to OCII in an amount equal to 110% of the estimated cost to OCII of completing the items described in clauses (1) through (3) above, as reasonably determined by OCII.

7.02 Certifications to be Recordable.

The Certificate of Completion will be in a form that permits it to be recorded with the Recorder of the City.

7.03 Certification of Completion—Non-Issuance Reasons.

If OCII refuses or fails to provide a Certificate of Completion in accordance with the provisions of Section 7.01, OCII will provide Tenant with a written statement indicating in adequate detail in what respects Tenant has failed to complete the construction of the Improvements in accordance with the provisions of this Lease or is otherwise in default hereunder and what measures or acts will be necessary, in the opinion of OCII, for Tenant to take or perform in order to obtain a Certificate of Completion.

ARTICLE 8 CHANGES TO IMPROVEMENTS; TITLE TO IMPROVEMENTS

8.01 Changes to the Improvements.

(a) Post-Completion Changes. Landlord has a particular interest in the Premises and in the nature and extent of the permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the following particular controls on the Premises: during the term of this Lease, neither Tenant, nor any voluntary or involuntary successor or assign, shall make or permit any change in the Improvements, as change is hereinafter defined, unless the express prior written consent for any change shall have been requested in writing from the City and obtained, and, if obtained, upon such terms and conditions as the City may require. The City agrees not to unreasonably withhold or delay its response to such a request.

(b) Definition of Change. “**Change**” as used in this Article means any alteration, modification, addition and/or substitution of or to the Community Commercial Units and the Improvements which differs materially from that which existed upon the completion of construction of the Improvements, and shall include without limitation the exterior design, exterior materials and/or exterior color, and/or relocation or removal of either the control room, the

transformer room, or both. For purposes of the foregoing, exterior shall mean and include the roof of the Improvements. “Change” does not include any repair, maintenance, cosmetic interior alterations (e.g., paint, carpet, installation of moveable equipment and trade fixtures, and hanging of wall art) in the normal course of operation of the Improvements, any subtenant improvements to the Community Commercial Units installed for a permitted use of the Community Commercial Units, or as may be required in an emergency to protect the safety and well-being of the employees, guests and invitees of Tenant or a Space Subtenant.

(c) Enforcement. Landlord shall have any and all remedies in law or equity (including without limitation restraining orders, injunctions and/or specific performance), judicial or administrative, to enforce the provisions of this Article, including without limitation any threatened breach thereof or any actual breach or violation thereof.

8.02 Title to Improvements.

Fee title to any Improvements shall be vested in Tenant and shall remain vested in Tenant during the term of this Lease. As further consideration for Landlord entering into this Lease, at the expiration or earlier termination of this Lease, fee title to all the Improvements shall vest in the City without further action of any party, without any obligation by the City to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to Landlord. Notwithstanding the foregoing, if requested by Landlord, upon expiration or sooner termination of this Lease, Tenant shall execute and deliver to Landlord an acknowledged and good and sufficient grant deed conveying to Landlord Tenant’s fee interest in the Improvements. For so long as it is not in default of this Lease, Tenant shall have the exclusive right to deduct, claim retain and enjoy any and all rental income appreciation, gain, depreciation, amortization, and tax credits for federal and State tax purposes relating thereto, substitution therefor, fixtures therein and other property relating thereto.

8.03 City Requirements.

Upon OCII’s assignment of its right title and interest to the Site and this Lease to MOHCD, Tenant shall comply, and shall require its Space Subtenants to comply, with the applicable requirements of San Francisco Administrative Code Section 23.61, as further set forth in Exhibit 7.

ARTICLE 9 USE OF PREMISES; CHANGE OF USE

9.01 Permitted Uses.

The permitted uses of the Premises are limited to the construction and operation of the Project, which includes a childcare facility and other community commercial space and a private internal courtyard and second floor patio for childcare use, consistent with the MOHCD Commercial Underwriting Guidelines, as amended from time to time, the Declaration of Restrictions, and otherwise compatible with the use and operation of the Residential Component by providing a direct benefit to the community in which the Project is located. Community Commercial Units not used for the childcare facility may be used for Public Benefit Use, Community Serving Use, or, in the sole and absolute discretion of Landlord, for other commercial

uses. All Space Subtenants and Space Subleases must be approved in advance by Landlord, which approval will not be unreasonably withheld. Any use by Space Subtenants of common areas or of the sidewalk adjacent to the Premises shall be required to obtain prior approval by OCII or its successor prior to the commencement or installation of such use. Tenant and Space Subtenants shall at all times comply with the relevant conditions of approval of the Project's Schematic Design.

9.02 Prohibited Uses.

No part of the Premises shall be used or operated for: (i) any use which violates Redevelopment Requirements or any applicable zoning ordinance; (ii) any unlawful or disreputable purpose or any activity which is inappropriate for a comparable mixed-use residential complex conducted in accordance with good and generally accepted standards of operations; or (iii) any activity that exposes occupants or permittees to health or safety risks. No noxious or offensive activities shall be carried on, upon or within the Premises, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable disturbance, or hazard or annoyance to the Residential Component, or its residents. Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "**Prohibited Use**" and collectively, "**Prohibited Uses**"), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

(a) any activity, or the maintaining of any object, that is not within the Permitted Use;

(b) any activity, or the maintaining of any object, that will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents, or cause a substantial increase in the cost of insurance for OCII or the Residential Component;

(c) any activity or object that will overload or cause damage to the Premises excluding normal wear and tear;

(d) any activity that constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises, or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Premises;

(e) any activity that will in any way injure, obstruct, or interfere with the rights of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

(f) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Landlord, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Landlord;

(g) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids;

(h) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes, except to the extent necessary during construction of the Project or during critical maintenance or repairs to the Project or its shared systems for the timeframe reasonably necessary to complete such maintenance or repairs;

(i) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials, except to the extent necessary during construction of the Project or during critical maintenance or repairs to the Project or its shared systems for the timeframe reasonably necessary to complete such maintenance or repairs;

(j) the washing of any vehicles or equipment;

(k) bars, retail liquor sales, marijuana sales, or any other non-community-benefit-uses that cater exclusively to adults;

(l) any structure or improvement that will preclude, limit or impede the intended use of the Courtyard for childcare purposes; and

(m) any structure or improvement that will impede public ingress and egress across the Pedestrian Mews.

9.03 Compliance with Common Interest Agreements.

Tenant shall at all times comply with the provisions of all applicable Common Interest Agreements and shall require in the Space Subleases that all Space Subtenants comply with all applicable Common Interest Agreements.

9.04 Purchase of Personal Property by Landlord.

At the termination of this Lease, if no Event of Default exists, Landlord has the right to purchase all Personal Property of Tenant, including, without limitation, all signs, furniture, furnishings, equipment and supplies, placed in or on the Premises by Tenant, except any logos, trademarks, symbols, designs or Personal Property not owned by Tenant, at a price determined by Tenant and agreed to by Landlord not to exceed the fair market value thereof. If at the termination of this Lease, no Event of Default exists and Landlord elects not to purchase such Personal Property, Tenant must remove all such Personal Property within sixty (60) days of the termination of this Lease. If Tenant fails to remove such Personal Property within said period of time, such Personal Property will be deemed abandoned by Tenant and become the property of Landlord.

9.05 Temporary Cessation of Business.

Temporary cessation of business by Tenant when necessary for the purpose of making alterations, repairs or restoration, or by reason of such reasonable interruptions as may be incidental to the conduct of its business will not be deemed a discontinuance of the operation of Tenant so long as the cessation is as brief as reasonably required to address the permitted purpose for said cessation and the affected Premises are reopened promptly upon completion of such act or event. Nothing contained in this Section limits the effect of the Force Majeure provisions herein.

ARTICLE 10 UTILITY SERVICES

In no event shall Landlord be obligated to provide any utility, sewer, mechanical or other services with respect to the Site or any portion thereof. Tenant will procure water and sewer service from the City and electricity, telecommunications, natural gas, if applicable, and any other utility service from the City or utility companies providing such services, and will pay all connection and use charges imposed in connection with such services. Tenant will be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service. Tenant will pay or cause to be paid as the same become due all charges for all public or private utility services at any time rendered to or in connection with the Site or any part thereof and will do all other things required for the maintenance and continuance of all such services. Tenant hereby expressly waives any and all claims against Landlord for compensation, damages, payments or offset based upon or with respect to any and all loss or damage now or hereafter sustained by Tenant by reason of any failure by Landlord to furnish, supply or provide any service or utility furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance, or operation of the Premises or any part thereof. Such services and utilities shall include, without limitation, the water supply system, drainage, sewer system, wires leading to or inside the Premises, gas, electric or telephone services.

ARTICLE 11 PAYMENT OF IMPOSITIONS

11.01 Taxes.

(a) Tenant's Covenant to Pay Impositions. Subject to any exemptions available to Tenant, Tenant covenants and agrees to pay all Impositions (defined below) assessed, levied, confirmed, imposed or that become a lien upon the Premises, Personal Property, Subtenant Improvements or the Leasehold Estate or any part thereof, that become payable until the later of (i) the last day of the Term, or (ii) the last day Tenant has possession of the Premises. Tenant shall pay all Impositions before delinquency and before any fine, penalty, interest or cost that may be added thereto for the nonpayment thereof. If any applicable law, code, regulation or rule permits Tenant to pay any such Imposition in installments, Tenant may pay the same (and any accrued interest thereon) in installments prior to delinquency and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof.

(b) Impositions. As used herein, “**Impositions**” means all taxes and all transit taxes, possessory interest taxes associated with the Premises, Personal Property, Subtenant Improvements or the Leasehold Estate or any part thereof and assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or

completed prior to the date hereof and whether or not to be completed within the Term of this Lease), taxes assessed by any governmental authority by virtue of any operations by Tenant conducted in on or out of the Premises, fees, water, sewer or similar rents, rates and charges, excises, levies, vault license fees or rentals, license fees, permit fees, inspection fees and other authorization fees and other governmental charges of any kind or nature whatsoever, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, except as expressly stated herein to the contrary (including all interest and penalties thereon), which at any time during or in respect of the period to the later of (i) the last day of the Term, or (ii) the later of the last day Tenant (a) is in or (b) has a right to possession of the Premises, may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises or the Leasehold Estate, any Personal Property or Subtenant Improvements now or hereafter located thereon, or which may be imposed upon any taxable interest of Tenant acquired pursuant to this Lease or on account of any taxable possessory right which Tenant may have acquired pursuant to this Lease, or any part thereof. Tenant must pay or reimburse Landlord, as the case may be, for any fine, penalty, interest or cost which may be added by the collecting authority for the late payment or nonpayment of any Imposition required to be paid by Tenant hereunder. All Impositions imposed for the tax years in which Tenant permissibly vacates the Premises (or portion thereof) will be apportioned and prorated between Tenant and Landlord. Upon demand made from time to time by Landlord, Tenant will furnish to Landlord for inspection, immediately upon receipt thereof, official receipts of the appropriate taxing authority, or other proof satisfactory to Landlord evidencing the payment of such Imposition.

(c) Landlord's Right to Pay. Unless Tenant is exercising its right to contest under and in accordance with the provisions of Article 12, if Tenant fails to pay and discharge any amounts payable pursuant to this Article 11, Landlord, at its option, may (but is not obligated to) pay or discharge the same. The amount paid by Landlord and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at an interest rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest accruing from the date of such payment, shall be deemed to be and shall be payable by Tenant as Additional Ground Rent and must be reimbursed to Landlord by Tenant on demand.

11.02 Taxes, Assessments, Licenses, Permit Fees and Liens

(d) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(e) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency.

(f) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly

discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same pursuant to Article 12, below.

(g) Upon transfer of the Site to the City in accordance with Section 19.09, San Francisco Administrative Code Sections 23.38 and 23.39 require that the City report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to an assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

ARTICLE 12 CONTESTS

12.01 Contests.

Tenant has the right, after not more than ninety (90) days nor less than ten (10) Business Days' prior written notice to Landlord, to contest the amount or validity of any Imposition, Law or Ordinance, and/or lien by appropriate proceedings promptly initiated and conducted in good faith and with due diligence, at its sole cost and expense; provided, that (i) Landlord shall have determined reasonably that neither the Premises, nor any part thereof or interest therein, will be in danger of being sold, forfeited, terminated, canceled or lost, (ii) Tenant shall have furnished such security as may be required in such proceedings or as may from time to time be reasonably requested by Landlord, and (iii) Landlord shall have determined reasonably that Landlord shall not be in danger of being subjected to fines, penalties or criminal liability as a result of such contest. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. Before any fine, interest, penalty or cost may be added thereto for nonpayment, Tenant must pay and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Tenant. After such payment and discharge by Tenant, Landlord will promptly return to Tenant the unused portion of such security as Landlord received in connection with such contest, without interest. If Landlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by and/or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at Tenant's sole cost and expense and with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by and/or in the name of Landlord or any owner of the Premises. Neither Landlord nor the Premises may be subjected to any liability for the payment of any fines, penalties, costs, fees, including attorneys' fees, or expenses in connection with any such proceeding, and Tenant covenants to indemnify, defend and hold harmless Landlord and the Premises from any such fines, penalties, costs, fees or expenses.

12.02 Contesting Impositions.

At its own cost and after notice to Tenant of its intention to do so, by appropriate proceedings conducted in good faith and with due diligence, Landlord may but in no event shall be obligated to contest the validity, applicability and/or the amount of any Impositions. Landlord in so contesting any Imposition, shall hold all other parties harmless from and against any loss, cost or damage they suffer by reason of such contest. Nothing in this Section requires Landlord to pay any Impositions as long as it contests the validity, applicability or the amount thereof in good faith and so long as it does not allow the portion of the Premises affected thereby to be forfeited to the imposer of such Impositions as a result of its nonpayment. Landlord must give notice to all other parties within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

ARTICLE 13 INSURANCE

Subject to approval of the insurers and policy forms by Landlord's Risk Manager, Tenant must obtain and maintain, or cause to be maintained, the insurance and bonds as set forth in Exhibit 6 throughout the Term of this Lease at no expense to Landlord.

ARTICLE 14 LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

14.01 Landlord May Perform in Emergency.

Without limiting any other provision in this Lease, and in addition to all other remedies available to Landlord hereunder and/or at law or in equity, and without waiving any alternative rights or remedies, including, without limitation, the right to declare Tenant to be in default of its obligations under this Lease, Tenant covenants and agrees that upon any failure by Tenant to pay any obligation and/or perform any act, covenant, term, condition or agreement required to be paid or performed by Tenant hereunder within the time provided herein for such payment and/or performance, which failure shall give rise to an emergency, as reasonably determined by Landlord, after using reasonable efforts to notify Tenant of Landlord's intent, Landlord may, but shall not be obligated to, pay any such obligation and/or perform any such act, covenant, term, condition or agreement required to be paid or performed by Tenant hereunder for and on behalf of Tenant.

14.02 Landlord May Perform Following Tenant's Failure to Perform.

Without limiting any other provision in this Lease, but subject to the provisions of [Article 35], and in addition to all other remedies available to Landlord hereunder and/or at law or in equity, and without waiving any alternative rights or remedies, including, without limitation, the right to declare Tenant to be in default of its obligations under this Lease, Tenant covenants and agrees that if Tenant at any time fails to perform any act, covenant, term, condition or agreement on Tenant's part to be performed under this Lease, which failure to perform, in all cases other than as described in [Article 5], continues for thirty (30) days after written notice from Landlord; then, Landlord may, but shall not be obligated to, perform any such act, covenant, term, condition or agreement for and on behalf of Tenant. If Landlord believes that Tenant has failed to perform an obligation set forth in this Lease, then before performing such obligation, Landlord shall give Tenant as much notice as reasonably possible.

14.03 Tenant's Obligation to Reimburse Landlord.

If, pursuant to the provisions of Sections 14.01 or 14.02, Landlord pays and/or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Landlord immediately upon demand for all sums so paid by Landlord, including, without limitation, all costs and expenses and reasonable attorney fees, incurred by Landlord in connection with the performance of any such obligation by Landlord, regardless of which party actually completes the same, together with interest from the date Landlord incurs the cost or expense until paid at a per annum rate equal to the sum of the Prime Rate plus 5%, which rate shall be reduced to the extent that it exceeds the maximum rate permissible by applicable law.

ARTICLE 15 REPAIR, MAINTENANCE AND OPERATION OF PREMISES

15.01 No Waste.

Subject to the applicable provisions of this Lease, Tenant covenants not to do or suffer any waste or damage, disfigurement or injury to the Premises.

15.02 Repair; Maintenance.

Tenant covenants to repair and maintain (or cause to be repaired and maintained) the Premises (including without limitation the exterior, interior, substructure, and foundation of the Premises and all fixtures, equipment, and landscaping from time to time located on the Site or any part thereof) now or at any time erected on the Site including all Personal Property and Subtenant Improvements within the Site owned by Tenant, in good and clean order, condition and repair, as may be necessary to maintain the same in first-class condition and in compliance with all applicable laws and governmental regulations, all at Tenant's own cost and expense. Furthermore, Tenant covenants promptly, at Tenant's own cost and expense, to make or cause others to make all necessary or appropriate capital and operating repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, reasonable wear and tear excepted, to the extent that the same is consistent with maintenance of the Premises in a first-class condition, with materials, apparatus and facilities as originally approved by Landlord and installed by Tenant under this Lease, or, if not originally subject to Landlord approval or not available, with materials, apparatus and facilities of quality at least equal in quality, appearance and durability of the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, and durability to and in all respects consistent with the original work. Under no circumstances shall Landlord be obligated to make repairs or replacements of any kind or to maintain all or any portion of the Premises, Personal Property, Subtenant Improvements, or any portion thereof, as part of the consideration for rental, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced, or restated.

15.03 Facilities Condition Report.

Every five (5) years beginning on the fifth anniversary date of the issuance of the Certificate of Completion, Tenant will deliver to Landlord a facilities condition report for the Premises, prepared by a qualified team of construction professionals acceptable to Tenant and Landlord, describing at a minimum the condition and integrity of the Premises, foundation and structural

integrity of the Premises, and all utilities systems serving the building (the "**Facilities Condition Report**"). Tenant will provide with its submittal of the Facilities Condition Report, an anticipated schedule of and budget for, the repairs identified in the Facilities Condition Report. If Landlord reasonably believes the Facilities Condition Report does not adequately describe the condition and integrity of the listed items or the timing of required repairs, then Landlord will notify Tenant of the deficiency and Tenant will revise the Facilities Condition Report to address Landlord's concerns. If Tenant fails to provide a Facilities Condition Report to Landlord every five (5) years, then Landlord after giving thirty (30) days' notice to Tenant will have the right, but not the obligation, to cause a Facilities Condition Report to be prepared by a team of construction professionals of Landlord's choice, at Tenant's sole cost. Tenant will perform the repairs within the timeframe set forth in the Facilities Condition Report approved by Landlord.

15.04 Landlord's Right to Inspect.

Without limiting [ARTICLE 24] below, Landlord may, upon reasonable prior notice to Tenant, make periodic inspections of the Premises and other areas for which Tenant has obligations and may advise Tenant when maintenance or repair is required, but such right of inspection will not relieve Tenant of its independent responsibility to maintain the Premises, Improvements, and other areas as required by this Lease in a condition as good as, or better than, their condition at the completion of the Improvements, excepting ordinary wear and tear.

15.05 Landlord's Right to Repair.

If Tenant fails to maintain or to promptly repair any damage to the Premises as required by this Lease, then subject to applicable notice and cure periods, Landlord may repair the damage at Tenant's sole cost and expense and Tenant will immediately reimburse Landlord for all costs of the maintenance or repair.

15.06 Reserve Requirements.

Tenant may, at its discretion, establish and annually fund a segregated interest-bearing depository accounts for (1) a Replacement Reserve, (2) an Operating Reserve, (3) a Leasing Reserve, and/or (4) a Tenant Improvement Reserve. Tenant may establish other such reserves as necessary given prior written approval by City.

ARTICLE 16 DAMAGE OR DESTRUCTION

16.01 Notice.

In case of any damage to or destruction of the Premises, Tenant will promptly but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to Landlord describing, with as much specificity as is reasonable, the nature and extent of such damage or destruction.

16.02 Insured Casualty.

If the Premises or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant hereunder, Tenant shall promptly commence and diligently complete the restoration of the Premises as nearly as possible to the condition thereof prior to such damage or destruction; provided, however, that if more than fifty percent (50%) of the Premises are destroyed or are damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to accomplish the restoration, Tenant, with the written consent of Mortgagee(s), may terminate this Lease within thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. In the event Tenant is required or elects to restore the Premises, all proceeds of any policy of insurance required to be maintained by Tenant under this Lease shall be used by Tenant for that purpose and Tenant shall make up from its own funds, or obtain additional financing as approved by Landlord in its sole discretion, any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost thereof. In the event Tenant elects to terminate this Lease pursuant to its right to do so under this Section 16.02, or elects not to restore the Premises, the insurance proceeds shall be disbursed in the order set forth in Section 16.03 below.

16.03 Uninsured Casualty.

If (i) more than 50% of the Premises are damaged or destroyed and ten percent (10%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the Premises cannot be completed or operated on an economically feasible basis; and (iii) there is not available to Tenant any feasible source of third party financing for restoration reasonably acceptable to Tenant; then Tenant may, with the written consent of each Mortgagee, terminate this Lease upon ninety (90) days written notice to the Landlord. If it appears that the provisions of this Section 16.03 may apply to a particular event of damage or destruction, Tenant shall notify the Landlord promptly and not consent to any settlement or adjustment of an insurance award without the Landlord's written approval, which approval shall not be unreasonably withheld or delayed. In the event that Tenant terminates this Lease pursuant to this Section 16.03, all insurance proceeds and damages payable by reason of the casualty shall be divided among Landlord, Tenant and Mortgagees in accordance with the provisions of Section 16.04. If Tenant does not have the right, or elects not to exercise the right, to terminate this Lease as a result of an uninsured casualty, Tenant shall promptly commence and diligently complete the restoration of the Premises as nearly as possible to their condition prior to such damage or destruction in accordance with the provisions of Section 16.02.

16.04 Distribution of the Insurance Proceeds.

In the event of an election by Tenant to terminate and surrender as provided in either Section 16.01 or 16.02, the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by Tenant hereunder shall be as follows:

(a) First to the Mortgagees, in order of their priority, to control, disburse or apply to any outstanding loan amounts in accordance with the terms of their respective Leasehold Mortgages;

(b) Second, to pay for the cost of removal of all debris from the Site or adjacent and underlying property, and for the cost of any work or service required by any statute, law, ordinance, rule, regulation or order of any federal, state or local government, or any agency or official thereof, for the protection of persons or property from any risk, or for the abatement of any nuisance, created by or arising from the casualty or the damage or destruction caused thereby;

(c) Third, to compensate Landlord for any diminution in the value (as of the date of the damage or destruction) of the Site as a raw development site caused by or arising from the damage or destruction; and

(d) The remainder to Tenant.

16.05 Clean Up of Site.

In the event Tenant terminates this Lease pursuant to the provisions of this Article 16 and the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Section 16.04(b), Tenant shall have the obligation to pay the costs to clean-up the interior of the Site to the extent such costs are not covered by the insurance proceeds.

ARTICLE 17 CONDEMNATION

17.01 Parties' Rights and Obligations to be Governed by Agreement.

If, during the term of this Lease, there is any Condemnation (as defined in Section 1.05) of all or any part of the Premises or any interest in the leasehold estate is taken by Condemnation, the rights and obligations of the parties shall be determined pursuant to this Article 17, subject to the rights of any Mortgagee.

17.02 Total Taking.

If the Premises are totally taken by Condemnation, this Lease shall terminate on the date the condemnor has the right to possession of the Site.

17.03 Partial Taking.

If any portion of the Premises is taken by Condemnation, this Lease shall remain in effect, except that Tenant may, with Mortgagee's written consent, elect to terminate this Lease if, in Tenant's reasonable judgment, the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate pursuant to this paragraph by giving notice to the Landlord within thirty (30) days after the Landlord notifies Tenant of the nature and the extent of the taking. If Tenant elects to terminate this Lease as provided in this Section 17.03, Tenant also shall notify the Landlord of the date of termination, which date shall not be earlier than thirty (30) days nor later than six (6) months after Tenant has notified the Landlord of its election to terminate; except that

this Lease shall terminate on the date the condemnor has the right to possession of the Premises if such date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within such thirty (30) day notice period, this Lease shall continue in full force and effect.

17.04 Effect on Rent.

If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect, then on the date of taking the rent shall remain calculated in accordance with this Lease.

17.05 Restoration of Improvements.

If there is a partial taking of the Premises and this Lease remains in full force and effect pursuant to Section 17.03, Tenant may use the proceeds of the taking to accomplish all necessary restoration to the remaining Premises, subject to Landlord's written approval.

17.06 Award and Distribution.

Any compensation awarded, paid or received on a total or partial Condemnation of the Premises or threat of Condemnation of the Premises shall belong to and be distributed in the following order:

(a) First, to pay the any balance due on any outstanding Leasehold Mortgages in accordance with applicable loan documents and other outstanding or unpaid obligations and/or liabilities that could result in a lien on the Premises; and

(b) Second, to Tenant.

17.07 Payment to Mortgagees.

In the event the Premises are subject to the lien of a Leasehold Mortgage on the date when any compensation resulting from a Condemnation or threatened Condemnation is to be paid to Tenant, such award shall be disposed of as provided in the Leasehold Mortgage.

ARTICLE 18 LIENS

Tenant will not directly or indirectly create or permit the creation of or to remain, and will immediately discharge, any mortgage, deed of trust, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the Premises, or any part thereof or all or any portion of Tenant's interest therein, other than (i) this Lease and Space Subleases approved by Landlord, (ii) liens for Impositions not yet payable, or payable without the addition of any fine, penalty, interest or cost for nonpayment, or being contested as permitted by Article 4, (iii) the Permitted Exceptions, and (iv) the Leasehold Mortgage held by Landlord.

ARTICLE 19 ASSIGNMENT, TRANSFER, SIGNIFICANT CHANGE AND
SUBLEASING

19.01 Landlord's Consent Required for Transfer.

Tenant, its successors and permitted assigns shall not (i) suffer or permit any voluntary or involuntary sale, assignment, conveyance, lease, trust or power, or transfer in any other form with respect to this Lease or any portion of or interest in the Premises, or any contract or agreement to do any of the same (except for contracts and agreements referred to in this Lease) (collectively, a “**Significant Change**”) to occur, (ii) assign any interest in this Lease either voluntarily or by operation of law, or (iii) sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, in each case, without the prior written consent of Landlord, which consent may be withheld in the sole discretion of Landlord.

19.02 Assignment Subject to Assumption of Performance Obligation.

No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, will be effective until there has been delivered to Landlord, within thirty (30) days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes performance of the obligations on the assignor's part to be performed under this Lease to the end of the Term.

19.03 Tenant and Transferee Obligations.

The consent by Landlord to an assignment hereunder is not in any way to be construed to (i) from and after the date of such assignment, relieve Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder or under this Lease prior to the date of such assignment, or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further assignment or to any Significant Change.

19.04 Tenant Notice to Landlord of Any and All Significant Changes.

Tenant must promptly notify Landlord of any and all Significant Changes. At such time or times as Landlord may reasonably request, Tenant must furnish Landlord with a statement, certified as true and correct by an officer of Tenant, setting forth all of the members of the board of directors of Tenant. Such lists, data and information must in any event be furnished to Landlord annually at the end of each Lease Year.

19.05 Landlord's Review of Proposed Transfer.

At any time, Tenant may submit a request in writing to Landlord for the approval of the terms of an assignment, transfer, sublease or encumbrance of this Lease or of a Significant Change (all of the foregoing being collectively referred to herein as a “**proposed transfer**”) or for a decision by Landlord as to whether in its opinion a proposed transfer requires Landlord consent under the provisions of this Article 19. Tenant’s request for a proposed transfer must comply with the following:

(a) Any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Landlord, must expressly assume all of the obligations of Tenant under this Lease and agree to be subject to all of the conditions and restrictions to which Tenant is subject; provided, however, that the fact that any transferee of this Lease, or any other successor in interest whatsoever to this Lease, whatsoever the reason, does not assume such obligations will not relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit Landlord of or with respect to any rights or remedies or controls with respect to this Lease, the Premises or the construction of the Improvements unless and only to the extent otherwise specifically provided in this Lease or agreed to in writing by Landlord. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises that Landlord would have had, had there been no such transfer or change;

(b) All instruments and other legal documents involved in effecting transfer shall have been submitted to Landlord for review, and Landlord shall have approved such documents which approval shall not be unreasonably withheld or delayed; and Tenant shall have complied with the provisions of this Article 19.

19.06 Subletting by Tenant.

Subject to this Section 19.06, the conditions and provisions of which are hereby agreed to be reasonable as of the date hereof, Tenant has the right to sublet the Community Commercial Units by written Space Subleases, subject to advanced approval by Landlord, which approval will not be unreasonably withheld. Upon expiration of such Space Subleases, Tenant shall (in accordance with the Community Commercial Leasing Agreement, as applicable) use commercially reasonable efforts to cause available Community Commercial Units to be leased and re-leased on terms and conditions acceptable to Tenant and to new Space Subtenants, consistent with this Lease. In addition, Tenant shall perform all other obligations under the Community Commercial Leasing Agreement, including obligations concerning marketing and leasing and re-leasing commercial units in the Block 2 West Project, as an obligation of this Lease.

19.07 Assignment of Subtenant Rent.

Tenant hereby assigns to Landlord as security for Tenant's obligations under this Lease all Space Subtenant rent and other payments of any kind, including, without limitation, all present or future Space Subtenant, licensee, concessionaire or other occupants; provided, however, that the foregoing assignment shall be subject and subordinate to any assignment made to a mortgagee until such time as Landlord has terminated this Lease, at which time the rights of Landlord in all Space Subtenant rent and other payments assigned pursuant to this Section 19.07 shall become prior and superior in right (such subordination shall be self-operative; however, in confirmation thereof, Landlord shall, upon the request of each mortgagee, execute a subordination agreement in form and substance reasonably satisfactory to such mortgagee and to Landlord). Such assignment shall be subject to the right of Tenant to collect such rent until the date of the happening of any

Event of Default under the provisions of this Lease. Landlord shall apply any net amount collected by it from such Space Subtenants to the payment of Ground Rent, Additional Ground Rent or obligations due under this Lease.

19.08 Non-Disturbance of Space Subtenants, Attornment, Space Sublease Provisions.

(a) Landlord/Space Subtenant Non-Disturbance Agreements. From time to time upon the request of Tenant and provided no Event of Default shall have occurred and be continuing hereunder, Landlord shall enter into agreements (“Non-Disturbance Agreements”) with Space Subtenants whose Space Subleases has been approved by Landlord.

(b) Form and Substance of Non-Disturbance Agreement. Each Non-Disturbance Agreement for each such Space Sublease shall be in form and substance satisfactory to Landlord. If Tenant submits to Landlord a nonconforming Non-Disturbance Agreement with changes requested by a Space Subtenant, such changes must be shown as specific interlineations or deletions. Landlord, in its sole discretion, may refer the review and negotiation of any such changes to outside counsel of its choosing and Tenant shall pay all reasonable costs and fees incurred by Landlord in doing so. Landlord shall approve or disapprove of the requested changes within twenty (20) days of receipt of such changes. Any such disapproval by Landlord shall set forth the reasons for Landlord’s disapproval. Provided that the request for changes is submitted in accordance with Article 40, failure of Landlord to approve or disapprove of specific interlineations or deletions requested by a Space Subtenant within such twenty (20) days period shall be deemed to be approval of the requested changes.

19.09 Landlord's Sale or Assignment.

(a) Generally. Landlord has the right to sell and/or assign all or any portion of its interest in all or any portion of the Premises and/or this Lease, without the prior written consent of Tenant, provided, however, that no such transfer of the Premises may be effective until there is delivered to Tenant an agreement of the transferee reasonably satisfactory to Tenant expressly assuming all of Landlord's obligations hereunder with respect to those portions of the Premises so transferred, which obligations arise from and after the date of transfer. Upon delivery of such agreement, Landlord will be relieved of all obligations hereunder arising from and after the date of such transfer with respect to those portions of the Premises so transferred.

(b) To MOHCD as Housing Successor. Tenant acknowledges and agrees that OCII, effective upon the issuance of the Certificate of Completion or some later date as determined by OCII, intends to transfer all of its rights, interests and obligations under this Lease and the Loan Documents, together with conveyance of fee title to the Site, to MOHCD as the designated Housing Successor of the City and County of San Francisco under Board of Supervisors Resolution 11-12 (January 26, 2012), Redevelopment Dissolution Law, and OCII’s approved Long-Term Property Management Plan (November 23, 2015). As a condition of the assignment of the Lease and Loan Documents to the City, the City may require standard City contracting provisions under San Francisco Administrative Code or other Laws, as described in Exhibit 5, be incorporated into the Lease and Loan Documents. Tenant shall have no right to object and shall attorn to such assignee, and shall execute such instruments and take such actions as may be reasonably required to carry out OCII’s intent. Upon assignment to MOHCD, all references herein

to Landlord or OCII shall be deemed references to MOHCD. OCII and Tenant hereby agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Section 19.09(b).

**ARTICLE 20 INDEMNIFICATION; DAMAGE TO PERSON OR PROPERTY;
HAZARDOUS SUBSTANCES**

20.01 Damage to Person or Property; General Indemnification.

Landlord will not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site, for any injury or damage to the Premises, or to any property of Tenant, or to any property of any other person, entity, or association on or about the Premises, unless (a) during construction of the Project, arising from the active negligence, sole negligence, or willful misconduct of an Indemnified Party (as defined below); or (b) after construction of the Project, arising from the gross negligence or willful misconduct of an Indemnified Party (as defined below). To the fullest extent of the law, Tenant will defend, hold harmless, and indemnify Landlord and the City and County of San Francisco, including but not limited to their boards, commissions, commissioners, departments, agencies, and other subdivisions, officers, agents, and employees (each, an “**Indemnified Party**” and collectively the “**Indemnified Parties**”), of and from all claims, loss, damage, injury, actions, causes of action, and liability of every kind, nature and description (collectively, “**Claims**”) incurred in connection with or directly or indirectly arising from the Site, this Lease, Tenant’s tenancy, its or their use of the Site, including adjoining sidewalks and streets, and any of Tenant’s operations or activities on or connected to the Site, including without limitation, the Space Subleases; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further excepting only such Claims that are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing indemnity will include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and Landlord’s costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Landlord from any claim that actually or potentially falls within any indemnity provision set forth in this Lease even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter. Tenant’s obligations under this Article will survive the termination or expiration of this Lease.

20.02 Hazardous Substances—Indemnification.

(a) Tenant will indemnify, defend, and hold the Indemnified Parties harmless from and against any and all Claims of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to violation of any Environmental Law, or any Release, threatened Release, and any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site or Block 2 caused by Tenant, its employees, agents, affiliates, or contractors; provided, however, that this Section 20.02(a) shall not be deemed or construed to, and shall not impose any

obligation on Tenant to indemnify and save harmless the Indemnified Parties from any Claim arising from or in any way related to or connected with any willful misconduct or gross negligence by any Indemnified Party occurring after the Effective Date. No Indemnified Party shall be entitled to indemnification under this Section for, and Tenant will have no liability for any Claims relating to a violation of, any Environmental Law, Release, or threatened Release, or arising out of any condition or action of pollution, contamination or Hazardous Substance- related nuisance on, under or from the Site or Block 2 occurring prior to the Effective Date except for those contributed to or exacerbated by Tenant.

(b) For purposes of this Section 20.02, the following definitions apply:

(i) "**Hazardous Substance**" has the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Lease, 42 U.S.C. 9601(14), and in addition includes, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**"), PCB- containing materials, all hazardous substances identified in the California Health & Safety Code 25316 and 25281(d), all chemicals listed under the California Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition does not include substances that occur naturally on the Site or commercially reasonable amounts of hazardous materials used in the ordinary course of construction and operation of a mixed-use residential development, provided they are used and stored in accordance with all applicable Laws.

(ii) "**Environmental Law**" means all Laws governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Lease.

(iii) "**Release**" means any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance.

20.03 Exculpation and Waiver.

Tenant, as a material part of the consideration to be rendered to Landlord, hereby waives any and all Claims against the Indemnified Parties related to this Lease including their rights or obligations as landlord under this Lease, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct (including breach of this Lease) or active gross negligence. The Indemnified Parties will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims against the Indemnified Parties related to this Lease including their rights or obligations as landlord under this Lease for, any injury, loss, or damage to any person or property in or about the Premises by or from any cause whatsoever occurring on or after the Effective Date including, without limitation, (a) any act or omission of persons occupying adjoining premises or

any part of the Premises adjacent to or connected with the Premises, (b) theft, (c) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (d) stopped, leaking, or defective building systems, (d) construction or Site defects, (f) damages to goods, wares, goodwill, merchandise, equipment, or business opportunities, (g) Claims by persons in, upon or about the Premises or any other Landlord property for any cause arising at any time, (h) alleged facts or circumstances of the process or negotiations leading to this Lease before the Effective Date (other than with respect to any Environmental Law or Release); and (i) any other acts, omissions, or causes.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Lease will remain effective. Therefore, with respect to the Claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO
CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR.

Tenant initials ____

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time this Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

20.04 Insurance.

The Indemnification requirements under this Lease, or any other agreement between OCII and Tenant, will in no way be limited by any insurance requirements under any such agreements.

20.05 Survival.

The provisions of ARTICLE 20 will survive the expiration or earlier termination of this Lease.

**ARTICLE 21 COMPLIANCE WITH SITE-RELATED AND LEGAL
REQUIREMENTS**

21.01 Compliance with Legal Requirements.

From and after the Effective Date, Tenant will at its cost and expense, promptly comply with all applicable Laws now in force or that may later be in force, including, without limitation, the requirements of the fire department or other similar body now or later constituted and with any direction or occupancy certificate issued under any Law as any of them may relate to or affect the condition, use, or occupancy of the Premises. If Tenant contests any of the foregoing, Tenant will not be obligated to comply therewith to the extent that the application of the contested Law is stayed by the operation of law or administrative or judicial order and Tenant indemnifies, defends, and holds harmless the Indemnified Parties against all Claims resulting from noncompliance.

21.02 Regulatory Approvals.

Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Site and not as a regulatory agency with certain police powers. Tenant understands and agrees that neither entry by Landlord into this Lease nor any approvals given by Landlord under this Lease will be deemed to imply that Tenant has thereby obtained any required approvals from City departments, boards, or commissions that have jurisdiction over the Premises. By entering into this Lease, Landlord is in no way modifying or limiting the obligations of Tenant to develop the Project in accordance with all Laws and as provided in this Lease.

Tenant understands that the construction of the Improvements on the Site and development of the Project will require approval, authorization, or permit by governmental agencies with jurisdiction. Tenant must use good faith efforts to obtain and will be solely responsible for obtaining any approvals required for the Project in the manner set forth in this Section. Throughout the permit process for any regulatory approvals, Tenant will consult and coordinate with Landlord in Tenant's efforts to obtain permits. Landlord will cooperate reasonably with Tenant in its efforts to obtain permits; provided, however, Tenant may not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency if Landlord is required to be a co-permittee under the permit or the conditions or restrictions could create any financial or other material obligations on the part of Landlord whether on or off of the Premises, unless in each instance Landlord has approved the conditions previously in writing and in Landlord's reasonable discretion. No approval by Landlord will limit Tenant's obligation to pay all the costs of complying with conditions under this Section. Tenant must bear all costs associated with applying for and obtaining any necessary regulatory approval, as well as any fines, penalties or corrective actions imposed as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval.

With Landlord's prior written consent, Tenant will have the right to appeal or contest any condition in any manner permitted by Law imposed upon any regulatory approval. In addition to any other indemnification provisions of this Lease, Tenant must indemnify, defend, and hold harmless Landlord and its commissioners, officers, agents or employees from and against any and all Claims that may arise in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval or with the appeal or contest of any conditions of any regulatory approval, except to the extent damage arises out of the active gross negligence or willful misconduct of Landlord or its agents.

ARTICLE 22 ENTRY

22.01 Entry.

Landlord (which, for the purposes of this Article 22, includes OCII and its authorized representatives including MOHCD and any public health or safety services or departments of the City) reserves the right to enter the Premises at all reasonable times during normal business hours upon not less than twenty-four (24) hours' written notice to Tenant (except in the event of an emergency), subject to the rights of the occupants, Space Subtenants, and others lawfully permitted on the Premises, for any of the following purposes:

(a) to determine whether the Premises is in good condition and to inspect the Premises (including soil borings or other Hazardous Substance investigations);

(b) to determine whether Tenant is in compliance with its Lease obligations and to cure or attempt to cure any Tenant default;

(c) to serve, post, or keep posted any notices required or allowed under any of the provisions of this Lease;

(d) to do any maintenance or repairs to the Premises that the City has the right or the obligation, if any, to perform hereunder; and

(e) to show the Premises to any prospective purchasers, brokers, Mortgagees, or public officials, or, during the last year of the Term of this Lease, exhibit the Premises to prospective tenants or other occupants, and to post any reasonable "for sale" or "for lease" signs in connection therewith.

22.02 Emergency Entry.

In the event of any emergency as reasonably determined by Landlord, at its sole option and without notice, Landlord may enter the Premises and alter or remove any Improvements or Tenant's personal property on or about the Premises as reasonably necessary, given the nature of the emergency, and will have the right to use any and all means Landlord deems appropriate to gain access to any portion of the Premises in an emergency, in which case, Landlord will not be responsible for any damage or injury to any property, or for the replacement of any property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

22.03 No Liability.

Landlord will not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of the Landlord's entry onto the Premises, except to the extent damage arises out of the active gross negligence or willful misconduct of Landlord or its agents. Landlord will be responsible for any losses resulting from its active gross negligence or willful misconduct and will repair any resulting damage promptly.

22.04 No Abatement.

Tenant will not be entitled to any abatement in Ground Rent if the Landlord exercises any rights reserved in this Article, subject to Section 22.03 above.

22.05 Reasonable Conduct.

Landlord will use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Article in a manner that, to the extent practicable, will minimize any disruption to Tenant's use of the Premises as permitted by this Lease.

ARTICLE 23 MORTGAGE FINANCING; LENDER PROTECTIONS

23.01 No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Lease and subject to the prior written consent of Landlord in the form attached hereto as Attachment 3, which consent will not be unreasonably withheld, conditioned, or delayed, Leasehold Mortgages (and encumbrances related to such Leasehold Mortgages) are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing the acquisition of the Project; refinancing of financing used to acquire or rehabilitate the Project; design, construction, renovation, or reconstruction of the Improvements; any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Improvements under this Lease and in connection with the operation of the Project; costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Lease; or otherwise as approved by Landlord. OCII, acting solely in its capacity as landlord under this Lease, hereby acknowledges and accepts Bank of America, N.A. as a Holder (as defined below) possessing a right to assume this Lease in accordance with Section 23.06 below, and consents to a deed of trust to be recorded against the Leasehold Estate securing these rights.

23.02 Holder Not Obligated to Construct.

The holder of any mortgage, deed of trust, or other security interest authorized by Section 23.01 (“**Holder**”), including the successors or assigns of the Holder, is not obligated to complete any construction of the Improvements or to guarantee such completion; and no covenant or any other provision of this Lease may be construed to obligate the Holder. However, if the Holder undertakes to complete or guarantee the completion of the construction of the Improvements, nothing in this Lease will be deemed or construed to permit or authorize the Holder or its successors or assigns to devote the Premises or any portion thereof to any uses, or to construct any Improvements on the Site, other than those uses or Improvements authorized in Article 9 and the Declaration of Restrictions and any reasonable modifications in plans proposed by the Holder or its successors in interest proposed for the viability of the Project approved by Landlord in its reasonable discretion under Section 6.11. To the extent any Holder or its successors in interest wish to change such uses or construct different improvements, Holder or its successors in interest must obtain the advance written consent of Landlord.

23.03 Failure of Holder to Complete Construction.

In any case where six (6) months after assumption of obligations under Section 23.02 above, a Holder, having first exercised its option to complete the construction, has not proceeded diligently towards completion of the construction, Landlord will have all the rights against the Holder it would otherwise have against Tenant under this Lease for events or failures occurring after such assumption; subject to any extensions of time granted under Section 6.11 of this Lease.

23.04 Default by Tenant and Landlord's Rights.

(a) Right of Landlord to Cure a Default or Breach by Tenant under a Leasehold Mortgage. In the event of a default or breach by Tenant under any Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of such default or breach, Landlord may, at its option, cure such breach or default for the period of one hundred ten (110) days after the date that the Holder files a notice of default. In such event, Landlord will be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by Landlord in curing the default or breach. Landlord will also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent such costs and disbursements are not reimbursed by Tenant. Any such lien will be subject to the lien of any then-existing Leasehold Mortgage authorized by this Lease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Holder filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable Loan Documents, Landlord will also have the right to assign Tenant's interest in the Lease to another entity, subject to all Holders' written consent, and which consent may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage. After ninety (90) days following the date of Holder filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable documents, Landlord will also have the right to assign Tenant's interest in the Lease to another entity, subject to all Holders' written consent in the exercise of their sole and absolute discretion, and which consent may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage.

(b) Notice of Default to Landlord. Tenant will use its best efforts to require Holders to give Landlord prompt written notice of any default or breach of the Leasehold Mortgage and each Leasehold Mortgage will provide for that notice to Landlord and contain Landlord's right to cure as above set forth.

23.05 Cost of Mortgage Loans to be Paid by Tenant.

Tenant covenants and affirms that it will bear all of the costs and expenses in connection with (a) the preparation and securing of any Leasehold Mortgage, (b) the delivery of any instruments and documents and their filing and recording, if required, and (c) all taxes and charges payable in connection with any Leasehold Mortgage.

23.06 Right to Assume Lease Prior to Termination.

Landlord hereby establishes, and Tenant acknowledges and consents to, a right vested in Bank of America, N.A. ("**Bank**"), to assume (or cause a Designee of Bank to assume) this Lease and all of Tenant's rights and obligations hereunder prior to termination of the Lease by Landlord,

exercisable, if at all, at any time prior to the issuance of a Temporary Certificate of Occupancy for the Improvements. For purpose of this Article the term “**Designee**” means an affiliate of Bank or other entity approved by Landlord in writing (which approval shall not be unreasonably withheld, conditioned or delayed). Upon the issuance of a Temporary Certificate of Occupancy, the rights established by this Section 23.06 shall automatically expire and be of no further force or effect, Bank shall no longer be considered a Holder under this Lease, and Bank shall execute any documentation confirming said expiration as reasonably requested by Landlord. Landlord acknowledges that for the period of effectiveness specified herein, Bank rights under this Section 23.06 shall be senior to OCII’s security interest against the Leasehold Estate arising from the Loan Documents, and Bank may record a deed of trust or other lien securing its rights accordingly.

23.07 Notification to Landlord.

Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in this Article 23, Tenant will cause each Holder to give written notice to Landlord of the Holder's address and of the existence and nature of its Leasehold Mortgage. Execution of Attachment 3 will constitute Landlord’s acknowledgement of Holder’s having given such notice as is required to obtain the rights and protections of a Holder under this Lease. Landlord hereby acknowledges Bank’s rights as a Holder pursuant to Section 23.06, above, and Attachment 3 is not required.

23.08 Holder's Rights to Prevent Termination.

Each Holder has the right, but not the obligation, at any time before termination of this Lease and without payment of any penalty other than the interest on unpaid rent, to pay all of the rents due under this Lease, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant or necessary and proper to be done in the performance and observance of the agreements, covenants and conditions of this Lease to prevent a termination of this Lease to the same effect as if the same had been made, done, and performed by Tenant instead of by Holder.

23.09 Holder's Rights When Tenant Defaults.

Upon the occurrence of an Event of Default under this Lease, Landlord will not terminate this Lease or exercise any other remedy unless it first gives written notice of the event of default to Holders, and:

(a) If the Event of Default is a failure to pay a monetary obligation of Tenant (not including any of Tenant’s indemnification obligations under this Lease (the “**Indemnification Obligations**”)), Holder fails to cure such default within sixty (60) days from the date of written notice from Landlord to Holder to cure the default; or

(b) If the Event of Default is not a failure to pay a monetary obligation of Tenant, Holder fails, within sixty (60) days of receipt of the written notice, to either (a) remedy such default; or (b) obtain title to the Leasehold Estate and Improvements in lieu of foreclosure or pursuant to its rights under Section 23.06; or (c) commence foreclosure or other appropriate proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently

prosecute such proceedings to completion, in which case such Event of Default will be remedied or deemed remedied in accordance with Section 23.10 below.

(c) All rights of Landlord to terminate this Lease as the result of the occurrence of any uncured Event of Default is subject to, and conditioned upon, Landlord having first given Holder written notice of the Event of Default and Holder having failed to remedy such default or assume Tenant's Leasehold Estate or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Section 23.09, and upon Permitted Limited Partner(s) having failed to proceed as permitted under Section 23.12(d).

23.10 Default That Cannot be Remedied by Holder.

Any Event of Default under this Lease that in the nature thereof cannot be remedied by Holder will be deemed to be remedied as it pertains to Holder or any Subsequent Owner if (a) within sixty (60) days (and as may be extended in the OCII Executive Director's discretion) after receiving notice from Landlord setting forth the nature of such Event of Default, Holder has acquired the Leasehold Estate and Improvements or has commenced foreclosure or other appropriate proceedings in the nature of foreclosure, (b) Holder is diligently prosecuting any such proceedings to completion, (c) Holder has fully cured any event of default arising from failure to pay or perform any monetary obligation (other than the Indemnification Obligations) in accordance with Section 23.09, and (d) after gaining possession of the Improvements, Holder diligently proceeds to perform all other obligations of Tenant as and when due in accordance with the terms of this Lease. Notwithstanding anything to the contrary contained elsewhere herein, in no event shall any Holder have the obligation, or be required, as a condition to preventing the termination of this Lease, as a condition to obtaining a new lease or otherwise, to cure any breach by Tenant of its obligation, under Section 23.04(a) of this Lease, to reimburse Landlord for all costs, expenses, advances and disbursements made or incurred by Landlord in connection with its cure of any breach of default under any Leasehold Mortgage (and all such breaches shall automatically be deemed cured upon a foreclosure under any Leasehold Mortgage (or acceptance of a deed in lieu thereof or otherwise exercising rights to assume this Lease under Section 23.06)).

23.11 Court Action Preventing Foreclosure.

If Holder is prohibited by any process or injunction issued by any court or because of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure, the times specified in Sections 23.09 and 23.10 above for commencing or prosecuting such foreclosure or other proceedings will be extended for the period of such prohibition. If this Lease is terminated for any reason or rejected by Tenant in bankruptcy, then Landlord agrees to enter into a new ground lease with the Holder on the same terms set forth in this Lease and said new lease shall be afforded a priority equal to the recording priority of this Lease. For purpose of this Article, if there is more than one Holder, Landlord will offer the new lease to each Holder in the order of priority until accepted.

23.12 Holder's Rights to Record, Foreclose, and Assign.

Landlord hereby agrees with respect to any Leasehold Mortgage, that:

(a) the Holder (including the Bank) may cause its Leasehold Mortgage to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate to an assignee from whom it may accept a purchase price; provided however that: (a) except with respect to affiliates of a Holder, Holder obtains prior written approval from Landlord with respect to the selection of the assignee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) the proposed assignee maintains the use restrictions of Article 9. Holder, furthermore, may acquire title to the Leasehold Estate in any lawful way, and if the Holder, or an affiliate, shall become the assignee, then Holder (or affiliate) may sell and assign said Leasehold Estate subject to Landlord approval as to assignee or purchaser, which shall not be unreasonably withheld, conditioned or delayed and to Landlord's cure rights under Section 23.04. The foreclosure of the Leasehold Mortgage shall not constitute an Event of Default hereunder.

(b) each Subsequent Owner must take the Leasehold Estate subject to all of the provisions of this Lease, and except as provided elsewhere in this Lease, must assume all of the obligations of Tenant under this Lease for so long as it is the owner of the Leasehold Estate;

(c) Landlord will mail or deliver to any Holder that has an outstanding Leasehold Mortgage a duplicate copy of all notices that Landlord may give to Tenant under this Lease; and

(d) any Permitted Limited Partner(s) of Tenant will have the same rights as Bank under Sections 23.08, 23.09, and 23.12(c), and any reference to a Holder in those sections will be deemed to include the Permitted Limited Partners; provided, however, that the rights of the Permitted Limited Partners are subordinate to the rights of Bank.

23.13 Intentionally Omitted

23.14 Permitted Uses After Holder Foreclosure.

Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Premises must be operated in accordance with the Declaration of Restrictions, Article 9 of this Lease, and in accordance with those uses specified in the schematic designs and final construction documents approved by OCII and the building permit, with all addenda, as approved by the City's Department of Building Inspection, and any reasonable modifications in plans proposed by the Subsequent Owner or its successors in interest for the viability of the Project approved by Landlord in its reasonable discretion under Section 6.11.

23.15 Preservation of Leasehold Benefits.

Until such time as a Holder notifies Landlord in writing that the obligations of the Tenant under its loan documents have been satisfied, Landlord agrees:

(a) Landlord will not voluntarily cancel or surrender this Lease, or accept a voluntary cancellation or surrender of this Lease by Tenant, or amend this Lease to materially increase the obligations of the Tenant or the rights of Landlord under this Lease or alter the rights

and protections of Holder, without the prior written consent of the Holder (which may not be unreasonably withheld or delayed);

(b) That Landlord will not enforce against a Holder any waiver or election made by the Tenant under this Lease that has a material adverse effect on the value of the Leasehold Estate without the prior written consent of the Holder (which will not be unreasonably withheld or delayed);

(c) That, if a Holder makes written request to Landlord for a new ground lease within fifteen (15) days after Holder receives written notice of termination of this Lease, then Landlord will enter a new ground lease with the Holder commencing on the date of termination of this Lease and ending on the normal expiration date of this Lease, on substantially the same terms and conditions as this Lease and subject to the rent provisions set forth in [Section 26.07], and with the same priority as against any subleases or other interests in the Premises; so long as the Holder cures all unpaid monetary defaults under this Lease (other than the Indemnification Obligations), through the date of such termination;

(d) That Landlord will provide reasonable prior notice to each Holder of any proceedings for adjustment or adjudication of any insurance or condemnation claim involving the Premises and will permit each Holder to participate the proceedings as an interested party.

23.16 No Merger.

The Leasehold Estate will not merge with the fee interest in the Site, notwithstanding ownership of the leasehold and the fee by the same person, without the prior written consent of each Holder.

23.17 Landlord Bankruptcy.

(a) If a bankruptcy proceeding is filed by or against Landlord, Landlord will immediately notify each Holder of the filing and will deliver a copy of all notices, pleadings, schedules, and similar materials regarding the bankruptcy proceedings to each Holder.

(b) Landlord acknowledges that: (i) the Tenant seeks to construct improvements on the Leasehold Estate that are a component of a larger mixed-use development program developed in part using proceeds of the loans provided by the Bank, and (ii) it would be unfair to both the Tenant and the Bank to sell the Site free and clear of the Leasehold Estate. Therefore, Landlord waives its right, under section 363(f) of the Bankruptcy Code, to sell Landlord's fee interest in the Site free and clear of the Leasehold Estate at any time prior to issuance of a Temporary Certificate of Occupancy for the Improvements.

(c) If a bankruptcy proceeding is filed by or on behalf of Landlord, Landlord agrees as follows:

(i) the Tenant will be presumed to have objected to any attempt by Landlord to sell the fee interest free and clear of the Leasehold Estate;

(ii) if Tenant does not so object, each Holder will have the right to so object on its own behalf or on behalf of the Tenant.

(d) Landlord recognizes that the Holders are authorized on behalf of the Tenant to vote, participate in, or consent to any bankruptcy, insolvency, receivership, or court proceeding concerning the Leasehold Estate.

23.18 Encumbrance of Landlord's Interest.

Landlord shall not voluntarily encumber Landlord's interest in the Site with a foreclosable mortgage or similar interest without the prior written consent of Tenant and all Holders (including, prior to the issuance of a Temporary Certificate of Occupancy for the Improvements, the Bank).

ARTICLE 24 QUIET ENJOYMENT

Subject to the Permitted Exceptions, Landlord covenants and agrees that Tenant, upon observing and keeping all of the covenants, agreements and conditions of this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy said Premises during the Term without hindrance or molestation of anyone claiming by, through or under Landlord.

Notwithstanding the foregoing, Landlord shall have no liability to Tenant in the event of any defect in the title of Landlord whether or not such defect affects Tenant's rights of quiet enjoyment and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant and Tenant's sole remedy shall be to obtain compensation for such event by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

ARTICLE 25 EVENTS OF DEFAULT

25.01 Events of Default.

The occurrence of any one or more of the following events, which event shall not have been cured as provided in this Lease (which cure period shall be 60 days after provision of notice thereof by Landlord to Tenant unless otherwise specified herein), shall constitute an “**Event of Default**” under the terms of this Lease (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which has or might have the effect of preventing Tenant from complying with the terms of this Lease).

(a) Permitted Uses; Prohibited Uses. Tenant or a Space Subtenant fails to comply with permitted and prohibited use provisions of Article 9.

(b) Failure to Pay Taxes. From and after the Effective Date, Tenant or its successor in interest fails to pay Impositions or Carrying Costs in accordance with Articles 3 or 11, or places or allows to be placed on the Leasehold Estate, Site, the Premises, or any portion thereof, any encumbrance or lien not authorized by this Lease, or suffers any levy or attachment, or any material supplier's or mechanic's lien or the attachment of any other unauthorized encumbrance or lien, and the taxes or assessments have not been paid, or the encumbrance or lien removed or discharged within the time period provided in Article 18; provided, however, that Tenant has the right to contest any tax or assessment or encumbrance or lien as provided in Article 12 and Article 18.

(c) Failure to Pay Ground Rent Within Certain Time Period. Tenant fails to pay any Ground Rent, in the manner prescribed in Article 2 of the Lease, when due to Landlord within five (5) days after notice thereof from Landlord.

(d) Failure to Operate, Maintain or Repair. Failure to perform any operation, maintenance or repair obligation concerning the Premises, and such failure continues for thirty (30) days after the date of notice from Landlord to Tenant concerning such failure.

(e) Failure to Terminate Certain Proceedings Within Certain Time Period. Subject to the provisions of Sections 40.02 and 40.03, the filing by or against Tenant of any proceedings under any state or federal insolvency or bankruptcy law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;

(f) Failure to Stop Certain Order for Relief Under Certain Conditions. Subject to the provisions of Sections 40.02 and 40.03, the entry of an order for relief against Tenant under any bankruptcy or reorganization case which order has not been stayed or dismissed within sixty (60) days;

(g) Final Appointment of a Receiver Under Certain Conditions. Subject to the provisions of Sections 40.02 and 40.03, the appointment of a receiver, trustee or custodian of all or any part of the property of Tenant which appointment with respect to Tenant is not dismissed or stayed within sixty (60) days; provided that Tenant shall have an additional thirty (30) days to achieve such dismissal or stay if Tenant commences to pursue such relief within the first sixty (60) days; and further provided, however, that the appointment of a receiver pursuant to the exercise by a Mortgagee of its rights under a Leasehold Mortgage shall not be an Event of Default hereunder;

(h) Unauthorized Assignment. The assignment of all or any part of the Premises by Tenant;

(i) Tenant's Failure to Notify Landlord Within Certain Time Period in Filing Certain Proceedings. The failure of Tenant to give written notice to Landlord of Tenant's intention to commence proceedings under any state or federal insolvency, bankruptcy or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, at least thirty (30) days prior to the commencement of such proceedings;

(j) Failure to Release Attachment Within Certain Time Period. A writ of attachment or execution is levied on this Lease which is not released within sixty (60) days;

(k) Abandonment of Premises Under Certain Conditions. Except as permitted by Article 17, the Premises are abandoned or cease to be used for the uses permitted hereunder, which abandonment or cessation is not cured within thirty (30) days after notice thereof from Landlord;

(l) Unauthorized Assignment of, or Changes to, this Lease Under Certain Conditions. Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises in violation of this Lease, which violation is not remedied within thirty (30) days after notice thereof from Landlord;

(m) Failure to Comply with Lease Terms Under Certain Conditions. Tenant shall fail to perform or comply with any other term hereof, and such failure shall continue beyond the applicable cure period, if any, or, if none, for more than thirty (30) days after notice thereof from Landlord, or if such default cannot reasonably be cured within such thirty (30)-day period, Tenant shall not within such period commence with due diligence and dispatch the curing of such default, or having so commenced, shall thereafter cease, fail or neglect to prosecute or complete with diligence and dispatch the curing of such default.

25.02 Force Majeure.

For the purposes of any of the provisions of this Lease, and notwithstanding anything to the contrary, neither Landlord nor Tenant, as the case may be, will be considered in breach or default of its obligations, and there will not be deemed a failure to satisfy any obligations or conditions of this Lease, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions due to occurrence(s) of “**Force Majeure,**” meaning unforeseeable causes beyond obligated or conditioned party’s control and without its fault or negligence, including, but not limited to, acts of God, acts of the public enemy, terrorism, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials, unusually severe weather, or delays of subcontractors due to unusual scarcity of materials or unusually severe weather; it being the purposes and intent of this provision that the time or times for the satisfaction of conditions to this Lease including those with respect to construction of the Improvements, will be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph must have notified the other party of the delay and evidence of its causes in writing within thirty (30) days after the beginning of any such enforced delay and requested an extension for the reasonably estimated period of the enforced delay; and, provided further, that this paragraph does not apply to, and nothing contained in this paragraph will extend or will be construed to extend, the time of performance of any of Tenant’s obligations to be performed before the commencement of construction, and the failure to timely perform pre-commencement of construction obligations will not extend or be construed to extend Tenant’s obligations to commence, prosecute, and complete construction of the Improvements in the manner and at the times specified in this Lease.

ARTICLE 26 REMEDIES

The provisions of this Article 26 and the exercise of Landlord's remedies are subject to the limitations on recourse set forth in Article 43.

26.01 Landlord's Remedies Generally.

(a) Notification to Tenant, Holder. Upon the occurrence of any of the events described in Section 25.01 above, and before exercising any remedies, Landlord will notify Tenant, the Permitted Limited Partner(s), and each Holder in writing of Tenant's purported breach, failure, or act in accordance with the notice provisions of ARTICLE 40, and provide Tenant, any Holder, and Permitted Limited Partner(s) with an opportunity to cure such breach, failure, or act, commencing upon the date of giving notice and continuing for the applicable cure period set out in Section 25.01. If Tenant, Holder, or Permitted Limited Partner does not cure or, if the breach, failure, or act is not reasonably susceptible to cure within the applicable cure period, begin to cure within the applicable cure period and thereafter diligently prosecute such cure to completion, then, subject to the rights of any Holder and Permitted Limited Partner and subject to [Section 26.01(b)] [and ARTICLE 26], Landlord will have all of its rights at law or in equity, including as specified in this Article 26 and Article 27.

(b) Landlord's Rights and Tenant's Obligations Under an Event of Default. Upon the occurrence of an Event of Default hereunder, Landlord may continue this Lease in full force and effect, and this Lease shall continue in effect and Landlord shall have the right to collect, Ground Rent, Additional Ground Rent and other sums when and as they become due. If Tenant abandons the Premises in violation of this Lease, Landlord may enter the Premises and relet the Premises, or any part thereof, to third parties for Tenant's account without notice to Tenant, Tenant's rights, if any, to any such notice under any applicable law being hereby waived, and alter or install or modify the Improvements at the Premises, or any portion thereof, and Tenant shall be liable immediately to Landlord for all costs Landlord incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, the reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, facsimile expenses, brokers' fees or commissions, the costs of removing and storing the property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of restoration and of repairing and maintaining the Premises or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease.

(c) Lease May Not Terminate Without Landlord's Consent. No act by Landlord allowed by this Section 26.01 shall terminate the Lease unless Landlord notifies Tenant that Landlord elects to terminate the Lease.

(d) Lease Termination Requires Landlord to Notify Tenant. Landlord may terminate Tenant's right to possession of the Premises or this Lease or both at any time after the occurrence of an Event of a Default by giving written notice of such termination, and such termination shall then occur on the date set forth in such notice. Acts of maintenance and efforts to relet the Premises shall not constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice to Tenant shall terminate this Lease.

(e) Cessation of Tenant's Rights to Sublet or Assign. Upon the occurrence of an Event of Default, Tenant shall have no right to sublet or assign its interest in the Premises and/or this Lease without Landlord's written consent, which may be given or withheld in Landlord's sole and unfettered discretion.

(f) Landlord's Remedies Are Cumulative. The remedies given to Landlord in this Section shall be in addition and supplemental to all other rights or remedies which Landlord may have at law or in equity.

(g) Personal Property. At the termination of this Lease, if an Event of Default exists, title to all Personal Property, except any logos, trademarks, symbols, designs or Personal Property not owned by Tenant, will vest in Landlord without any further action of any parties.

26.02 Continuation of Subleases and Other Agreements.

Except as provided in Article 25, in case of default by Tenant in the performance of any of the terms, covenants or agreements herein contained on the part of Tenant to be done, observed, kept and performed and the continuance thereof for the period hereinbefore provided for, or if Landlord shall for any lawful reason or cause recover or come into possession of the Premises before the date hereinbefore fixed for the expiration of the Term hereof, Landlord shall have the right, at its sole option, to take over any and all Space Subleases of the Premises, if applicable, or any part thereof and all concessions and licenses and agreements by Tenant for the maintenance thereof or supplies thereof, and at Landlord's option to have and succeed to all the risks and privileges of said Space Subleases, or concessions, licenses or agreements, or such of them as it may elect to take over and assume, and Tenant upon any such default by Tenant or recovery of possession by Landlord hereby expressly assigns and transfers to Landlord such of the Space Subleases, or concessions, licenses and agreements as Landlord may elect to take over and assume as may exist and be in force and effect at the time of said default and recovery of possession and all deposits with Landlord pursuant thereto; and Tenant hereby further expressly covenants that, upon request of Landlord, Tenant will execute, acknowledge and deliver to Landlord such further instruments as may be necessary or desirable to vest in Landlord the then existing Space Subleases of said Premises or any part thereof and the licenses, concessions and agreements then in force, as above specified.

ARTICLE 27 LANDLORD'S EQUITABLE RELIEF

No expiration or termination of this Lease pursuant to the terms hereof or by operation of law or otherwise and no repossession of the Premises or any part thereof pursuant to the term hereof or by operation of law or otherwise, shall relieve Tenant of its liabilities and obligations hereunder arising prior to termination of this Lease, all of which shall survive such expiration, termination or repossession, including, without limitation, the rights of Landlord for indemnification for liability, personal injuries or property damage, nor shall anything in this Lease be deemed to affect the right of Landlord to equitable relief where such relief does not impose personal liability on Tenant which is inconsistent with the provisions of Article 43.

ARTICLE 28 NO WAIVER BY LANDLORD OR TENANT

No failure by Landlord or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial Ground Rent during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

ARTICLE 29 DEFAULT BY LANDLORD; TENANT'S REMEDIES

29.01 Default by Landlord; Tenant's Remedies.

Landlord shall be deemed to be in default hereunder if Landlord shall fail to perform or comply with any term hereof and such failure shall continue for more than the time of any cure period provided herein, or, if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, if such default cannot reasonably be cured within such thirty (30)-day period, Landlord shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon such default by Landlord, Tenant may exercise any remedy available at law or at equity, including, but not limited to, specific performance.

29.02 Survival of Certain Obligations.

Subject to the provisions of Section 29.01, no expiration, termination or repossession of this Lease pursuant to the term hereof or by operation of law or otherwise, shall relieve Landlord of its liabilities and obligations hereunder arising prior to such expiration, termination or repossession of this Lease, all of which shall survive such expiration, termination or repossession, including, without limitation, the rights of Tenant for indemnification for liability, for personal injuries or property damage.

ARTICLE 30 ACCEPTANCE OF SURRENDER

No modification, termination or surrender of this Lease or surrender of the Premises or any part thereof or of any interest therein by Tenant shall be valid or effective unless agreed to and accepted in writing by Landlord and Mortgagee, and no act by any representative or agent of Landlord, other than such a written agreement and acceptance by Landlord, shall constitute an acceptance thereof.

ARTICLE 31 NO MERGER OF TITLE

There shall be no merger of the Leasehold Estate with the fee estate in the Site by reason of the fact that the same person may own or hold (a) the leasehold estate created by this Lease or any interest in such leasehold estate, and (b) any interest in such fee estate; and no such merger shall occur unless and until all persons having any interest in (i) the leasehold estate created by

this Lease and (ii) the fee estate in the Premises shall join in and record a written instrument effecting such merger.

ARTICLE 32 END OF LEASE; SURRENDER OF PREMISES; HOLDING OVER

32.01 Surrender.

Upon the expiration or other termination of the Term, Tenant shall quit and surrender to Landlord the Premises, all other leased property and renewals and replacements thereof, in good order, condition and repair, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in good order, condition and repair. Upon termination of this Lease, Landlord has the right to terminate all Space Subleases (if applicable). The Premises must be surrendered clean, free of debris, waste, and Hazardous Substances, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created or approved in writing by Landlord. At the request of Landlord, Tenant must surrender the Premises to Landlord free of all Personal Property and fixtures belonging to Tenant, and in any event, Tenant must repair any damage to the Premises caused by such removal. Improvements and Changes will remain in the Premises as Landlord property and title to the Improvements and any Changes will be conveyed to Landlord as provided in Article 11 above.

32.02 Execution of Documents.

Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence such termination of this Lease.

32.03 Holding Over.

Holding over is not permitted under this Lease. If Tenant fails to surrender the Premises at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Article 32, such failure shall not constitute renewal of this Lease or give Tenant any rights hereunder or in the Premises, except with the prior written consent of Landlord, and Tenant shall be a Tenant at sufferance hereunder. Tenant shall be responsible for the payment of holdover rent constituting 100% of Surplus Cash (whether or not the Community Commercial Loan has been repaid) or [Twelve Thousand Dollars (\$12,000) per month], whichever is greater, until the Premises is surrendered in accordance with this Article 32, and Tenant will indemnify, defend and hold harmless the Indemnified Parties from and against any and all Claims resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Landlord to obtain possession of the Project; any loss or liability resulting from any Claim against Landlord made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Landlord due to lost opportunities to lease any portion of the Project or the Site to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

ARTICLE 33 EQUAL OPPORTUNITY

Tenant agrees to comply with OCII's Equal Opportunity Program as described in Exhibit 7 and will submit all documents required pursuant to the policies included in Exhibit 7.

ARTICLE 34 OCII LABOR STANDARDS PROVISIONS

Tenant agrees to comply with requirements of the MOHCD Underwriting Guidelines concerning payment of prevailing wage for tenant improvements, including Subtenant Improvements. In addition, California Labor Code Section 1720 *et seq.* requires payment of prevailing wages for developments paid for in whole or in part out of public funds. Although the Parties acknowledge that the development of the Project is a private work of improvement, Tenant further acknowledges that the Project may be subject to Labor Code requirements. Tenant agrees to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in Attachment 7-3 and to comply with applicable provisions of the Labor Code.

ARTICLE 35 OCII MINIMUM COMPENSATION AND HEALTH CARE ACCOUNTABILITY POLICY

Landlord finds that it has a significant proprietary interest in the public parcel that is being leased to the Tenant pursuant to this Lease. Tenant agrees that the Tenant and its Space Subtenants, if any, will comply with the applicable provisions of OCII's Health Care Accountability Policy, Attachment 7-5, and Minimum Compensation Policy, Attachment 7-6, and, adopted by Agency Resolution No. 168-2001 on September 25, 2001, as these policies may be amended from time to time (jointly in this Article, the "Policies"). Notwithstanding this requirement, the Parties recognize that the leasing and operations of all Community Commercial Units is subject to the Policies.

ARTICLE 36 CONFLICT OF INTEREST

No commissioner, official, or employee of OCII may have any personal or financial interest, direct or indirect, in this Lease, and any such commissioner, official, or employee may not participate in any decision relating to this Lease that affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

ARTICLE 37 ENERGY CONSERVATION

Tenant agrees that it will use its best efforts to maximize provision of, and incorporation of, both energy conservation techniques and systems and improved waste-handling methodology in the construction of the Improvements.

ARTICLE 38 PROVISIONS SUBJECT TO APPLICABLE LAW

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law.

ARTICLE 39 CUMULATIVE REMEDIES; NO WAIVER

Subject to the provisions of Article 43, the specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled. The failure of Landlord to insist in anyone or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. A receipt by Landlord for Ground Rent with knowledge of the breach of any covenant hereto' shall not be deemed a waiver of such breach, and no waiver, change, modification or discharge by either party hereto of any provision in this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by both Landlord and Tenant. Subject to the provisions of Articles 43 and 44, in addition to the other remedies in this Lease provided, Landlord and Tenant shall be entitled to the restraint by injunction of the violation, or threatened violation, of any of the covenants, conditions, or provisions of this Lease, or to a decree compelling performance of any of such covenants, conditions or provisions.

ARTICLE 40 NOTICES

40.01 Notices.

All notices, demands, consents, and requests which may or are to be given by any party to the other shall be in writing. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date sent if served personally on a day that is a Business Day, or, if mailed, on the date that is three days after the date when sent in the United States registered or certified mail, return receipt requested, postage prepaid, in either case, addressed as follows:

If to Tenant: [.....]

If to Landlord: [.....]

With copy to:

MOHCD
[.....]

City Attorney
[.....]

or at such other place or places in the United States as each such party may from time to time designate by written notice to the other.

40.02 Form and Effect of Notice.

Every notice given to a party or other person under this Section must state (or must be accompanied by a cover letter that states):

- (a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto; and
- (c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) did not fully comply with the requirements of Subsection 40.02(a) and (b). The effectiveness of notices sent by Landlord to Tenant shall not be invalidated or impaired by a failure of Landlord to send copies of notices to any person or entity other than Tenant.

40.03 Time of Performance.

Except as provided herein, all performance (including cure) dates expire at 5:00 p.m. Pacific Standard/Daylight Savings Time on the performance or cure date. Provisions in this Lease relating to number of days will be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action is not a Business Day, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding Business Day. Time is of the essence in the performance of all the terms and conditions in this Lease.

ARTICLE 41 SEVERABILITY

If any term or provision of this Lease or application thereof to any party, parties, person or circumstances is found to be invalid or unenforceable to any extent, the remainder of this Lease and its application to parties, persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected, and each term and provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

**ARTICLE 42 SUCCESSORS AND ASSIGNS BOUND; GOVERNING LAW;
THIRD PARTIES**

42.01 Successors and Assigns Bound.

This Lease shall be binding upon and inure to the benefit of the successors and assigns of OCII and Tenant and where the term "Tenant," "Landlord" or "OCII" is used in this Lease, it shall mean and include the respective successors and assigns of each party; provided, however, that

Landlord shall have no obligation under this Lease to, nor shall any benefit of this Lease accrue to, any unapproved successor or assign of Tenant where Landlord approval of a successor or assign is required by this Lease.

42.02 Governing Law.

This Lease shall be construed and enforced in accordance with the laws of the State of California, and applicable provisions of the City's Charter and Municipal Codes.

42.03 No Third-Party Beneficiary.

This Lease is entered into solely among, between, and for the benefit of, and may be enforced only by, the parties hereto and does not create rights in any other third party.

ARTICLE 43 LANDLORD'S RECOURSE AGAINST TENANT

Landlord may recover from Tenant, but not from any officer, member, director, employee, representative or attorney, past, present or future of Tenant only those damages that arise out of or in connection with (i) any Impositions or Carrying Costs not paid by Tenant; (ii) the amount of any insurance premiums paid for by Landlord pursuant to this Lease; (iii) the application of any insurance or Condemnation proceeds in a manner inconsistent with or contrary to the provisions of this Lease, except as applied as required by any Leasehold Mortgage; (iv) the cost of razing any Improvements Tenant fails to raze in accordance with the terms of this Lease; (v) any damages suffered by Landlord as the result of the breach by Tenant of the covenants contained in this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, and facsimile expenses; (vi) any expenses in enforcing the limited recourse provisions of this Article 43, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, and facsimile expenses; (vii) the portion of any amounts paid to Tenant for the period ending on the date of termination of this Lease which Tenant is required to pay Landlord as Ground Rent under this Lease; and (viii) waste committed or permitted by Tenant.

ARTICLE 44 RECOURSE AGAINST LANDLORD

44.01 No Recourse to Other Persons.

Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any claim based upon this Lease or otherwise, against any officer, director, employee, Supervisors, representative or attorney, past, present or future, of Landlord, or against any person other than Landlord, or against Landlord except to the extent of the value of Landlord's interest in the Premises, whether by virtue of any constitution, statute, rule of law, rule of equity,

enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Lease, or otherwise. By Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder all such liability is expressly waived.

44.02 Limitation on Landlord's Liability.

In the event of any transfer of Landlord's interest in and to the Premises, Landlord, subject to the provisions hereof, (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations on the part of Landlord (or such transferor, as the case may be) contained in this Lease thereafter to be performed, but not from liability incurred by Landlord (or such transferor, as the case may be) on account of covenants or obligations to be performed by Landlord (or such transferor, as the case may be) hereunder prior to the date of such transfer; provided, however, that (a) any funds in Landlord's possession (or in the possession of the then transferor at the time of such transfer) in which Tenant has an interest must be turned over to the transferee, in trust, for application pursuant to the provisions hereof and such transferee shall assume all liability for all such funds so received by such transferee from Landlord and (b) any amount then due and payable to Tenant by Landlord or the then transferor under any provisions of this Lease must be paid to Tenant.

ARTICLE 45 TENANT TO FURNISH AND EQUIP THE IMPROVEMENTS

47.01 Tenant to Furnish and Equip the Improvements.

Tenant covenants and agrees to furnish and equip the Improvements with all fixtures, furniture, furnishings, equipment, machinery, supplies and other personalty of a quantity and quality necessary to operate the Premises in accordance with the provisions of this Lease, including any Subtenant Improvements.

47.02 Landlord's Lien.

If Landlord elects such lien, Tenant hereby grants to Landlord a lien in all of its Personal Property, and all products and proceeds thereof, as security for the payment and performance of Tenant's obligations hereunder, and agrees to execute a financing statement evidencing such lien to secure the performance by Tenant of all of its (or their) obligations under this Lease. Landlord hereby agrees to subordinate its lien in all Personal Property to any purchase money lien in any Personal Property (such subordination shall be self-operative; however, in confirmation thereof, upon the request of each such lienor in Tenant's Personal Property, Landlord shall execute a subordination agreement in form and substance reasonably satisfactory to such lienor and to Landlord). If any of such Personal Property is leased from third parties, Tenant agrees to collaterally assign its leasehold interest to Landlord upon terms and conditions and pursuant to an assignment acceptable in form and substance to Landlord to secure the performance by Tenant of all of its obligations under this Lease. Tenant shall execute from time to time such additional documents as may be necessary to effectuate and evidence such assignments if requested to do so by Landlord. Upon the occurrence of an Event of Default on the part of Tenant, Landlord shall have the immediate right of possession of all of the Personal Property and the right to assume the

leasehold interest of Tenant in such Personal Property, subject to the interest of the lien of any Mortgagee.

ARTICLE 46 NO JOINT VENTURE

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Tenant to be responsible in any way for the debts or obligations of Landlord, except as otherwise provided to the contrary herein, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other party.

ARTICLE 47 ATTORNEYS FEES

If either Landlord or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, will pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Lease (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of OCII or the City's Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the 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 OCII or the Office of the City Attorney. The term "attorneys' fees" also includes, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which the fees were incurred. The term "costs" means the costs and expenses of counsel to the parties, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

ARTICLE 48 TRANSFERS OF PARTNERSHIP INTEREST IN TENANT

Tenant may not cause or permit any voluntary transfer, assignment, or encumbrance of its interest in the Site or Project or of any ownership interests in Tenant, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases, or occupancy agreements to Space Subtenants consistent with this Lease; or (b) security interests for the benefit of Mortgagees securing loans for the Project as approved by Landlord on terms and in amounts as approved by Landlord in its reasonable discretion, (c) transfers of the general partnership or manager's interest in Tenant to a nonprofit public benefit corporation approved in advance by Landlord; or (d) transfers by foreclosure or deed in lieu of foreclosure consistent with this Lease. Any other transfer, assignment, encumbrance, or lease without Landlord's prior written consent will be voidable and, at Landlord's election, constitute a default under this Lease. Landlord'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 Landlord's rights under this Lease.

ARTICLE 49 BROKERS

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Lease contemplated herein. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, the party through whom the broker or finder makes a claim will be responsible for such commission or fee and will indemnify, defend and hold harmless the other party from any and all Claims. The provisions of this Section shall survive any termination of this Lease.

ARTICLE 50 NO RECORDATION OF LEASE; MEMORANDUM OF LEASE

This Lease shall not be recorded. Landlord and Tenant shall record on, or as of, the Effective Date a memorandum of this Lease for the Premises, substantially in the form and substance as set forth in Exhibit 4, in the Official Records. The parties will execute the memorandum in form and substance as required by a title insurance company insuring Tenant's leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive notice of the Lease to subsequent purchasers and Mortgagees.

ARTICLE 51 GENERAL PROVISIONS

51.01 Complete Agreement.

There are no oral agreements between Tenant and Landlord affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings between Tenant and Landlord with respect to the lease of the Site.

51.02 Cooperative Drafting.

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

51.03 Amendments.

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

51.04 Authority.

If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations and warranties.

51.05 Time of the Essence.

Time is of the essence in the enforcement of the terms and conditions of this Lease. References to days, months and years mean calendar days, months and years unless otherwise specified.

51.06 Headings.

Any titles of the paragraphs, articles, and sections of this Lease are inserted for convenience only and will be disregarded in construing or interpreting any of its provisions. "Paragraph," "article," and "section" may be used interchangeably.

51.07 Survival of Indemnities.

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

51.08 Counterparts.

This Lease and any memorandum hereof may be executed in counterparts, each of which will be considered an original, and all of which will constitute one and the same instrument.

ARTICLE 52 LIST OF EXHIBITS

The following Exhibits are attached and by this reference incorporated into this Lease as if fully set forth above:

- Exhibit 1 Legal Description of Site
- Exhibit 2 Schedule of Performance
- Exhibit 3 Consent to Leasehold Mortgage
- Exhibit 4 Form of Memorandum of Lease

Exhibit 5 City Contract Provisions Applicable Upon Assignment

Exhibit 6 Insurance Requirements

Exhibit 7 Contract Compliance Policies

7-1. Small Business Enterprise Agreement

7-2. Construction Workforce Agreement

7-3. Prevailing Wage Policy

7-4. Nondiscrimination in Contracts and Benefits

7-5. Health Care Accountability Policy Declaration

7-6. Minimum Compensation Policy Declaration

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

TENANT:

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Ramie Dare
Vice President

[Signatures continue on following page]

LANDLORD:

Office of Community Investment and
Infrastructure, Successor Agency to the
Redevelopment Agency of the City and
County of San Francisco, a public body
organized and existing under the laws of the
State of California

By: _____
Thor Kaslofsky
Executive Director

APPROVED AS TO FORM:
James B. Morales
OCII General Counsel

By: _____

Authorized by OCII Resolution No. XX-2024, dated _____, 2024

EXHIBIT 1

Legal Description of Site

EXHIBIT 2
Schedule of Performance

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
1.	Commercial Space		
a.	Commercial Space Plan submission (preliminary)	May 2023	Complete
b.	Commercial Space Plan submission (updated)	January 2024	March 2024
c.	LOIs executed (target)	[May 2024]	N/A
d.	2 out of 3 Commercial Spaces Occupied	October 2027	October 2028
2.	Closing		
a.	Construction Loan Closing	May 2024	July 2024
b.	Conversion of Construction Loan to Permanent Financing	December 2026	April 2027
3.	Construction		
a.	Notice to Proceed	May 2024	July 2024
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	May 2026	October 2026
4.	Cost Certification/8609	December 2027	March 2028
5.	Close Out MOH/OCII Loan(s)	December 2027	March 2028

EXHIBIT 3
Consent to Leasehold Mortgage

Date:

Office of Community Investment and Infrastructure
Successor to the San Francisco Redevelopment Agency
Attn: Executive Director
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

RE: _____, San Francisco (LEASEHOLD MORTGAGE)

To Whom It May Concern:

Under Section 23.01 of the _____ Ground Lease, dated _____, 20__, between the Office of Community Investment and Infrastructure (“OCII”) and _____, a California _____, we are formally requesting the OCII’s consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for OCII to provide its consent:

Holder:

Principal Amount:

Interest:

Term:

Attached hereto are unexecuted draft loan documents, including the loan agreement, promissory note, and all associated security agreements which we understand are subject to review and approval by OCII. Furthermore, we are willing to supply any additional documentation related to the leasehold mortgage which OCII deems necessary.

Sincerely,

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest a California nonprofit public benefit corporation, its sole member/manager

By: _____

Name: Ramie Dare
Title: Vice President
Enc.

By signing this letter, OCII consents to the leasehold mortgage, under the terms and conditions of Section 23.01 of the _____ Ground Lease, dated _____, 2024.

Office of Community Investment and Infrastructure

Thurston Kaslofsky
Executive Director

EXHIBIT 4

Form of Memorandum of Lease

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §§27383 & 27388.1 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

WHEN RECORDED RETURN TO:

The Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco, One South Van Ness Avenue,
5th Floor, San Francisco, California 94103
Attn: Jane Suskin

Assessor's Block ____, Lot ____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into as of ____, 2024, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California ("Landlord"), and TRANSBAY 2 FAMILY COMMERCIAL, LLC, a California limited liability company ("Tenant"), with respect to that certain Ground Lease (the "Lease") dated for reference purposes as, 2024, between Landlord and Tenant.

Under the Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Lease will become effective on the date of recordation of this Memorandum and will end on the date that is 75 years from said date, subject to a 24-year option to extend, unless terminated earlier or extended pursuant to the terms of the Lease.

It is the intent of the parties to the Lease that the Lease creates a constructive notice of severance of the Improvements from the Property (as defined in the Lease), without the necessity of a deed from Lessor to Lessee, which Improvements together with the Leasehold Interest in the Property created by the Lease are and will remain real property.

This Memorandum incorporates herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and will not be construed to alter, modify, amend, or supplement the Lease, of which this is a memorandum.

This Memorandum may be signed by the parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts will be deemed an original of this Memorandum.

Executed as of _____, 2024 in San Francisco, California.

TENANT:

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Ramie Dare
Vice President

[Signatures continue on following page]

LANDLORD:
SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO,
a public body organized and existing under the
laws of the State of California

By: _____
Thurston Kaslofsky
Executive Director

APPROVED AS TO FORM:
James B. Morales
General Counsel

By: _____
Aaron J. Foxworthy
Deputy General Counsel

Exhibit A

Legal Description

EXHIBIT 5

City Contract Provisions Applicable Upon Assignment

In accordance with Article 19 of the Lease, upon transfer of the Site and assignment of the rights and obligations of this Lease to the City in accordance with Section 14.02 therein, the following provisions shall be applicable to Tenant and in that event, any conflict between these provisions and those of the Lease shall be resolved in favor of the provisions set out below.

1. Nondiscrimination; Penalties.

(a) *Nondiscrimination in Contracts.* The Tenant shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Tenant shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Tenant is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) *Nondiscrimination in the Provision of Employee Benefits.* *San Francisco Administrative Code 12B.2.* The Tenant does not as of the date of this Lease, and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Lease. By entering into this Lease, the Tenant confirms that it has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

3. Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges the Tenant not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Tenant to remove from, City facilities personnel of the Tenant who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

5. Compliance with Americans with Disabilities Act. The Tenant shall provide the services specified in this Lease in a manner that complies with the Americans with Disabilities Act

(ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

6. Sunshine Ordinance. The Tenant acknowledges that this Lease and all records related to its formation, the Tenant's performance under this Lease, and the City's payment are subject to the California Public Records Act (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.
7. Limitations on Contributions. By executing this Lease, the Tenant acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of the Tenant's board of directors; the Tenant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Tenant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Tenant. The Tenant certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.
8. Requiring Minimum Compensation for Covered Employees. If Administrative Code Chapter 12P applies to this Lease, the Tenant shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Tenant is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. The Tenant is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Lease, the Tenant certifies that it complies with Chapter 12P.
9. Requiring Health Benefits for Covered Employees. If Administrative Code Chapter 12Q applies to this Lease, the Tenant shall comply with the requirements of Chapter 12Q. For each Covered Employee, the Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. The Tenant is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by the Tenant shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.
10. Prohibition on Political Activity with City Funds. In performing under this Lease, the Tenant shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds

appropriated by the City for this Lease from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Tenant is subject to the enforcement and penalty provisions in Chapter 12G.

11. Nondisclosure of Private, Proprietary or Confidential Information. If this Lease requires the City to disclose “Private Information” to the Tenant within the meaning of San Francisco Administrative Code Chapter 12M, the Tenant shall use such information consistent with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services provided under this Agreement. The Tenant is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of services provided under this Lease, the Tenant may have access to the City’s proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to the Tenant, such information must be held by the Tenant in confidence and used only in performing this Lease. The Tenant shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

12. Consideration of Criminal History in Hiring and Employment Decisions. The Tenant 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 Lease. The text of Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of the Tenant’s obligations under Chapter 12T is set forth in this Section. The Tenant is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to the Tenant’s operations to the extent those operations are in furtherance of the performance of this Lease, shall apply only to applicants and employees who would be or are performing work in furtherance of this Lease, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport property. Chapter 12T shall 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.

13. Reserved

14. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code § 21.35, including the enforcement and penalty provisions, is incorporated into this Lease. Under San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the 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.

15. Conflict of Interest. By entering into this Lease, the Tenant certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Lease.
16. Food Service Waste Reduction Requirements. The Tenant shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.
17. Distribution of Beverages and Water. The Tenant agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Lease. The Tenant agrees that it shall not sell, provide or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Lease.
18. Consideration of Salary History. The Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." The Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Lease or in furtherance of this Lease, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Tenant is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.
19. Laws Incorporated by Reference. The full text of the laws listed in this Exhibit G, including enforcement and penalty provisions, are incorporated into this Lease by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Exhibit G are available at http://www.amlegal.com/codes/client/san-francisco_ca/
20. First Source Hiring Program. The Tenant must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Lease, and the Tenant is subject to the enforcement and penalty provisions in Chapter 83.
21. Prevailing Wages. Services to be performed by the Tenant under this Lease may involve the performance of trade work covered by the provisions of Section 6.22(e) or Section 21C of the Administrative Code (collectively, "Covered Services"). The provisions of Section 6.22(e) and Section 21C of the Administrative Code are incorporated as provisions of this Lease as if fully set forth herein and will apply to any Covered Services performed by the Tenant.
22. Contractor Vaccination Policy.
 - (a) Tenant acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"),

dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (“Contractor Vaccination Policy”), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

(c) In accordance with the Contractor Vaccination Policy, Tenant agrees that:

(i) Where applicable, Tenant shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Tenant an exemption based on medical or religious grounds; and

(ii) If Tenant grants Covered Employees an exemption based on medical or religious grounds, Tenant will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

EXHIBIT 6

Insurance Requirements

Subject to approval by the OCII Risk Manager of the insurers and policy forms, Tenant must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth in this Attachment 8 throughout the Compliance Term of this Agreement, or in accordance with the timeframes stated herein, at no expense to OCII.

A. **Overview of Coverage Requirements.** The following table summarizes required insurance policies and documentation. Please see Section B of this Attachment 8 for more detailed descriptions of policy requirements.

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Commercial General Liability (see Section B.1)	\$1,000,000 per occurrence/ \$2,000,000 aggregate*	Tenant's design and professional contractors; and Tenant (prior to start of construction)	Additional insured (see Section G)
	\$10,000,000 per occurrence/ \$10,000,000 aggregate*	Tenant (upon construction start), general contractor, and subcontractors to the general contractor	Completed Operations Coverage endorsement (on construction stage policy) (see Section G)
Automobile Liability (see Section B.2)	\$1,000,000 per accident*	Tenant and Tenant's contractors	Additional insured (see Section G)
	\$10,000,000 per accident*	Upon construction start - general contractor and subcontractors to the general contractor	
Worker's Compensation and Employer's Liability (see Section B.3)	As per statute for Workers Comp; \$1,000,000 per accident; \$1,000,000 per employee; and in aggregate for bodily injury by disease as respects Employers Liability*	Tenant and Tenant's contractors	Waiver of subrogation
Professional Liability (see Section B.4)	\$2,000,000 per claim/ \$2,000,000 aggregate	Tenant if engaged in any eligible design-related activities; and Tenant's design and professional contractors	None
Crime/Dishonesty (see Section B.5)	\$1,000,000 per loss	Tenant	Loss payee endorsement

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Pollution Liability/Asbestos (see Section B.6)	\$1,000,000 per claim/ \$2,000,000 aggregate	Tenant or Tenant's construction contractor(s)	Additional insured (see Section G)
Builder's Risk – During Construction (see Section B.7a)	100% of replacement value	Tenant	Loss payee endorsement
Property Insurance – After Construction Completion (see Section B.7b)	100% of replacement value	Tenant or Tenant's property manager	Loss payee endorsement
Performance and Payment Bonds (see Section B.8)	100% of contract value	Tenant's construction contractors	OCII and Tenant named as dual obligees

** Umbrella, excess liability policy, [contractor controlled insurance program (CCIP)—OCII confirming] or owner controlled insurance program (OCIP) may be used to meet limits (see Section D)*

B. Minimum Scope and Limits of Insurance. Tenant and/or Tenant's Contractors must maintain insurance with limits no less than:

1) Commercial General Liability coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by OCII, with additional insured endorsement (form CG 20 10 or equivalent) (see Section G). Limits set forth below. Coverage must be included for contractual liability; explosion, collapse and underground (XCU); products and completed operations. Umbrella, Excess Liability, [Contractor Controlled Insurance Policy,] or an Owner Controlled Insurance Policy may be used to meet the terms of this section.

a. Before the start of demolition/construction if the Site is unoccupied, Tenant and Tenant's Contractors will maintain coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit. These limit requirements apply to Tenant's design and professional contractors throughout the required coverage period;

b. During demolition/construction and occupancy of the Site and ongoing operations of the Project, Tenant and its Construction Contractors and/or Property Manager will maintain coverage of not less than Ten Million Dollars (\$10,000,000) combined single limit per occurrence and Ten Million Dollars (\$10,000,000) annual aggregate limit. For subcontractors to the Construction General Contractor and the Property Manager, the Tenant, in consultation with the Construction General Contractor and the Property Manager, as appropriate, is required to assess the risks associated with such contractors and determine, authorize, and verify the appropriate level of coverage provided by the subcontractor or consultant;

c. The construction period general liability policy must include completed operations coverage for a minimum of ten (10) years. Tenant must provide a

completed operations coverage endorsement (form CG 20 37 or equivalent) and OCII must be named as an additional insured pursuant to Section G below.

- 2) Automobile Liability coverage for all owned, non-owned, scheduled, and hired automobiles under Insurance Services Office form number CA 00 01 or other form approved by OCII, with additional insured endorsement (see Section G). If Tenant does not own any automobiles, Tenant must provide OCII a written statement confirming that no automobiles are owned, and OCII will accept an Automobile Insurance policy providing coverage for Symbol 8 (hired autos) and Symbol 9 (non- owned autos), with additional insured endorsement. One Million Dollars (\$1,000,000) per accident for bodily injury and property damage, combined single limit.

For construction operations, Tenant's Contractor will maintain coverage of not less than Ten Million Dollars (\$10,000,000) per accident for bodily injury and property damage, combined single limit. For subcontractors to the Construction General Contractor and the Tenant, the Construction General Contractor, is required to assess the risks associated with such contractors and, with the authorization of the Tenant, determine and verify the appropriate level of automobile liability coverage provided by the subcontractor or consultant.

- 3) Worker's Compensation and Employer's Liability as required by the State of California. A waiver of subrogation naming OCII is required (also known as "transfer of rights of recovery against others to us"). Employer's Liability coverage must provide limits of One Million Dollars (\$1,000,000) for bodily injury each accident; and not less than One Million Dollars (\$1,000,000) per employee; and One Million Dollars (\$1,000,000) in the annual aggregate for bodily injury by disease. If the Tenant does not have any employees, then evidence of Workers' Compensation and Employers Liability coverage required herein must be provided by either the Project Sponsor(s) or the General Partner of the Partnership, in lieu of such coverage being provided by the Tenant. Additionally, the Tenant must provide a written statement confirming that the Tenant does not have employees.
- 4) Professional Liability (Errors and Omissions) insurance, applicable to the Tenant's licensed design and professional contractors (architects, engineers, surveyors and other eligible consultants) and to the Tenant only if the Tenant or Sponsor has any employees providing design or engineering services. Two Million Dollars (\$2,000,000) for each claim and in the annual aggregate limit covering negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. If the Professional Liability insurance is "claims made" coverage, these minimum limits shall be maintained for not less than five (5) years beyond completion of the scope of services performed. Any deductible over One Hundred Thousand Dollars (\$100,000) each claim must be reviewed by OCII Risk Management.

Design professionals who utilize the services of subcontractors or consultants to complete work in connection with this project are required to assess the risks associated with such contractors and, with the authorization of the Tenant, determine and verify the appropriate level of coverage provided by the subcontractor or consultant. The design professional and the Tenant shall assume costs and expenses that may be incurred in fulfilling any indemnity obligations as to itself or any subcontractors or consultants for whom the design professional and/or the Tenant are legally liable in the absence of adequate subcontractor or consultant coverage.

- 5) Crime Policy or Fidelity Bond covering Tenant's officers and employees against employee dishonesty, forgery and alteration, theft of money and securities, and theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees with respect to the Funding Amount. One Million Dollars (\$1,000,000) each loss, with any deductible not to exceed Fifty Thousand Dollars (\$50,000). Tenant must provide an endorsement naming OCII as an additional obligee or loss payee.

Application of Crime Insurance Proceeds. Tenant shall promptly notify OCII of any claim under the required Crime Insurance Policy. OCII may retain from the proceeds of the required Crime Insurance Policy, a sufficient amount of the proceeds to pay the Funding Amount, if any, and shall pay the balance to Tenant. For the avoidance of doubt, OCII shall have no right or claim to the proceeds of the required Crime Insurance Policy in excess of the Funding Amount.

- 6) Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) aggregate per policy, this coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Tenant's construction contractor to maintain these minimum limits for no less than three (3) years beyond completion of the Project.

- 7) Property Insurance

- a. Builder's Risk Insurance during the course of any construction, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and OCII property in the care, custody and control of Tenant or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss, including OCII as loss payee. Builder's Risk must be maintained by the Tenant or the Tenant must cause its general contractor to maintain this insurance.
- b. Property Insurance after completion of construction, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, and including boiler and machinery insurance, for one hundred percent (100%) of the replacement value of all furnishings, fixtures,

equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Twenty Five Thousand Dollars (\$25,000) each loss, including OCII as a loss payee. A waiver of subrogation naming OCII is required (also known as “transfer of rights of recovery against others to us”).

- 8) Performance and Payment Bonds for eligible construction contractors during construction and/or rehabilitation, each in the amount of one hundred percent (100%) of contract amounts, naming OCII and Tenant as dual obligees, or other completion security approved by OCII in its sole discretion. OCII has approved issuance of a Completion Guaranty by an affiliate of Tenant to Tenant’s institutional lender as completion security.
 - 9) Performance Insurance. Tenant shall require its general contractor to obtain performance insurance that insures against delay in delivery of modules, up to the amount of Tenant’s or Tenant’s general contractor’s contract amount for the delivery of modules for the construction of the Project. Tenant shall limit general contractor’s use of proceeds from the performance insurance policy to be used to solely to reduce cost overruns in the construction of the Project related to or caused by delay in the delivery of modules, and Tenant shall, and shall require general contractor, to obtain OCII’s approval prior to expending such proceeds.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of those required for policies stated herein must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Tenant shall provide a financial guarantee satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- D. Umbrella, Excess Liability, and Owner Controlled Insurance Policies (OCIP). An Umbrella and/or Excess Liability policy(ies) or an OCIP may be used to reach the Commercial General Liability, Workers’ Compensation, and/or Automobile Liability coverage limits required herein. The Umbrella/Excess Liability/OCIP policy(ies) must appropriately schedule any such underlying policy(ies).
- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise approved by OCII’s Risk Manager.
- F. General Requirements.
- 1) If the Tenant maintains additional coverages and/or higher limits than the minimums shown in this Attachment 8, OCII requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Tenant.

- 2) The policies required herein, with the exception of Professional Liability and Workers Compensation, shall be primary insurance and non-contributory as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Tenant's insurance and shall not contribute with it.
- 3) Each insurance policy required herein must be endorsed (if endorsement is available) to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by mail has been given to OCII. Should the insurance carrier not be able to provide such notice, then the responsibility to provide the notice to OCII shall be borne by the policyholder.
- 4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
- 5) Approval of Tenant's insurance by OCII will not relieve or decrease the liability of Tenant under this Agreement.
- 6) OCII and its officers, agents and employees will not be liable for any required premium under any policy maintained by Tenant.
- 7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

G. Verification of Coverage. Tenant must furnish OCII with certificates of insurance and original endorsements evidencing coverage required by this clause. The certificates and applicable endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by OCII before work commences. OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time. Tenant shall require and verify that its contractors and consultants maintain the required policies as stated herein. Tenant must furnish OCII with copies of certificates and endorsements upon request. All certificates shall include the following:

- 1) Identify the following as the certificate holder:
Successor Agency to the Redevelopment Agency of the
City and County of San Francisco
Office of Community Investment and Infrastructure
One South Van Ness Avenue, 5th Floor

San Francisco, CA 94103

- 2) Identify the name of the insurance policy holder (Tenant or Contractor), the Project name, and the Project address.
- 3) For policies in which OCII is required to be named as an additional insured, loss payee, dual obligee, or named on a waiver of subrogation, the policy shall name “Office of Community Investment and Infrastructure/ Successor Agency to the Redevelopment Agency of the City and County of San Francisco, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees” on the certificate and on the attached endorsement or certificate.

H. Review. OCII reserves the right to modify the insurance coverage under this Section, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances consistent with OCII’s Risk Management Policy. The insurance coverage required under this Section shall be evaluated by OCII for adequacy from time to time. OCII may require Tenant to increase the insurance limits and/or forms of coverage in its reasonable discretion provided that such limits and/or coverage is generally available at commercially reasonable rates.

EXHIBIT 7

Contract Compliance Policies

1. Equal Opportunity Policies. Tenant shall comply with OCII's Equal Opportunity Policies:

- (i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 7-2022, March 15, 2022
- (ii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985);
- (iii) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997);
- (iv) Health Care Accountability Policy (adopted by Resolution No. 168-2001); and
- (v) Minimum Compensation Policy (adopted by Resolution No. 168-2001).

Copies of the aforementioned policies are available on the OCII website at <http://sfocii.org/policies-and-procedures>

2. Environmental Review. The Project must meet the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 et seq.) and implementing regulations, and any other environmental reviews as required by any federal funding sources obtained, including the National Environmental Policy Act ("NEPA").

3. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Tenant or OCII who exercises or has exercised any function or responsibilities with respect to activities assisted by Funds, in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, Tenant must incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. Tenant 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, Tenant must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) Tenant represents that it is familiar with the provisions of Sections 1090 through 1097 and 87100 et seq. of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Tenant certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify OCII immediately if Tenant at any time obtains knowledge of facts constituting a violation.

(c) In the event of any violation of the conflict of interest prohibitions, Tenant agrees that OCII may refuse to consider any future application for funding from Tenant or any entity related to Tenant until the violation has been corrected to OCII's satisfaction, in OCII's sole discretion.

4. Disability Access. Tenant must comply with all applicable disability access Laws, including the Americans with Disabilities Act (42 U.S.C. §§ 1201 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 et seq.). Tenant 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, Tenant must provide to OCII a written reasonable accommodations policy that indicates how Tenant will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. Tenant must satisfy the requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 et seq.) and implementing regulations at 24 CFR part 35. Tenant must also comply with the provisions contained in 17 CCR 350000 et seq., and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.

6. Relocation. Tenant must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 et seq.) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code and similar Laws.

7. Non-Discrimination in OCII Contracts and Benefits Policy.

(a) Tenant May Not Discriminate. In the performance of this Agreement, Tenant agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by Tenant.

(b) Non-Discrimination in Benefits. Tenant 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

San Francisco or where the work is being performed for OCII or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a Governmental Agency under state or local law authorizing such registration, subject to the conditions set forth in the Agency's Nondiscrimination in Contracts Policy, adopted by Agency Resolution 175-97, as amended from time to time.

8. Public Disclosure

(a) Tenant understands and agrees that under the State Public Records Law (Cal. Gov. Code §§ 6250 et seq.) and the Agency Public Records Policy, this Agreement and any and all records, information and materials submitted to OCII or the City hereunder are public records subject to public disclosure. Tenant hereby authorizes OCII and the City to disclose any records, information and materials submitted to OCII or the City in connection with this Agreement as required by Law.

9. Limitations on Contributions. Through execution of this Agreement, Tenant acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors; Tenant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Tenant agrees to provide to OCII the names of each member of Tenant's general partners' (or, if applicable, general partners' managing members) board of directors; Tenant's general partners' (or, if applicable, general partners' managing members) chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant's general partners (or, if applicable, general partners' managing members); any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Tenant.

EXHIBIT 7-1

Small Business Enterprise Agreement

The company or entity executing this Small Business Enterprise Agreement, by and through its duly authorized representative, hereby agrees to use good faith efforts to comply with all of the following:

I. PURPOSE. The purpose of entering into this Small Business Enterprise Program agreement (“**SBE Program**”) is to establish a set of Small Business Enterprise (“SBE”) participation goals and good faith efforts designed to ensure that monies are spent in a manner which provides SBEs with an opportunity to compete for and participate in contracts by or at the behest of the Successor Agency to the San Francisco Redevelopment Agency (“**Agency**”) and/or the Agency-Assisted Contractor. A genuine effort will be made to give First Consideration to Project Area SBEs and San Francisco-based SBEs before looking outside of San Francisco.

II. APPLICATION. The SBE Program applies to all Contractors and their subcontractors seeking work on Agency-Assisted Projects on or after November 17, 2004 and any Amendment to a Pre-existing Contract.

III. GOALS. The Agency’s SBE Participation Goals are:

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

IV. TRAINEE HIRING GOAL. In addition to the goals set forth above in Section III, there is a trainee hiring goal for all design professionals (architects, engineers, planners, and environmental consultants) on contracts or subcontracts over \$100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional’s contract as follows:

<u>Trainees</u>	<u>Design Professional Fees</u>
0	\$ 0 – \$99,000
1	\$ 100,000 – \$249,999
2	\$ 250,000 – \$499,999
3	\$ 500,000 – \$999,999
4	\$1,000,000 – \$1,499,999
5	\$1,500,000 – \$1,999,999
6	\$2,000,000 - \$4,999,999
7	\$5,000,000 - \$7,999,999
8	\$8,000,000 – or more

A. Procedures For Trainee Hires

1. Compliance with the Trainee Hiring Goal

Design professionals will be deemed in compliance with this Agreement by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. **Execution and Incorporation of this Agreement to Sub-agreements**

The Agency-Assisted Contractor shall execute this Agreement and shall incorporate by reference or attach this Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of this Agreement. The Agency-Assisted Contractor and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. **Contact Educational Institutions**

Each design professional shall call the City and County of San Francisco Office of Economic and Workforce Development (OEWD) or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution or OEWD to make the referral. The minimum duration of assignment is part-time for one semester. However, design professionals are strongly encouraged to offer longer trainee employment periods to allow a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) or OEWD may require the design professionals to send a confirming letter or complete its form(s). Each design professional is required to timely provide all of the information requested by the OEWD or educational institution(s) in order to get the referrals.

4. **Response from Educational Institutions**

Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

5. **Action by Design Professionals When Referrals Available**

The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency strongly encourages the design professional to hire a qualified San Francisco resident referred by the educational institution(s). The design professional shall notify the educational institution in writing of the hiring decision.

6. **Action by Design Professionals When Referrals Unavailable**

If after contacting two or more educational institutions the design professional is informed that no San Francisco residents are currently available, then the design professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco residents are currently available for hire as trainees. If no qualified San Francisco residents are currently available after the second request, then the design professional has fulfilled its obligation under this Agreement, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with this Section IV and submit a copy of its file to the Agency Compliance Officer upon request.

7. **Action by Design Professional When No Response From Educational Institutions**

If a design professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals, then the design professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the design professional within five (5) business days of the Agency Compliance Officer being notified. If the design professional still has not received a response from the educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section IV, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with this Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

8. **Termination of Trainee for Cause**

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Agreement and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth above.

B. Reporting Requirements For Trainee Hires

1. **Reporting**

Upon completion of the Term of the Agreement or the term of the design professional's contract with the Agency-Assisted Contractor, whichever is less, the design professional (i.e. Employer) shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. **Report on Terminations**

In the event a San Francisco resident hired pursuant to this Agreement is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); and (4) whether the design professional replaced the trainee(s).

V. TERM. The obligations of the Agency-Assisted Contractor and/or Contractor(s) with respect to SBE Program shall remain in effect until completion of all work to be performed by the Agency-Assisted Contractor in connection with the original construction of the site and any tenant improvements on the site performed by or at the behest of the Agency-Assisted Contractor unless another term is specified in the Agency-Assisted Contract or Contract.

VI. FIRST CONSIDERATION. First consideration will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: (1) Project Area SBEs, (2) San Francisco-based SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-San Francisco-based SBEs. Non-San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-San Francisco-based SBEs.

VII. ASSOCIATIONS AND JOINT VENTURES (JV). OCII will recognize JVs and Associations between non-SBE firms and SBE firms where the SBE partner performs at least 35% of the work defined in the JV or Association agreement, and receives at least 35% (or a proportionate share, whichever is higher) of the dollars to be earned by the JV or Association. Under this arrangement, OCII will deem the JV or Association to be an SBE for the purposes of meeting the SBE goal. Due to the technical nature of the disciplines and the various standards of each industry, OCII will not require a standardized agreement. However, each JV and Association agreement must be in writing and contain, at a minimum, the following terms:

- Define the management of the agreement between the parties;
- Define the technical and managerial responsibilities of each party;
- Define the scope of work to be performed by each party, and where possible identify the percentage and break-down of scope of work for each party;
- Identify any additional subcontractors or consultants that will perform the work under the agreement;
- Define the schedule, duration, and deliverable of the agreement;
- Detail the fee schedule, fee breakdown, or division of compensation;
- Specify insurance requirements and/or if each party shall maintain its own insurance;
- Specify how additional work or changes in scope shall be negotiated or determined and which party shall be responsible for notifying OCII of the changes;
- Specify how claims and disputes will be resolved.

A copy of the JV or Association agreement must be provided to OCII for approval in order for the JV or Association to be recognized.

VIII. CERTIFICATION. The Agency no longer certifies SBEs but instead relies on the information provided in other public entities' business certifications to establish eligibility for the Agency's program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency's SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the SBE Policy.

IX. INCORPORATION. Each contract between the Agency, Agency-Assisted Contractor or Contractor on the one hand, and any subcontractor on the other hand, shall physically incorporate as an attachment or exhibit and make binding on the parties to that contract, a true and correct copy of this SBE Agreement.

X. DEFINITIONS. Capitalized terms not otherwise specifically defined in this SBE Agreement have the meaning set forth in the Agency's SBE Policy adopted on November 16, 2004 and amended on July 21, 2009 ("**Policy**") or as defined in the Agency-Assisted Contract or Contract. In the event of a conflict in the meaning of a defined term, the SBE Policy shall govern over the Agency-Assisted Contract or Contract which in turn shall govern over this SBE Agreement.

Affiliates means an affiliation with another business concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indicators of affiliation. Power to control exists when a party or parties have 50 percent or more ownership. It may also exist with considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Affiliated business concerns need not be in the same line of business.

Agency-Assisted Contract means, as applicable, the Development and Disposition Agreement

(“DDA”), Land Disposition Agreement (“LDA”), Lease, Loan and Grant Agreements, and other similar contracts, and agreement that the Agency executed with for-profit or non-profit entities.

Agency-Assisted Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed an Agency-Assisted Contract.

Agency Contract means personal services contracts, purchase requisitions, and other similar contracts and operations agreements that the Agency executes with for-profit or non-profit entities.

Amendment to a Pre-existing Contract means a material change to the terms of any contract, the term of which has not expired on or before the date that this Small Business Enterprise Policy (“SBE Policy”) takes effect, but shall not include amendments to decrease the scope of work or decrease the amount to be paid under a contract.

Annual Receipts means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service tax return forms. The term does not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. Typically, receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts. However, to the extent a public entity considers a five-year average in its certification program, OCII will accept the five-year average provided the remaining certification criteria of the public entity is consistent with OCII’s criteria stipulated in this Policy. If a concern has not been in business for three (3) years, the average weekly revenue for the number of weeks the concern has been in business is multiplied by 52 to determine its average annual receipts.

Arbitration Party means all persons and entities who attend the arbitration hearing pursuant to Section XIII, as well as those persons and entities who are subject to a default award provided that all of the requirements in Section XIII.L. have been met.

Association means an agreement between two parties established for the purpose of completing a specific task or project. The associate agreement shall provide the SBE associate a significant project management role and the SBE associate shall be recognized in marketing and collateral material. The Association shall be distinguished from traditional subcontracting arrangements via a written Association agreement that defines the management of the agreement, technical and managerial responsibilities of the parties, and defined scopes and percentages of work to be performed by each party with its own resources and labor force. Unlike the more formal Joint Venture, an Association does not require formation of a new business enterprise between the parties. The Associate agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

Commercially Useful Function means that the business is directly responsible for providing the materials, equipment, supplies or services in the City and County of San Francisco (“City”) as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a “commercially useful function” unless the brokerage, referral or temporary employment services are required and sought by the Agency.

Contract means any agreement between the Agency and a person(s), firm, partnership, corporation, or combination thereof, to provide or procure labor, supplies or services to, for, or on behalf of the Agency.

Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed a Contract.

Joint Venture means an entity established between two parties for the purposes of completing a

venture or project. The Joint Venture agreement typically creates a separate business entity and requires acquisition of additional insurance for the newly created joint business entity. The Joint Venture agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

Non-San Francisco-based Small Business Enterprise means a SBE that has fixed offices located outside the geographical boundaries of the City.

Office or Offices means a fixed and established place(s) where work is performed of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an “office” under this SBE Policy. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an “office.” The office is not required to be the headquarters for the business but it must be capable of providing all the services to operate the business for which SBE certification is sought. An arrangement for the right to use office space on an “as needed” basis where there is no office exclusively reserved for the business does not qualify as an office. The prospective SBE must submit a rental agreement for the office space, rent receipt or cancelled checks for rent payments. If the office space is owned by the prospective SBE, the business must submit property tax or a deed documenting ownership of the office.

Project Area Small Business Enterprise means a business that meets the above-definition of Small Business Enterprise and that: (a) has fixed offices located within the geographical boundaries of a Redevelopment Project or Survey Area where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a Project Area or Survey Area business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in a Project Area or Survey Area for at least six months preceding its application for certification as a SBE; and (e) has a Project Area or Survey Area office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers of residential addresses alone shall not suffice to establish a firms’ location in a Project Area or Survey Area.

Project Area means an area of San Francisco that meets the requirements under Community Redevelopment Law, Health and Safety Code Section 33320.1. These areas currently include the Bayview Industrial Triangle, Bayview Hunters Point (Area B), Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, and Transbay.

San Francisco-based Small Business Enterprise means a SBE that: (a) has fixed offices located within the geographical boundaries of the City where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a San Francisco business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in the City for at least six months preceding its application for certification as a SBE; and (e) has a San Francisco office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers or residential addresses alone shall not suffice to establish a firm's status as local.

Small Business Enterprise (SBE) means an economically disadvantaged business that is certified by another public entity (either municipal, State, or federal agency) that considers the certification criteria stipulated in this Policy. In general, such criteria shall include a determination by the public entity as to whether an economically disadvantaged business is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; and has average gross annual receipts in at least the three years (and no more than five years, if practiced by the public entity) immediately preceding its application for certification as a SBE that do not exceed the following limits:

Industry	OCII SBE Size Standard
Construction Contractors	\$24,000,000
Specialty Construction Contractors	\$14,000,000
Suppliers (goods/materials/ equipment and general services)	\$12,000,000
Professional Services	\$5,000,000
Trucking	\$5,000,000

In addition, an economically disadvantaged business shall meet the other certification criteria described in Exhibit I of the SBE Policy in order to be considered an SBE by the Agency.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations) to calculate the firm's average annual gross receipts. In addition, the calculation of a firm's size shall include the receipts of all affiliates.

Once a business reaches the average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

Specialty Construction Contractor means a contractor licensed by the Contractors State License Board under the "C" classification license pursuant to California Business and Professions Code Section 7058.

Survey Area means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas currently include the Bayview Hunters Point Redevelopment Survey Area C.

XI. GOOD FAITH EFFORTS TO MEET SBE GOALS Compliance with the following steps will be the basis for determining if the Agency-Assisted Contractor and/or Consultant has made good faith efforts to meet the goals for SBEs:

A. Outreach. Not less than 30 days prior to the opening of bids or the selection of contractors, the Agency-Assisted Contractor or Contractor shall:

1. **Advertise.** Advertise for SBEs interested in competing for the contract, in general circulation media, trade association publications, including timely use of the *Bid and Contract Opportunities* newsletter published by the City and County of San Francisco Purchasing Department and media focused specifically on SBE businesses such as the *Small Business Exchange*, of the opportunity to submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.

2. **Request List of SBEs.** Request from the Agency's Contract Compliance Department a list of all known SBEs in the pertinent field(s), particularly those in the Project and Survey Areas and provide written notice to all of them of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.

B. Pre-Solicitation Meeting. For construction contracts estimated to cost \$5,000 or more, hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors for the purpose answering questions about the selection process and the specifications and requirements. Representatives of the Contract Compliance Department will also participate.

C. Follow-up. Follow up initial solicitations of interest by contacting the SBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work.

D. Subdivide Work. Divide, to the greatest extent feasible, the contract work into small units to facilitate SBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.

E. Provide Timely and Complete Information. The Agency-Assisted Contractor or Contractor shall provide SBEs with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Agency-Assisted Contractor or Contractor to give SBEs any information not provided to other contractors. This paragraph does require the Agency Assisted Contractor and Contractor to answer carefully and completely all reasonable questions asked by SBEs and to undertake every good faith effort to ensure that SBEs understand the nature and the scope of the work.

F. Good Faith Negotiations. Negotiate with SBEs in good faith and demonstrate that SBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.

G. Bid Shopping Prohibited. Prohibit the shopping of the bids. Where the Agency-Assisted Contractor or Contractor learns that bid shopping has occurred, it shall treat such bid shopping as a material breach of contract.

H. Other Assistance. Assist SBEs in their efforts to obtain bonds, lines of credit and insurance. (Note that the Agency has a Surety Bond Program that may assist SBEs in obtaining necessary bonding.) The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.

I. Delivery Scheduling. Establish delivery schedules which encourage participation of SBEs.

J. Utilize SBEs as Lower Tier Subcontractors. The Agency-Assisted Contractor and its Contractor(s) shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize SBEs as lower tier subcontractors.

K. Maximize Outreach Resources. Use the services of SBE associations, federal, state and local SBE assistance offices and other organizations that provide assistance in the recruitment and placement of SBEs, including the Small Business Administration and the Business Development Agency of the Department of Commerce. However, only SBEs certified by the Agency shall count towards meeting the participation goal.

L. Replacement of SBE. If during the term of this SBE Agreement, it becomes necessary to replace any subcontractor or supplier, the Agency's Contract Compliance Specialist should be notified prior to replacement due to the failure or inability of the subcontractor or supplier to perform the required services or timely delivery the required supplies, then First Consideration should be given to a certified SBE, if available, as a replacement.

XII. ADDITIONAL PROVISIONS

A. No Retaliation. No employee shall be discharged or in any other manner discriminated against by the Agency-Assisted Contractor or Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Agreement.

B. No Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of an Agency-Assisted Contract or Contract. The Agency-Assisted Contractor or Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) or other protected class status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations.

C. Compliance with Prompt Payment Statute. Construction contracts and subcontracts awarded for \$5,000 or more shall contain the following provision:

“Amounts for work performed by a subcontractor shall be paid within seven (7) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq.* Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity.”

In addition to and not in contradiction to the Prompt Payment Statute (California Business and Professions Code Section 7108.5 *et seq.*), if a dispute arises which would allow a Contractor to withhold payment to a subcontractor due to a dispute, the Contractor shall only withhold that amount which directly relates to the dispute and shall promptly pay the remaining undisputed amount, if any.

D. Submission Of Electronic Certified Payrolls. For any Agency-Assisted Contract which requires the submission of certified payroll reports, the requirements of Section VII of the Agency’s Small Business Enterprise Policy shall apply. Please see the Small Business Enterprise Policy for more details.

XIII. PROCEDURES

A. Notice to Agency. The Agency-Assisted Contractor or Contractor(s) shall provide the Agency with the following information within 10 days of awarding a contract or selecting subconsultant:

1. the nature of the contract, e.g. type and scope of work to be performed;
2. the dollar amount of the contract;
3. the name, address, license number, gender and ethnicity of the person to whom the contract was awarded; And
4. SBE status of each subcontractor or subconsultant.

B. Affidavit. If the Agency-Assisted Contractor or Contractor(s) contend that the contract has been awarded to a SBE, the Agency-Assisted Contractor or Contractor(s) shall, at the same time also submit to the Agency a SBE Application for Certification and its accompanying Affidavit completed by the SBE owner. However, a SBE that was previously certified by the Agency shall submit only the short SBE Eligibility Statement.

C. Good Faith Documentation. If the 50% SBE Participation Goals are not met in each category (Construction, Professional Services and Suppliers), the Agency-Assisted Contractor or

Contractor(s) shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Agency-Assisted Contractor's or Contractor's good faith efforts is not resolved at this meeting, the Agency-Assisted Contractor or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts ("**Submission**"):

1. A report showing the responses, rejections, proposals and bids (including the amount of the bid) received from SBEs, including the date each response, proposal or bid was received. This report shall indicate the action taken by the Agency-Assisted Contractor or Contractor(s) in response to each proposal or bid received from SBEs, including the reasons(s) for any rejections.

2. A report showing the date that the bid was received, the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the non-SBE contractor who was selected submitted more than one bid, the amount of each bid and the date that each bid was received shall be shown in the report. If the bidder asserts that there were reasons other than the respective amounts bid for not awarding the contract to an SBE, the report shall also contain an explanation of these reasons.

3. Documentation of advertising for and contacts with SBEs, contractor associations or development centers, or any other agency which disseminates bid and contract information to small business enterprises.

4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.

5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.

6. A description of the assistance provided to SBEs with respect to bonding, lines of credit, etc.

7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.

8. A description of any divisions of work undertaken to facilitate SBE participation.

9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.

10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.

11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

D. Presumption of Good Faith Efforts. If the Agency-Assisted Contractor or Contractor(s) achieves the Participation Goals, it will not be required to submit Good Faith Effort documentation.

E. Waiver. Any of the SBE requirements may be waived if the Agency determines that a

specific requirement is not relevant to the particular situation at issue, that SBEs were not available, or that SBEs were charging an unreasonable price.

F. SBE Determination. The Agency shall exercise its reasonable judgment in determining whether a business, whose name is submitted by the Agency-Assisted Contractor or Contractor(s) as a SBE, is owned and controlled by a SBE. A firm's appearance in any of the Agency's current directories will be considered by the Agency as prima facie evidence that the firm is a SBE. Where the Agency-Assisted Contractor or Contractor(s) makes a submission the Agency shall make a determination, as to whether or not a business which the Agency-Assisted Contractor or Contractor(s) claims is a SBE is in fact owned and controlled by San Francisco-based SBEs. If the Agency determines that the business is not a SBE, the Agency shall give the Agency-Assisted Contractor or Contractor a Notice of Non-Qualification and provide the Agency-Assisted Contractor or Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a Submission, concerning its good faith efforts. If the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to Section XIII.

G. Agency Investigation. Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Agency-Assisted Contractor or Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency shall give the Agency-Assisted Contractor or Contractor a written Notice of Non-Compliance setting forth its findings and recommendations. If the Agency-Assisted Contractor or Contractor disagrees with the findings and recommendations of the Agency as set forth in the Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to this SBE Agreement.

XIV. ARBITRATION OF DISPUTES.

A. Arbitration by AAA. Any dispute regarding this SBE Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of San Francisco.

B. Demand for Arbitration. Where the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Agency-Assisted Contractor or Contractor shall have seven (7) business days, in which to file a Demand for Arbitration**, unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying any entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Agency-Assisted Contractor and Contractor fail to file a timely Demand for Arbitration, the Agency-Assisted Contractor and Contractor shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.

C. Parties' Participation. The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Agency-

Assisted Contractor or Contractor made an initial timely Demand for Arbitration pursuant to Section XIII.B. above.

D. Agency Request to AAA. Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.

E. Selection of Arbitrator. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

F. Setting of Arbitration Hearing. A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

G. Discovery. In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

H. Burden of Proof. The burden of proof with respect to SBE status and/or Good Faith Efforts shall be on the Agency-Assisted Contractor and/or Contractor. The burden of proof as to all other alleged breaches by the Agency-Assisted Contractor and/or Contractor shall be on the Agency.

I. California Law Applies. Except where expressly stated to the contrary in this SBE Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.

J. Arbitration Remedies and Sanctions. The arbitrator may impose only the remedies and sanctions set forth below:

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Agency-Assisted Contract or this SBE Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Agency-Assisted Contract or this SBE Agreement, other than those minor modifications or extensions necessary to enable compliance with this SBE Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the SBE Program requirements in the Agency-Assisted Contract or this SBE Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

4. If any Arbitration Party is found to be in willful breach of its obligations

hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this SBE Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

K. Arbitrator's Decision. The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

L. Default Award; No Requirement to Seek an Order Compelling Arbitration. The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

M. Arbitrator Lacks Power to Modify. Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agency-Assisted Contract, this SBE Agreement or any other agreement between the Agency, the Agency-Assisted Contractor or Contractor or to negotiate new agreements or provisions between the parties.

N. Jurisdiction/Entry of Judgment. The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

O. Exculpatory Clause. Agency-Assisted Contractor or Contractor (regardless of tier) expressly waive any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Agency-Assisted Contractor or Contractor (regardless of tier) acknowledge and agree that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this SBE Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.

P. Severability. The provisions of this SBE Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this SBE Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this SBE Agreement or the validity of their application to other persons or circumstances.

Q. Arbitration Notice: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Agency

Agency-Assisted Contractor

XV. AGREEMENT EXECUTION

I, hereby certify that I have authority to execute this SBE Agreement on behalf of the business, organization or entity listed below and that it will use good faith efforts to comply with the Agency's 50% SBE Participation Goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

TRANSBAY 2 FAMILY COMMERCIAL LLC
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Ramie Dare
Vice President

EXHIBIT 7-2

Construction Workforce Agreement

I. **PURPOSE.** This Agreement is entered into between the Office of Community Investment and Infrastructure (“OCII” or “Agency”), as successor agency to the San Francisco Redevelopment Agency, and Owner (who for this purposes of this Attachment 9-2 shall be the Tenant as defined under the Lease to which this document is an Attachment), for the purposes of ensuring participation of San Francisco residents and equal employment opportunities in the construction work force involved in constructing any of the phases upon the Site covered by the underlying agreement to which this Agreement is attached hereto.

II. **DEFINITIONS.**

The following definitions apply to this Agreement.

- A. “CityBuild” means the construction employment program of the Workforce Development Division of the San Francisco Office of Economic and Workforce Development (OEWD).
- B. "Contract" means any agreement in excess of \$10,000 between the Owner, its Contractors and a person to provide or procure labor, materials or services for the construction of the Improvements, including a purchase order that requires installation of materials.
- C. "Contractor" means the Owner's general contractor, all prime contractors and all subcontractors (regardless of tier) having a Contract or subcontract in excess of \$10,000 and who employ persons in a Trade for construction of the Improvements.
- D. "Improvements" has the meaning set out in the Lease to which this Attachment 9-2 is attached.
- E. “Project Area Resident” means a San Francisco Resident who resides in a redevelopment area under the management of OCII.
- F. "San Francisco Resident" in the case of a new hire shall mean an individual who has lived in San Francisco for at least one week prior to submitting his/her initial application for employment to work on the Improvements. In the case of a person employed by the Owner or its Contractor or Consultant prior to assignment to the Improvements, this term shall mean a person who has lived in San Francisco for at least six months prior to the date he/she applied for a transfer to a position at the Improvements or the date he/she was assigned to work on the Improvements, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that he/she lived in San Francisco prior to applying for or being considered for a position with the Owner, Contractor or Consultant.

III. WORK FORCE GOALS.

The Owner agrees and will require each Contractor and all subcontractors to use good faith efforts to employ 50 percent of its construction workforce hires by trade and by hours from qualified San Francisco Residents with first consideration given to Project Area Residents. Owner and Contractors will be deemed in compliance with this Agreement and the Policy by meeting or exceeding the goal or by demonstrating good faith efforts toward compliance.

IV. GOOD FAITH EFFORTS.

A. Submission of Labor Force Projections and Other Data

The Contractor shall submit, to the extent available, labor force projections to the OCII Compliance Officer, or its agent, within two (2) weeks of contract award.

B. Submit Subcontractor Information Form

The Contractor shall submit to the Compliance Officer, or its agent, the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Compliance Officer upon request.

C. Preconstruction Meeting

The Contractor shall hold a preconstruction meeting which shall be attended by the Compliance Officer, CityBuild, all prime contractor(s) and all subcontractor(s). The preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this Agreement and to explore any anticipated problems in complying with the Agreement. All questions regarding how this Agreement applies to the Owner, Contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of the Policy and this Agreement that may result in the Agency ordering a suspension of work until the breach has been cured. Suspension under this provision is not subject to arbitration.

D. Submit Construction Worker Request Form

For the Term of the Agreement, each time the Owner or Contractor seeks to hire workers for the construction or rehabilitation of improvements, they must first submit, by fax, email or hand delivery, an executed construction worker request form to CityBuild. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The

construction worker request form is available from the Compliance Officer upon request.

E. Response from CityBuild

CityBuild shall respond, in writing, via fax, email or hand delivery to each request for construction workers. The response shall state that CityBuild was able to satisfy the request in full, in part or was unable to satisfy the request. CityBuild shall look to their own referral lists, as well as confer with CBOs in an attempt to find qualified Project Area Residents and San Francisco Residents. If CityBuild is able to satisfy the request in full or in part, it shall direct the qualified Project Area Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If CityBuild is unable to satisfy the request, then CityBuild shall send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

F. Action by Contractor When Referrals Available

The Owner or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the Project Area Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified Project Area Residents or San Francisco Residents referred by CityBuild. However, if the Contractor finds the Project Area Residents or San Francisco Residents are not qualified, then the Contractor shall send the Project Area Residents or San Francisco Residents back to CityBuild. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to CityBuild stating in detail the reason(s) the Project Area Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the Project Area Residents or San Francisco Residents. CityBuild shall, within one (1) business day of receipt of the fax or email, send new qualified Project Area Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

G. Action by Contractor When Referrals Unavailable

If a Contractor receives a response from CityBuild stating that no qualified Project Area Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request.

H. Action by Contractor When No Response From CityBuild

If a Contractor has not received a response to its construction worker request from CityBuild within two (2) business days, then the Contractor should immediately advise the Compliance Officer by phone, fax or email. The Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from CityBuild within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request. This Policy is intended to provide qualified Project Area and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

I. Action by Contractor When No Response From Union

The Contractor should immediately advise the Compliance Officer by phone, fax or email when the Contractor has sent a qualified Project Area Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified Project Area or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this Policy. Nothing in this Policy shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements.

J. Hiring Apprentices

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

K. Termination and Replacement of Referrals

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Policy, the Contractor shall notify CityBuild in writing via fax or email and submit a report of termination pursuant to Section (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Policy beginning at Section (A)(6).

V. REPORTING REQUIREMENTS.

A. Submission of Certified Payroll Reports

Each Contractor subject to this Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Owner is ultimately responsible for the submission of these reports by the Contractors. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses an online Project Reporting System (PRS) for submission of certified payroll reports. This system is available at no cost to the Contractor. Training and educational materials for PRS are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using PRS. However, a waiver may be granted to any Contractors who do not have a computer or online access.

B. Additional Information

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Policy and may be addressed as set forth in the arbitration provisions included in Agency contracts.

C. Report on Terminations

In the event a Project Area Resident or San Francisco Resident hired pursuant to this Policy is terminated for cause, the responsible Contractor shall within two (2) days fax or email a termination report to CityBuild with a copy to the Compliance Officer stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) were Project Area Resident(s) or San Francisco Resident(s).

D. Inspection of Records

The Owner and each Contractor shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency and its designated Compliance Officer, and shall permit such

representatives to interview construction workers and apprentices during working hours on the job.

E. Failure to Submit Reports

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Agreement and the Policy, and may be addressed under arbitration provisions pursuant to Article VII (Arbitration of Disputes) of this Agreement.

F. Submission of Good Faith Effort Documentation

If the Owner's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency or its designated Compliance Officer with the documentation of its efforts to comply with this Policy and the Agreement. The Owner or Contractor must maintain a current file of the names, addresses and telephone numbers of each Project Area Resident or San Francisco Resident applicant referral (whether a self-referral or a referral from a union, CBO or CityBuild referral) and what action was taken with respect to each such individual.

G. Coding Certified Payrolls

Each Contractor shall include, on the weekly payroll submissions, the proper job classification (as approved by the California Department of Industrial Relations), apprentice's craft (if applicable), skill level, protected class status, and domicile of each construction worker.

VI. RECORDKEEPING REQUIREMENTS.

Contractor shall comply with the requirements of California Labor Code Section 1776, as amended, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its subcontractors of all tiers.

In addition, each Contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of Improvements, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Improvements. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident or disadvantaged worker, and the referral source or method through which the Contractor hired or retained that worker for work on the Improvements (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method). Contractor may verify that a worker is a local resident through the worker's possession of a valid SF City ID Card or other government- issued identification. OCII may require additional records to be kept with regard to Contractor's compliance with this Agreement. All records described in this section shall at all times be open to

inspection and examination by the duly authorized officers and agents of OCII, including representatives of the OEWD.

VII. ARBITRATION OF DISPUTES.

- A. **Arbitration** by **AAA**. Any dispute regarding this Construction Work Force Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of San Francisco.
- B. **Demand for Arbitration**. Where the Owner disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Owner shall have seven (7) business days, in which to file a Demand for Arbitration**, unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Owner fails to file a timely Demand for Arbitration, the Owner shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.
- C. **Parties' Participation**. The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Owner made an initial timely Demand for Arbitration pursuant to Section VII.B. above.
- D. **Agency Request to AAA**. Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.
- E. **Selection of Arbitrator**. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

- F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.
- G. **Discovery.** In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.
- H. **Burden of Proof.** The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.
- I. **California Law Applies.** Except where expressly stated to the contrary in this Construction Work Force Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.
- J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:
1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.
 2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.
 3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.
 4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each

such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Construction Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.
- K. **Arbitrator's Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.
- L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.
- M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.
- N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of

competent jurisdiction.

- O. **Exculpatory Clause.** Owner expressly waives any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services (“the Work”). Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Construction Work Force Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.
- P. **Severability.** The provisions of this Construction Work Force Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Construction Work Force Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Construction Work Force Agreement or the validity of their application to other persons or circumstances.
- Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Agency

Owner

I, hereby certify that I have authority to execute this Construction Work Force Agreement on behalf of the Owner listed below and that Owner agrees to diligently exercise good faith efforts to comply with this Agreement to meet or exceed the construction work force participation goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Ramie Dare
Vice President

EXHIBIT 7-3
Prevailing Wage Policy

These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements and Subtenant Improvements as defined in the underlying agreement between the Tenant and OCII of which this Attachment and these Labor Standards are a part.

11.1 All Contracts and Subcontracts for construction and construction-related improvements shall contain the Labor Standards.

- (a) All specifications relating to the construction of the Improvements shall contain these Labor Standards and the Tenant shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Tenant shall supply the Agency with true copies of each contract relating to the construction of the Improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do shall be a violation of these Labor Standards.
- (b) Before close of escrow under the Agreement and as a condition to close of escrow, the Tenant shall also supply a written confirmation to the Agency from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.

11.2 Definitions. The following definitions shall apply for purposes of this Exhibit H:

- (a) "Contractor" is the Tenant if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Improvements.
- (a) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.
- (b) "Working foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the work week.

11.3 Prevailing Wage.

- (a) All Laborers and Mechanics employed in the construction of the improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §5) the full amount of wages and bona fide fringe benefits
(or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency.
- (b) All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.
- (c) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Contractor that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §8. The Executive Director of the Agency may require the Contractor to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

- (e) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

11.4 Permissible Payroll Deductions.

The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when case or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and

3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
 4. The deduction shall serve the convenience and interest of the employee.
- (e) Any authorized purchase of United States Savings Bonds for the employee.
 - (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
 - (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
 - (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments provided, that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

11.5 **Apprentices and Trainees.** Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

11.6 **Overtime.** No Contractor contracting for any part of the construction of the improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek

in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.

11.7 Payrolls and Basic Records.

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

- (b) The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Contractor acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.

11.8 Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

- (a) The Contractor shall make the records required under this §8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working

hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

- 11.9 Occupational Safety and Health.** No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.
- 11.10 Equal Opportunity Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the Agency's equal opportunity program set forth in Attachment 5 of this Lease Agreement.
- 11.11 Nondiscrimination Against Employees for Complaints.** No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.
- 11.12 Posting of Notice to Employees.** A copy of the Wage Determination referred to in subsection (a) of §4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Contractor at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.
- 11.13 Violation and Remedies.**
- (a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
 - (b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the improvements to contain the Labor Standards as required by §2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §8 ("Non- Complying Contractor"), the Executive Director of the Agency may, after written notice to the Contractor with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the

Non-Conforming Contract or the Non-Complying Contractor comes into compliance.

- (c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Contractor, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Contractor shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Contractor, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Contractor fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Contractor shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14.

- (d) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the improvements provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.
- (e) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

11.14 Arbitration of Disputes.

- (a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco,

California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.

- (b) The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- (c) The arbitration shall take place in the City and County of San Francisco.
- (d) Arbitration may be demanded by the Agency, the Tenant or the Contractor.
- (e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Contractor, or as appropriate to one or the other if the Contractor or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §4) and copies of all notices sent or received by the Agency pursuant to §13. Such material shall be made part of the arbitration record.
- (f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.
- (g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.

- (h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Contractor shall pay the Contractor from money withheld.
- (i) Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

11.15 **Non-liability of the Agency.** The Contractor and each Contractor acknowledge and agree that the procedures hereinafter set forth for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the improvements, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly the Contractor, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

EXHIBIT 7-4

Nondiscrimination in Contracts and Benefits

	<p>OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (OCII) (SUCCESSOR TO THE SAN FRANCISCO REDEVELOPMENT AGENCY)</p> <p>DECLARATION FORM</p> <p>Nondiscrimination in Contracts and Benefits</p>
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Section A

Is your company/organization currently certified by the City and County of San Francisco in compliance with Administrative Code 12B Equal Benefits Ordinance and will your company/organization ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts? If yes, please indicate below, skip Section B, and execute the Declaration in Section C. If no, please skip Section A and complete Sections B and C.

- My company/organization is certified and compliant with the 12B Equal Benefits Ordinance of the City and County of San Francisco and there has been no change in our 12B Declaration since certification. My company/organization agrees to ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts. (Please check box to affirm, if applicable)

Section B

1. Nondiscrimination—Protected Classes

a. Is it your company/organization’s policy that you will not discriminate against your employees, applicants for employment, employees of the Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency) (Agency), or City and County of San Francisco (City), or members of the public for the following reasons:

- | | | |
|---------------------------|------------------------------|-----------------------------|
| • Race | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • color | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Creed | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Religion | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • ancestry | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • national origin | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Age | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sex | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sexual orientation | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • gender identity | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • marital status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • domestic partner status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Disability | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • AIDS or HIV status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?

- Yes No

If you answered “no” to any part of Question 1a or 1b, the Agency or the City cannot do business with you.

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?

Yes No

b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?

Yes No

If you answered “no” to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered “yes” to Question 2a or 2b, continue to 2c.

c. If “yes,” please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Pension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee assistance programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation and travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company discounts, facilities, events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d. If you answered “yes” to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

(1) Have you taken all reasonable measures? Yes No

(2) Do you provide a cash equivalent? Yes No

3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered “yes” to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated “yes” in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered “yes” to Question 2d(1) complete and attach form SFRA/CC-103, “Nondiscrimination in Benefits—Reasonable Measures Affidavit,” which is available from the Agency. You need not document your “yes” answer to Question 1a or Question 1b.

Section C

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

Remittance Address (if different from above): _____

Name of Signatory: _____ Title: _____

(Please Print)

Signature: _____

Phone Number: _____ Federal Tax Identification Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____
(if known)

EXHIBIT 7-5

Health Care Accountability Policy Declaration

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (as Successor Agency to the Redevelopment Agency of the City and County of San Francisco) adopted the San Francisco Health Care Accountability Policy (the “HCAP”), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to offer health plan benefits to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits established by the San Francisco Department of Public Health (“SFPDH”), as approved by the OCII Commission; (2) pay OCII an amount equivalent to the current fee established by the SFPDH for each hour the employee works on the covered contract or subcontract or on property covered by a lease and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured; or (3) participate in a health benefits program developed and offered by SFPDH. The minimum health plan standards and fees established by SFPDH are published at <https://sfgov.org/olse/health-care-accountability-ordinance-hcao>.

OCII may require contractors to submit reports on the number of employees affected by the HCAP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the HCAP will have the following effect:

- in each contract, the contractor will agree to abide by the HCAP and to provide its employees the minimum benefits the HCAP requires, and to require its subcontractors to do the same.
- if a contractor does not provide the HCAP’s minimum benefits, OCII can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII’s contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the HCAP, available from the OCII’s Contract Compliance Department at: (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contact Compliance Department, Office of Community Investment and Infrastructure, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the HCAP to our covered employees, and will ensure that our subcontractors also subject to the HCAP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date _____

Print Name

Company Name

Phone _____

EXHIBIT 7-6

Minimum Compensation Policy Declaration

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (Successor Agency to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy (“MCP”), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to pay Covered Employees a minimum hourly wage and to provide 12 compensated and 10 uncompensated days off per year. The Minimum Compensation rate adjusts automatically to match the wage rate required by the City and County of San Francisco’s Minimum Compensation Ordinance. Contractor is obligated to keep informed of the then-current requirements, which are published at <https://sfgov.org/olse/minimum-compensation-ordinance-mco>.

OCII may require contractors to submit reports on the number of employees affected by the MCP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the MCP will have the following effect:

- in each contract, the contractor will agree to abide by the MCP and to provide its employees the minimum benefits the MCP requires, and to require its subcontractors subject to the MCP to do the same.
- if a contractor does not provide the MCP minimum benefits, OCII can award a contract to that contractor only if the contract is exempt under the MCP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the MCP, available from the OCII Contract Compliance Department at (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the MCP to our

covered employees, and will ensure that our subcontractors also subject to the MCP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Company Name

Phone

Citywide Affordable Housing Loan Committee

San Francisco Mayor's Office of Housing and Community
Development

Department of Homelessness and Supportive Housing

Office of Community Investment and Infrastructure

Controller's Office of Public Finance

Transbay Block 2 East

\$72,972,179 Total Funding Amount

(including \$4,500,000 additional predevelopment, a
\$8,676,682 commercial loan, and \$2,333,653 site
preparation funding)

Evaluation of Request for:	Permanent Residential Loan, Permanent Commercial Loan, and Site Preparation Cost Reimbursement
Loan Committee Date:	August 4, 2023
Prepared By:	Kim Obstfeld, OCII Senior Development Specialist
MOHCD Asset Manager:	Wesley Ellison-Labat
Sources and Amounts of New Funds Recommended:	<p>\$69,472,179 Transbay Fees and Bond Proceeds, comprised of:</p> <ul style="list-style-type: none"> • \$58,461,845 Permanent Residential Gap Loan (including additional predevelopment funding) • \$8,676,682 Permanent Commercial Loan • \$2,333,653 Horizontal Project Funding
Sources and Amounts of Previous City Funds Committed:	\$3,500,000 Transbay Jobs/Housing Linkage Fees
ROPS Line:	Line 416, FY 23-24
NOFA/PROGRAM/RFP:	OCII RFP, June 2020
Applicant/Sponsor(s) Name:	Transbay 2 Family L.P./Mercy Housing California ("Mercy")

EXECUTIVE SUMMARY

Sponsor Information:

Project Name:	Transbay Block 2 East	Sponsor(s):	Mercy
Project Address (w/ cross St):	Eastern half of Transbay Block 2 (200 Folsom Street)	Ultimate Borrower Entity:	Transbay 2 Family L.P.

Project Summary:

Mercy Housing California (“Mercy” or the “Sponsor”) is requesting a total of \$72,972,179 in funding for Transbay Block 2 East (“Block 2 East”). This amount is comprised of a \$61,961,845 permanent residential loan, a \$8,676,682 permanent commercial loan, and site preparation cost reimbursement of \$2,333,653. Included in the approximately \$61M permanent residential loan is \$4,500,000 in additional requested predevelopment funds, which is needed to complete predevelopment and bring Block 2 East to construction start. Loan Committee previously approved \$3.5M in predevelopment in February 2021.

Block 2 East is a planned 184-unit mixed-use affordable rental housing development serving extremely low- and low-income family households, with 40 units (22% of total units) set-aside to serve formerly homeless families, subsidized by the Local Operating Subsidy Program (“LOSP”). Units will range in size from studios to three-bedrooms, as well as a two-bedroom and a one-bedroom staff unit. Units will serve households at income levels ranging from 30% to 80% of Area Median Income as defined by the San Francisco Mayor’s Office of Housing and Community Development (“MOHCD AMI” or “AMI”). In addition to residential units and resident amenities, the Block 2 East development includes a childcare facility sized to serve approximately 45 children as well as two ground floor retail spaces (the residential and the commercial together are the “Project”).

Block 2 East is being developed in coordination with Transbay Block 2 West (“Block 2 West”), a mixed-use affordable rental project serving low-income and formerly homeless seniors under development by Chinatown Community Development Center (“CCDC”). Mercy and CCDC have collaborated throughout predevelopment and will continue to coordinate design, permitting, site preparation, and construction logistics.

The Project is expected to be financed with 4% Low Income Housing Tax Credits, tax-exempt bonds, and funds from the State’s Affordable Housing and Sustainable Communities (“AHSC”) program. The Sponsor is seeking funding approval to begin site preparation work and to include an OCII commitment in its September tax credit/bond allocation application, pending an AHSC award. This funding request is subject to approval by the OCII Commission.

Project Description:

Construction Type:	Type I	Project Type:	New Construction
Number of Stories:	17	Lot Size (acres and sf):	0.49 acre / 21,313 sf
Number of Units:	184	Architect:	Kennerly Architecture & Planning
Total Residential Area:	192,301 sf	General Contractor:	Swinerton
Total Commercial Area:	8,406 sf	Property Manager:	Mercy Housing Property Management Group
Total Building Area:	200,707 sf	Supervisor and District:	Sup. Dorsey – District 6
Land Owner:	OCII		
Total Development Cost (TDC):	\$189,038,828 (residential); \$203,049,163 (combined)	Total Acquisition Cost:	N/A
TDC/unit:	\$1,027,385 (residential); \$1,103,528 (combined)	TDC less land cost/unit:	\$189,038,828 (residential)
Funding Amount Requested:	\$72,972,179 (combined)	Request Amount / unit:	\$396,588 (combined)
HOME Funds?	No	Parking?	None

PRINCIPAL DEVELOPMENT ISSUES

- **Coordination between 2 East and 2 West.** As further discussed in Section 1.2, Mercy and CCDC were selected as co-developers under a single RFP for Transbay Blocks 2 East and West. Each developer will be the owner/operator of its respective project, but continued coordination is required for design, permitting, and construction logistics. As part of this request, the Sponsor is seeking OCII funding for work under a Horizontal Ground Lease to prepare the entire Block 2 site for both developments. The scope will include demolition of existing improvements, utilities relocation, and archeological testing (this scope is the “Horizontal Project”). The Sponsor will need to coordinate closely with the Block 2 West sponsor to manage the schedule to ensure that work is complete to facilitate the Block 2 West construction closing timeframe (by February 2024, pending a CDLAC/TCAC award in August). In addition, the Sponsors will need to determine and document ongoing shared maintenance responsibilities for common public spaces. See Section 1.3.2 and Condition 1.
- **Commercial Financing.** To reduce residential project costs and thus improve scoring for a tax-exempt bond allocation, the Sponsor is seeking a commercial loan separate from the residential loan to fund the cost of constructing the Project’s childcare facility and two ground floor retail spaces to a warm shell. The commercial spaces will be constructed within a separate air rights parcel and, at the close of construction financing, OCII will enter into a separate commercial ground lease and commercial grant agreement with an affiliate of the Sponsor. See Sections 4.7 and 6.5.3 and Condition 2.
- **Retail.** Ground floor commercial space is required on Block 2 under development controls for the Transbay Redevelopment Project Area. Successful retail is crucial to ground floor activation and meeting community needs and expectations related to the implementation of Project Area plans. Mercy, through its affiliate Mercy Commercial California (“Mercy Commercial”), will be responsible for the marketing and lease-up of all retail spaces at both 2 East and 2 West. While Mercy Commercial has prepared a preliminary commercial plan and leasing strategy, the only confirmed tenant is Wu Yee, which will operate the childcare center. See Section 4.7 and Condition 2.
- **Financing Competition.** The Project schedule and budget are reliant on an AHSC award. While the Project is competitive, scoring remains uncertain. Awards are scheduled to be announced on August 30. In addition, the Sponsor will seek a tax-exempt bond allocation from CDLAC in the third round of 2023. In recent years, CDLAC has been oversubscribed and thus has been and is expected to continue to be highly competitive. To the extent feasible and appropriate, the program and financing plan have been optimized to be competitive, however, the Project may face disadvantages as a larger scale, higher cost, urban infill project. The Sponsor will continue to closely monitor program regulations and review program elements and costs to seek ways to maximize scoring. See Section 6.5.
- **Archaeology.** Preliminary site studies indicate that the soil beneath the site may contain archaeological resources from the historic San Francisco Bay shoreline. The Sponsor has prepared an archaeological testing, health and safety, and logistics plan but has not yet conducted exploratory studies. Depending on the results of planned coring and trenching, the Sponsor, in collaboration with CCDC, may need to conduct more intensive studies and/or excavate portions of the site. The Horizontal Project includes schedule and budget contingency to allow for this but extensive findings may create challenges. See Section 2.6.5.

RESIDENTIAL SOURCES AND USES SUMMARY

Predevelopment Sources	Amount	Per Unit	Terms	Status
OCII Predevelopment Loan	\$3,500,000	\$19,022	3 yrs @ 3%, deferred	Committed
OCII Additional Predevelopment Loan	\$4,500,000	\$24,456	1 yr @ 3%, deferred	This request
Total	\$8,000,000	\$43,478		

Permanent Sources	Amount	Per Unit	Terms	Status
OCII Residential Loan	\$61,961,845	\$336,749	55 yrs @ 0-3%, res. receipts	This request
Limited Partner Equity	\$96,536,983	\$535,527	\$0.98 per credit	Not committed
AHSC	\$28,000,000	\$152,174	55 yrs @.42%, res. receipts	Not committed
Deferred Developer Fee	\$540,000	\$2,935	Deferred, residual receipts	Committed
Total	\$189,038,828	\$1,027,385		

Permanent Uses	Amount	Per Unit	Per SF
Acquisition	\$0	\$0	\$0
Hard Costs	\$160,034,130	\$869,751	\$832
Soft Costs	\$25,106,885	\$136,450	\$131
Reserves	\$857,813	\$4,662	\$4
Developer Fee	\$3,040,000	\$16,522	\$16
Total	\$189,038,828	\$1,027,385	\$983

COMMERCIAL SOURCES AND USES SUMMARY

Permanent Sources	Amount	Per SF	Terms	Status
OCII Commercial Loan	\$8,676,682	\$1,032	3%, res. receipts	This request
Wu Yee/LIIF	\$3,000,000	\$357	Grant	Committed
Total	\$11,676,682	\$1,389		

Permanent Uses	Amount	Per SF
Acquisition	\$0	\$0
Hard Costs (warm shell)	\$7,169,287	\$853
Tenant Improvements	\$3,000,000	\$357
Soft Costs	\$491,382	\$58
Reserves	\$591,013	\$70
Developer Fee	\$425,000	\$51
Total	\$11,676,682	\$1,389

HORIZONTAL PROJECT SOURCES AND USES SUMMARY

Permanent Sources	Amount	Per SF*	Terms	Status
OCII funding (under Horizontal Ground Lease)	\$2,333,653	\$55	Cost reimbursement	This request
Total	\$2,333,653	\$55		

Permanent Uses	Amount	Per SF*
Acquisition	\$0	\$0
Hard Costs	\$2,173,222	\$51
Soft Costs	\$160,431	\$4
Reserves	--	--
Developer Fee	--	--
Total	\$2,333,653	\$55

** Per square foot costs for the Horizontal Project are based on the Block 2 Site as a whole which totals 42,626 SF*

1. BACKGROUND

1.1. Project History Leading to This Request.

Blocks 2 East and West are part of the approximately 40-acre Transbay Redevelopment Project Area that was administered by the former San Francisco Redevelopment Agency (“SFRA”). Pursuant to state law, redevelopment agencies throughout the State of California were eliminated on February 1, 2012 (California Health and Safety Code Section 34161 et seq (the “Redevelopment Dissolution Law”). OCII is the Successor Agency to SFRA and is responsible for implementing SFRA’s enforceable obligations. On April 15, 2013, the California Department of Finance determined “finally and conclusively” that the Transbay Implementation Agreement, Affordable Housing Program, and Tax Increment Sales Proceeds Pledge Agreement are enforceable obligations under Redevelopment Dissolution Law.

The Transbay Redevelopment Plan, established in 2005, is implemented through partnerships between OCII, the City, Transbay Joint Powers Authority (“TJPA”), Caltrans, and for-profit and non-profit developers. The Project Area is divided into two zones: Zone 1 is implemented by OCII and Zone 2 is implemented by the San Francisco Planning Department. When completed, the Transbay Redevelopment Area (including both Zone 1 and Zone 2) will include over 4,000 new residential units, a minimum of 35% of which will be affordable, office and retail space, over 9 acres of new parks, and significant transportation and streetscape improvements.

Within Zone 1, a total of 2,196 residential units have been completed (Blocks 1, 6, 7, 8, 9, and 11a), 721 of which are restricted for affordability. Additional housing units are planned on Blocks 2 East (the subject of this evaluation) and 2 West, Block 4, and Block 12. The planned affordable units on Blocks 2 East and West are essential to achieving 35% affordability in the Transbay Project Area.

Transbay Block 2, along with Blocks 3 and 4 and the future extensions of Clementina and Tehama Streets, is part of the lot formerly used as the Temporary Transbay Terminal. Transbay Terminal operations relocated to the newly constructed Salesforce Transit Center in 2019. All three development blocks are in active predevelopment, with approved schematic designs for a public park on Block 3, a mixed-use mixed-income residential project on Block 4, and the two affordable housing projects on Block 2.

1.2. Applicable NOFA/RFQ/RFP. (See Attachment E for Threshold Eligibility Requirements and Ranking Criteria)

In June 2020, OCII issued a Request for Proposals (“RFP”) seeking teams to develop, own, and operate mixed-use affordable rental family and senior housing units, including units set-aside for formerly homeless family and senior households at Transbay Blocks 2 East and 2 West, with proposals due in September 2020. OCII received 5 proposals, all of which were deemed complete. An evaluation panel comprised of staff from OCII, Mayor’s Office of Housing and Community Development (“MOHCD”), the Department of Homelessness and Supportive Housing (“HSH”), and a member of the Transbay Citizens Advisory Committee (“CAC”) recommended selection of the development team led by Mercy and CCDC.

1.3. Borrower/Grantee Profile. (See Attachment B for Borrower Org Chart; See Attachment C for Developer Resume and Attachment D for Asset Management Analysis)

1.3.1. Borrower.

- Residential Loan: The borrower entity for the residential loan is Transbay 2 Family L.P. The managing general partner is Transbay 2 Family LLC, a subsidiary of Mercy.
- Commercial Loan: The borrower entity for the commercial loan has not yet been established but will be in place prior to the close of construction financing. It will be a limited liability company affiliated with Mercy.
- Horizontal Project: The entity undertaking the Horizontal Project under the Horizontal Ground Lease is Transbay 2 Family LLC, a subsidiary of Mercy (and managing general partner of the residential borrower entity as noted above).

1.3.2. Joint Venture Partnership.

Mercy will develop, own, and operate Block 2 East and will provide ongoing property management and resident services. Mercy will partner with Episcopal Community Services (“ECS”) for support services to families residing in permanent supportive housing units.

In addition, Mercy will collaborate with CCDC, lead developer of 2 West, to ensure cohesive and complementary development of the Block 2 site as a whole. Pursuant to a Joint Development Agreement between Mercy and CCDC dated March 30, 2021 (the “JDA”), Mercy and CCDC will collaborate on building, streetscape, and landscape design. Per the JDA, Mercy, through its affiliate Mercy Commercial California (“Mercy Commercial”) will take the lead in retail space planning and lease-up for both Block 2 East and initial lease-up for Block 2 West.

Mercy will also take the lead on the Horizontal Project, which is scheduled to occur prior to the close of construction financing for Block 2 West. Mercy is seeking to enter into a Horizontal Ground Lease with OCII that includes cost reimbursement funding for site preparation (part of this request) and will enter into a construction contract to demolish the existing building and paving on Block 2, remove existing trees, conduct archeological trenching work, and undertake related work to prepare the overall block for development. The Horizontal Project must be completed in time to facilitate the Block 2 West start of residential construction by February 2024. Pursuant to Condition 1, the Sponsor and CCDC will amend their JDA to reflect this arrangement or enter into a memorandum of understanding or similar document.

Pursuant to Condition 1, Mercy and CCDC will continue close coordination on design, mapping, permitting and construction logistics. The parties will enter into an agreement to establish roles, responsibilities, and cost sharing for maintaining a publicly accessible pedestrian mews located between the two buildings, straddling the property line, and any other common areas or features.

1.3.3. Demographics of Board of Directors, Staff and People Served.

See table below for gender identity and race demographics for the Mercy board and staff. Mercy does not collect sexual orientation data from board members or staff.

Entity	Gender Identity	Race
Mercy Housing California Board	M: 35% F: 55%	Asian: 11% African American: 22% Caucasian: 50% Latinx: 11% Biracial: 6%
Mercy Housing, Inc. Board	M: 50% F: 50%	Asian: 5% African American: 15% Caucasian: 75% Latinx: 5%
Mercy Housing, Inc. - All Staff	M: 42% F: 58%	2 or More Races: 3% American Indian/Alaska Native: 1% Asian: 11% Black or African American: 24% Hispanic or Latino: 22% Native Hawaiian/Other Pacific Islander: 1% Not specified: 1% White: 37%
Mercy Housing California - All Staff	M: 43% F: 57%	2 or More Races: 5% American Indian/Alaska Native: 1% Asian: 21% Black or African American: 17% Hispanic or Latino: 31% Native Hawaiian/Other Pacific Islander: 2% Not specified: 1% White: 22%
Mercy Housing California - Development Staff	M: 50% F: 50%	Asian: 20% Not specified: 20% White: 60%

MHC owns and operates 4,217 units of affordable housing in San Francisco. The chart below represents the total number of people currently living in MHC owned properties (7,176), disaggregated by race and ethnicity.

	Race	Ethnicity
Mercy Housing California San Francisco resident responses to US Census definitions	Asian: 42% White: 19% Black or African American: 16% Other: 15% Did not specify: 3% Native Hawaiian or Other Pacific Islander: 2% American India or Alaska Native: 2% Blank: 1%	Not-Hispanic or Latino: 77% Hispanic or Latino: 19% Did not specify: 3% Blank: 1%

**Responses are from US Census definitions which cause overlap between race and ethnicity categories.*

From January 2022 through November 2022 MHC had 17 resident evictions. Currently, Mercy does not track move out reasons and does not track evictions by race.

1.3.4. Racial Equity Vision.

Mercy is dedicated to advancing racial equity. To advance its racial equity and social justice, Mercy's national office launched the Racial Equity, Diversity, and Inclusion (REDI) initiative. In 2021, Mercy Housing Inc. ("MHI") hired Web Brown as SVP for Racial Equity, Diversity, and Inclusion. Mr. Brown has created a coordinated approach to REDI that includes creating an organizational framework that consists of focus areas to produce action plans throughout the organization in the areas of internal culture, resident empowerment, education, and training, hiring and recruitment, communication, and advocacy.

Mercy has also established REDI goals for each department. The California real estate development team generated five goals in 2020 and created workplans around achieving each of the goals. Goals include: expanding the pipeline of diverse real estate staff, creating a national contracting and procurement policy, developing REDI evaluation standards for each stage in the development process, incorporating equitable digital access in development projects, and creating a legislative advocacy strategy. San Francisco real estate staff have been central in elevating these conversations and moving the goals forward. In 2023, Mercy Housing Inc. will publish its organization wide racial equity mission and goals.

1.3.5 Relevant Experience.

MHI is the largest non-profit owner of affordable housing in the United States. MHI owns and provides property management (through Mercy Housing Management Group or "MHMG") to more than 23,000 units of affordable housing and currently serves more than 50,000 people. In addition, Mercy has nearly 6,000 units in its development pipeline with a team of 38 development staff members to support the process. Mercy Housing California is the California affiliate of MHI. In San Francisco, the company owns and/or manages 56 properties with 4,551 homes and 7,620 residents. Among these units, approximately 52% serve families, 32% serve seniors, and 16% is supportive housing for formerly unhoused households.

Mercy's San Francisco portfolio includes Natalie Gubb Commons, which is comprised of two affordable family projects with a total of 190 units in the Transbay Project Area, located across the street from the Block 2 Site. In addition to comparable housing, these properties include fully occupied ground floor retail and a childcare center.

1.3.6 Project Management Capacity.

Sean Wils at Mercy is the Senior Project Manager and dedicates approximately 50% of his time to the Project. Tauji Louisville is the Assistant Project Manager and dedicates approximately 50% of her time to Block 2 East. Sean and Tauji are supported by Michael Kaplan (Associate Director of Real Estate Development), Ramie Dare (Director of Real Estate Development), and Doug Shoemaker (President).

1.3.7 Past Performance.

1.3.7.1 City audits/performance plans. Mercy has no known outstanding performance issues on current grants administered by MOHCD’s Community Development program staff.

1.3.7.2 Marketing/lease-up/operations. Mercy has experience with OCII early outreach requirements and use of the DAHLIA system. According to MOHCD staff, Mercy has performed relatively well in recent marketing efforts, but lease-up teams have at times been understaffed or staffed by out-of-state marketing employees, which has resulted in challenges. Mercy anticipates utilizing San Francisco-based marketing staff for the Block 2 East lease-up. Pursuant to Condition 9, Mercy will submit and implement timely Early Outreach and Marketing Plans for the Project and, with submittal of the Marketing Plan, provide a diverse lease-up staffing plan that reflects the applicant pool for OCII and MOHCD review.

2 SITE (See Attachment E for Site map with amenities)

Site Description	
Zoning:	Zoning for the site is form-based and is governed by the Transbay Redevelopment Plan, Transbay Development Controls and Design Guidelines (“DCDG”), and the Transbay Design for Development. In November 2022, the OCII Commission approved certain deviations from the DCDG to facilitate the Block 2 East project as designed.
Maximum units allowed by current zoning:	The maximum number of units on the site is based on form-based zoning. The number of units is limited only by what can fit within the site’s height and bulk restrictions.
Seismic:	The site is within a Liquefaction Zone (per the California Geological Survey)
Soil type:	The Sponsor completed Phase I and II reports and testing. The proposed mat foundation with soil improvements was recommended by the design team based on the identified soil conditions. See Section 2.6 below.
Environmental Review:	The Sponsor has prepared Phase I and II reports as well as addenda to the Transbay Redevelopment Project Area FEIS/EIR and the Archaeological Research Design and Treatment Plan (“ARDTP”). See Section 2.6.5 below.

Adjacent uses (North):	Currently a continuation of the Block 2 surface parking lot, previously used as the temporary Transbay Terminal, planned for an approximately 1-acre public park (expected to start construction in 2024).
Adjacent uses (South):	An approximately 650-unit mixed use condominium complex known as “Lumina”. Woodlands Market, a small grocery store is located at the ground floor.
Adjacent uses (East):	A 392-unit mixed-use, condominium complex with inclusionary units known as “Mira”.
Adjacent uses (West):	Block 2 West, a planned 151-unit affordable senior rental project, under development concurrently with Block 2 East, will be located directly to the west within Block 2. To the west of Block 2 on Block 6 is a 479-unit mixed use apartment project, including 409 units in a tower (on the western side of the block) and 70 affordable units in a mid-rise and townhomes (on the eastern side of the block). The 70-unit affordable project is owned and operated by Mercy.
Neighborhood Amenities within 0.5 miles:	Grocery: Woodlands Market is located directly across Folsom Street, Ferry Building Saturday Farmer’s Market (0.5 mile), Safeway (0.7 mile), Whole Foods (0.8 mile), Target (0.9 mile), Trader’s Joe’s (1 mile) Pharmacy: Walgreens (0.4 mile), CVS (0.7 mile) Library: Mission Bay Public Library (1.3 miles) Parks: planning is under way for an approximately 1-acre park on Block 3 directly to the north of the site, Salesforce Park (located on the roof of the Salesforce Transit Center) is one block from the site (0.2 mile), Rincon Park is 2 blocks from the site (0.2 mile)
Public Transportation within 0.5 miles:	The site is located 1 block from the Salesforce Transit Center, a regional hub for 11 transit systems, including multiple Muni bus lines. In addition, the site is two blocks from the Muni Metro station at The Embarcadero and Folsom Street and 2 blocks from the Embarcadero BART station.
Article 34:	Not exempt. Block 2 East secured an Article 34 authorization for the current unit count in January 2023.
Article 38:	Not exempt. The site is within the Air Pollutant Exposure Zone. The design is subject to relevant guidelines and requirements.
Accessibility:	15% of units (28 units) will provide mobility accessible features, and 10% of units (19) will provide accessible communication features. This is consistent with CTCAC requirements.
Green Building:	Based on the Project’s Schematic Design, the building will achieve a Green Point rating of at least “Gold”. The Sponsor has engaged a sustainability consultant and will continue to monitor green standards throughout design and construction.
Recycled Water:	Block 2 East confirmed an exemption from SF PUC in March 2022.
Storm Water Management:	The stormwater management plan is in progress. A preliminary plan has been drafted and will be submitted to PUC pending design team review.

2.3 Description.

Block 2 East is an infill site in a dense area of downtown San Francisco. The site previously held ramps for the demolished Embarcadero Freeway, which was removed after it sustained significant damage in the 1989 Loma Prieta earthquake. Footings for the freeway likely remain below-grade on the site and will need to be removed to facilitate building construction. The site was later used as the temporary Transbay Terminal and the improvements to support this use remain on the site today. Improvements include paving, landscaping, and a building that was previously a Greyhound bus terminal. The improvements will need to be removed to prepare the site for construction. As described in Section 1.3.2 above, this work will be completed by the Sponsor under the Horizontal Ground Lease in fall 2023. The Horizontal Project schedule includes a one-month contingency to address any unforeseen below grade objects.

2.4 Zoning. See above.

2.5 Local/Federal Environmental Review.

In April 2004, the Redevelopment Agency Commission certified the Final Environmental Impact Statement/Environmental Impact Report (“FEIS/EIR”) for the Transbay Redevelopment Plan. In January 2005, the Agency Commission adopted findings under the California Environmental Quality Act (“CEQA”), a Statement of Overriding Consideration, and a Mitigation Monitoring and Reporting Program in connection with the adoption of the Redevelopment Plan. The Board of Supervisors, Planning Commission, and TJPA adopted similar findings.

The Agency Commission/OCII Commission subsequently adopted ten addenda to the FEIS/EIR. The tenth addendum was prepared to analyze the impacts of massing modifications in the designs for Blocks 2 East and West, which deviated from the Transbay design controls and Redevelopment Plan. Overall, the addendum determined that the Project would not cause significant impacts not identified in the FEIS/EIR, nor would the Project cause significant impacts previously identified in the FEIS/EIR to become substantially more severe.

2.6 Environmental Issues.

- Phase I/II Site Assessment Status and Results. A Phase I report dated November 3, 2020 identified that soil classified as Federal Class I RCRA and California Class I Non-RCRA hazardous waste is present on the site. The soil was capped by the existing temporary terminal asphalt and terminal building but will need to be addressed as part of the Project’s development. Allowances for soil off-haul are included in the cost estimates for both the Horizontal Project and residential construction.

According to the geotechnical investigation dated October 19, 2022, the soil consists of layers of undocumented fill, marine deposit (sand with silt and clay), Colma Formation (sandy soil), Old Bay Clay (marine clay and sand), alluvium (sand and clay), ravine fill/slope debris, and finally bedrock at a depth of between 80.5 and 121 feet. As noted in the table above, these findings informed the proposed foundation system, which consists of deep soil mixing with a minimum replacement ratio (the ratio of improved soil over the entire soil volume) of 40 percent. The deep soil mixing grids/cells will be

at least three feet thick and have a center-to-center spacing of not more than 15 feet. The new soil will have a minimum compressive strength of 200 psi.

- Potential/Known Hazards. As noted above, hazardous soil is present on the site and will need to be removed and transported to appropriate facilities during construction.

2.6.5 Archaeological Resources.

According to a draft addendum to the Archeological Research Design and Treatment Plan for the Transbay Temporary Terminal Project (the “ARDTP”), Block 2 is located on the former San Francisco Bay shoreline. The site was filled to make way for urban development in the 1850s, thus the underlying soil may contain historic resources from earlier eras including those from Native American settlement on the shore and maritime resources from the 1800s. A study from 1990 indicates that a ship may be present below the surface on Block 2 West, and other artifacts may be located throughout the site.

The Sponsor, in collaboration with the Block 2 West developer, will conduct testing as set forth in the ARDTP to identify potential resources. Testing will occur in two phases. The first phase consists of deep coring to identify Native American and/or maritime resources. Coring will cause minimal disruptions to the site and is planned for August 2023.

The second phase consists of mechanical trenching, which would primarily identify the presence of nineteenth century features and remnants. Because of the length and depth of the trenches, the work will be highly disruptive to the site and thus is planned to be completed concurrent with or just before the demolition of existing improvements as part of the Horizontal Project. This work is planned for fall 2023. The Horizontal Project includes a one-month contingency for any unforeseen archaeological scope.

The cost of ARDTP preparation and coring is included in the predevelopment budget, with costs shared between the Blocks 2 East and West projects. The Horizontal Project budget under the Horizontal Ground Lease includes costs associated with the trenching, as well as contingencies for any required excavation or resource recovery work that may be needed based on findings from the testing.

2.7 Adjacent uses and neighborhood amenities.

The site is located in close proximity to transit, numerous recreational amenities, and cafes. However, residents may need to access transit to visit City Recreation & Parks Department facilities offering family programming, to access affordable grocery retail stores, and to get to schools. Mercy resident services staff will assist residents with transit access and provide connections to food programs. Mercy currently partners with the San Francisco-Marin food bank to bring food directly to many of its San Francisco sites. Block 2 East will include a food pantry that will be stocked multiple times a week with fresh produce (a food pantry storage space is included in the building design on the ground floor).

2.8 Green Building. See table above.

3 COMMUNITY SUPPORT

3.1 Prior Outreach.

OCII staff and the Sponsor have provided regular updates on Block 2 East (along with Block 2 West) to the Transbay Citizens Advisory Committee (“CAC”) since issuance of the RFP in 2020. In August 2022, the Sponsor provided an informational overview of the Project to the CAC. In September 2022, the CAC voted unanimously to recommend that the OCII Commission approve the schematic designs and related items.

In addition to CAC meetings and public OCII Commission hearings, the Sponsor has presented the Project at meetings of the East Cut Community Benefits District and IDEATE (a local resident group) and has been in communication with residents of Natalie Gubb Commons and with the South Beach/Rincon Hill Neighborhood Association.

3.2 Future Outreach.

The Sponsor will continue to conduct outreach throughout the remainder of predevelopment and through construction to garner support for the Project, and keep the community apprised of the Project plans and schedule (Condition 12). In collaboration with the sponsor of Block 2 West, the Sponsor has established a website (www.transbayblock2.org) to provide ongoing project progress updates and developer contact information. The Sponsor will return to the Transbay CAC at key milestones such as the start of construction and launch of marketing and will continue to connect with the East Cut CBD, IDEATE SF, and other community organizations. In addition, the Sponsor will expand outreach to include SOMA Pilipinas, the closest Cultural District, and to the South Beach/Rincon/Mission Bay Neighborhood Association, and other neighborhood groups.

3.3 1998 Proposition I Citizens’ Right-To-Know.

Not applicable in Redevelopment Project Area.

4 DEVELOPMENT PLAN

4.1 Site Control.

OCII currently holds and will continue to hold fee simple ownership of the site. The site was transferred from TJPA to OCII in January 2021, along with Transbay Blocks 3 and 4 and the lots planned for the extensions of Clementina and Tehama Streets. Pursuant to the terms of a purchase agreement between TJPA and OCII in August 2020, Transbay Block 2 was transferred at no cost to OCII.

The Sponsor, in coordination with the sponsor of Block 2 West, is pursuing a subdivision map to facilitate the Blocks 2 East and West projects. The tentative map was approved in May 2023, and a final parcel map is expected by November 2023. Per Condition 1, Mercy and CCDC will continue to work together on the subdivision. Mercy has taken the lead in preparing the subdivision map application and will continue to oversee the mapping process.

Proposed Property Ownership Structure. In the near term, OCII will enter into a Horizontal Ground Lease with an affiliate of the Sponsor to facilitate the

Horizontal Project. The Horizontal Ground Lease will terminate for each of the Block 2 projects at the close of construction financing for each respective project, at which point OCII will enter into a long-term residential ground lease with the Sponsor. OCII will retain fee interest in the land and the Sponsor will own the improvements. In addition, the Sponsor will form an affiliate limited liability company to construct and own the commercial improvements. OCII will enter into a long-term commercial ground lease with the commercial entity.

4.2 Proposed Design.

The schematic design for Block 2 East (along with the design for Block 2 West) was approved by the OCII Commission on November 1, 2022. The Block 2 East building steps from 5 stories in a townhouse-style wing along Clementina Street to 15 stories along Main Street, up to a 17-story mid-rise along Folsom Street. The massing wraps a central courtyard that provides open space on two levels that will be dedicated for use by the childcare facility. Adjacent to the courtyard, a 25' publicly accessible ground level mews separates the Block 2 East and 2 West buildings and provides added outdoor amenity space for residents of both projects.

On the ground floor, residents will enter the building through a residential lobby on Folsom Street. The lobby is flanked by retail spaces on the building corners at Folsom and Main Street and at the mid-block pedestrian mews. The childcare facility lobby is located on Clementina Street at the mews.

Resident community and open spaces are located on the ground floor (multi-purpose room), sixth floor (community room with kitchen opening out to a roof terrace) and 16th floor (amenity room opening to another roof terrace). Laundry rooms are located on the 2nd, 7th, and 16th floors, and a pet washroom is located on the 6th floor. The roof terraces will provide a variety of lounge and activity elements and will look out onto the planned public park on Block 3 to the north.

The exterior was designed to complement the neighborhood context and will utilize pre-cast panels of varied textures and deep earth tones. The Block 2 East design has been, and will continue to be, closely coordinated with the design of Block 2 West.

Residential SF:	192,301
Commercial SF:	8,406
Building Total SF:	200,707

Unit Types	Avg Unit SF - This Project	CTCAC-Required Min. SF	Percentage Greater Than CTCAC Min.
Studio	418	200	209%
1 BR	542	450	120%
2 BR	825	700	118%
3 BR	1132	900	126%

4.3 Proposed Rehab Scope. N/A

4.4 Construction Supervisor/Construction Representative's Evaluation.

The last time Loan Committee reviewed this Project was for predevelopment financing in February 2021 when the analysis was based on a preliminary concept design. Since then, the scale and scope of the Project have changed significantly, increasing from 101 units in a 9-story building to 184 units in a 17-story building. The Project team has completed schematic design and bid key scopes including mechanical, electrical, and plumbing. The prime contract is expected to be finalized in spring 2024, with construction scheduled to begin in May 2024. Site Permit review is nearly complete and approval is expected in August 2023. The Sponsor has also requested a demolition permit, and submitted a Streetscape Improvement Permit and Streetscape legislation package.

The residential construction cost estimate of \$160,034,130 (\$869,751/unit and \$797/square foot) is based on 100% schematic design drawings. The Sponsor has advanced drawings to 100% design development, but has not yet received updated pricing based on this set. Hard costs are escalated to the planned start of construction and overall construct costs include full contingencies (5% hard cost, 3% design, 3% bid, and 2% plan check).

At concept design, construction costs were estimated at \$795,289 per unit/\$689 per square foot, 9% lower than the current pricing (on a per unit basis). As noted, the design has changed substantially since that time. In addition, the Engineering News-Record, which publishes the Construction Cost Index for San Francisco, upon which the construction industry relies for cost data, estimates annual escalation at 8% across all trades. Escalation has primarily affected the cost of metals, including reinforcing bars required for Type I construction, cementitious materials, and lumber. This trend is predicted to continue through 2024.

Costs for Block 2 East exceed those of comparable projects on a per unit and per square foot basis. The high costs are largely attributable to the construction logistics challenges associated with a constrained infill site in a dense downtown neighborhood, significant streetscape improvements, inclusion of roof terraces needed to meet open space requirements, and Transbay Project Area design requirements applicable to this Site. Development controls require townhouse-style frontages along Clementina for streetscape activation and active ground floor uses on all four sides of the building. There is no “back” of the building where less expensive façade materials could be incorporated and the building could feature less architectural expression and articulation. In addition, the streetscape requirements are extensive, with landscaping on all four sides, wide sidewalks on Folsom and Main, and a publicly accessible pedestrian mews with seating and other features between Blocks 2 East and West.

The building includes four elevators, three serving the residential project (floors 1 through 17) and one in the childcare facility (floors 1 to 2). The number of residential elevators was determined based on an evaluation of the maximum resident population, and best practices for minimum handling capacity (the percentage of the building population that can be moved by the elevators in a five-minute period of time) and design interval (the increment of time between loaded elevators dispatching from the main lobby).

Pursuant to Conditions 1 and 8, the Sponsor will work with the Block 2 West developer to identify and take advantage of any opportunities for construction

efficiencies between the two projects and will work with the design team and general contractor to identify cost saving measures.

4.5 Commercial Space.

- Space Description. Ground floor commercial space is required on Block 2 under development controls for the Transbay Redevelopment Project Area. The Project includes a total of 8,405 square feet of commercial in three spaces:
 - Childcare: 6,447 square feet (mid-block, entry at the corner of the planned Clementina Street and the mid-block mews)
 - Retail Space A: 1,190 square feet (corner of Folsom Street and Main Street)
 - Retail Space B: 768 square feet (corner of Folsom Street and the mid-block pedestrian mews)

There is no shared space between any of the commercial units or between the commercial and residential uses. The commercial spaces will be mapped as one non-contiguous air rights parcel. A tentative map application was approved in May 2023. The Sponsor expects a final parcel map by November 2023.

- Commercial Leasing Plan. Since issuance of the RFP for Block 2, the OCII Commission and the CAC have emphasized the need for neighborhood serving retail on the Site. The OCII Commission has expressed at all stages of review that the Sponsor should make every effort to lease retail spaces to locally owned small businesses. Mercy Commercial has prepared a Commercial Leasing Plan for Block 2 East that outlines a vision for the retail spaces as part of an overall strategy for Block 2 that seeks to respond to OCII Commission direction. The plan describes potential target uses, market research, community outreach, racial equity, and a preliminary schedule. Mercy Commercial envisions retail that offers goods and services to Block 2 residents and supports and strengthens a healthy, equitable, and resilient Transbay neighborhood.

Childcare Space

The childcare facility will be home to a Wu Yee Children's Services early childhood education center or "ECEC". Wu Yee will enter into a 15-year lease for the space, which is located on two floors, with adjacent private outside space on both levels. Wu Yee has committed to maintaining at least half of enrollment from low- to moderate-income households and will strive to place families who qualify for subsidized services through Head Start/Early Head Start, a Title 5 contract, subsidy vouchers, and City-funded Early Learning Scholarships.

The ECEC will prioritize enrollment in the order below:

1. Children of families that are residents of the Block 2 East Project.
2. Children of families that live in the Transbay Redevelopment Project Area.
3. Children of families with a parent working in the Transbay Redevelopment Project Area.

4. Children of families that live in San Francisco.

Retail Spaces

Retail spaces A and B are designed to accommodate a type 2 hood to allow flexibility for a potential tenant. They could function as affordable food retail spaces, an exercise studio, a non-profit satellite office or small office, or more traditional community-serving retail or services.

Specific tenants for the retail spaces have not yet been confirmed. Pursuant to Condition 2, the Sponsor and Mercy Commercial will provide an updated Commercial Leasing Plan and endeavor to secure letters of intent for the spaces prior to the close of construction financing.

- Operating Pro Forma. Because of the separate loan structure as described above, commercial revenue and expenses will not flow through the residential operating budget. The commercial spaces will maintain a separate operating budget. Following full lease-up of the commercial spaces and stabilized occupancy, the Sponsor, in collaboration with Mercy Commercial, will seek a permanent commercial loan to be serviced by commercial rent revenue. Proceeds from the loan will be used to pay down the OCII commercial loan.

The commercial operating budget assumes a rent of \$2.75 per square foot per month for the retail spaces, escalating at 3% per year. To allow for lease-up, tenant improvement build-out, and rent concessions the budget assumes 100% vacancy in year one, 100% vacancy in the retail spaces only in year two, 50% vacancy in the retail spaces in year three, and 25% vacancy from year four on. Expenses generally escalate at 3.5% per year and include management fees, taxes, maintenance, and reserves (replacement, operating, and an additional reserve account for incident insurance deductible and future tenant improvements. Based on trends in recent years, insurance escalates at a higher rate (7%). Taxes escalate at 2%. The capitalized lease-up reserve will be drawn to fund expenses in early years.

- Tenant Improvement Build Out. Wu Yee has secured a \$3M grant to fund tenant improvements in the childcare facility. Improvement designs are in progress and are being coordinated with the Project design team. To improve efficiency, Mercy will incorporate the tenant improvements into the commercial construction contract and will oversee their completion. Wu Yee will be responsible for ensuring that the improvements meet childcare licensing standards.

As discussed in Section 6.5.3, Mercy is requesting, and staff is conditionally recommending, a capitalized tenant improvement reserve for the retail spaces. This is intended to enhance viability for small locally owned businesses and reduce lease-up time and vacancies.

4.6 Service Space.

Resident services space includes four ground floor property management and services offices, four offices for ECS supportive services staff on the second

floor, and a resident services office on the sixth floor adjacent to the community room. In addition, Mercy resident services staff will utilize community rooms throughout the property to provide programs and activities. The large sixth floor community room will be used for after school programs and for food distribution in partnership with a local healthy food access program partner. Health and wellness activities, such as yoga and cooking and nutrition classes, will be provided in the ground floor community room.

4.7 Interim Use. N/A

While there is an interim use active on the Site, the use is overseen by OCII, not the Sponsor and the use will terminate prior to Project construction.

4.8 Infrastructure. N/A

4.9 Communications Wiring and Internet Access.

Block 2 East will comply with the 2021 MOHCD Communications Systems Standards. Units will be equipped with Category 6, coax, and fiber optic cabling. In addition, Sponsor intends to provide wireless access in common areas.

4.10 Public Art Component. N/A

4.11 Marketing, Occupancy, and Lease-Up.

Block 2 East will serve households at incomes ranging from 40% to 80% MOHCD AMI. 40 units will be set aside for occupancy by formerly homeless seniors, referred to the Project by HSH through the Coordinated Entry System.

With the exception of the 40 LOSEP-supported units, all affordable units will be marketed and leased through OCII's standard procedures, including early outreach to Certificate of Preference ("COP") holders, broad marketing and outreach, and applications and a lottery through the MOHCD DAHLIA system. DAHLIA applicants will be prioritized in accordance with preferences.

As of April 19, 2019 the OCII Commission has authorized staff to apply the preferences in City Affordable Housing Programs, as amended from time to time, to affordable housing approved by OCII, to the extent that those preferences are consistent with redevelopment plans, enforceable obligations, and applicable law. The preferences applicable to the Project are:

1. COP holders (including descendants of originally displaced household members)
2. Displaced Tenant Preference Program for 20% of lottery units
3. Neighborhood Resident Housing Preference for 40% of lottery units if the Project does not include State funding sources, and 25% of lottery units if the Project does include State funding sources (if such preference does not conflict with other financing sources)
4. San Francisco residents or workers
5. Members of the general public

Potential tenants, including those prioritized by preference must meet the Sponsor's established screening requirements for the Project, and final selection will lie with the Sponsor. Any authorized preference shall be permitted only to the extent that such preference (a) does not have the purpose or effect of delaying or otherwise denying access to a housing development or unit based

on race, color, ethnic origin, gender, religion, disability, age, sexual orientation, or other protected characteristic of any member of an applicant household; and (b) is not based on how long an applicant has resided or worked in the area. OCII and its agent will work with the Sponsor to resolve potential occupancy conflicts and determine marketing requirements and to ensure adherence to OCII occupancy preferences. Pursuant to Condition 9, Sponsor will submit Early Outreach and Marketing Plans in accordance with OCII program standards.

4.12 Relocation. N/A

5 DEVELOPMENT TEAM

Consultant Type	Name	SBE/LBE	Outstanding Procurement Issues
Architect	Kennerly Architecture & Planning	Y	N
Landscape Architect	Plural Studio	Y	N
Associate Architect	YA Studio	Y	N
General Contractor	Swinerton/Rubecon	Y (Rubecon)	N
Owner's Rep/Construction Manager	Regent Construction Management	Y	N
Financial Consultant	CHPC	N	N
Legal	Gubb & Barshay	N	N

5.1 Procurement Plan.

The Project is subject to OCII Small Business Enterprise (“SBE”) program and construction contracting goals and policies. Block 2 East is currently exceeding OCII’s 50% SBE participation goal for professional services contracts with 89% SBE participation. Among these, 83% are San Francisco-based SBEs.

Mercy has selected Swinerton Builders, in a joint venture partnership with Rubecon Builders (a San Francisco-Based SBE/Minority-owned business enterprise “MBE”), as the general contractor for the Project. During construction, the Block 2 East development and construction team will collaborate with OCII contract compliance staff to meet OCII’s 50% SBE construction subcontracting participation goal, along with OCII’s 50% local construction workforce hiring goal.

5.2 Opportunities for BIPOC-Led Organizations.

Along with meeting SBE goals as described above, the development and construction teams are committed to providing opportunities for BIPOC-led organizations. To date, 34% of professional services contract funds have been awarded to MBEs. Of these, 2% have been awarded to woman-owned MBEs. Mercy will continue to closely track participation and collaborate with OCII contract compliance staff to identify additional opportunities.

6 FINANCING PLAN (See Attachment H for Cost Comparison of City Investment in Other Housing Developments; See Attachment G and H for Sources and Uses)

6.1 Prior MOHCD/OCII Funding:

Loan Source	Loan Date	Loan Amount	Interest Rate	Accrual Method	Repayment Terms	Maturity Date	Outstanding Principal Balance	Accrued Interest to Date*
OCII Predev Loan	Apr. 6, 2021	\$3,500,000	3%	Simple	Deferred	Apr. 6, 2024**	\$2,746,429	\$59,123

* As of July 11, 2023

** Sponsor is seeking OCII Commission approval of an amendment to the predevelopment loan agreement that would extend the maturity date to July 6, 2024, and allow for additional extensions if the Project is not awarded a CLDAC allocation in 2023.

6.2 Disbursement Status.

To date, a total of \$2,746,429 of the predevelopment loan has been disbursed. Pursuant to the approved Predevelopment Loan Evaluation dated February 19, 2021, costs incurred on or after November 12, 2020 are eligible for reimbursement so long as costs are deemed acceptable and correspond to the budget attached hereto.

6.3 Fulfillment of Loan Conditions.

Below is the status of Loan Conditions since this project was last at Loan Committee for a predevelopment loan on February 15, 2021:

- Subject to OCII approval, Mercy and CCDC will enter into a joint development agreement that clearly defines the roles and responsibilities of Mercy and CCDC in the overall development of Transbay Block 2. The agreement will use as its basis the Term Sheet attached to the MOU dated September 10, 2020 between Mercy and CCDC and will clearly define Mercy’s role as lead developer, in close coordination with CCDC for the following matters: contract negotiations, including predevelopment loan terms, and ground leases; general contractor and consultants’ selection; retail programming, commercial shell design, marketing and leasing; lot split/subdivision mapping; streetscape and landscape design; respective liabilities for work performed under the agreement; and other matters to achieve cost efficiencies and cohesive development on Block 2.

Status: Complete, Mercy and CCDC entered into a joint development agreement on March 30, 2021. Pursuant to Condition 1, the JDA will be amended to reflect Mercy’s role in carrying out work to prepare the sites for residential construction.

- Sponsor will, in coordination with OCII, study massing and financing scenarios at 165’, 240’, and other design variations as recommended by the design team to balance unit count and financial feasibility on the 2 East site and will submit a combined conceptual design and cost estimate with Block 2 West.

Status: Complete, massing studies were reviewed in collaboration with OCII in 2021, and the conceptual design and cost estimate were completed November 1, 2021.

- Sponsor will work closely with the sponsor of Block 2 West throughout predevelopment and will:
 - ensure that the design teams for Blocks 2 East and West collaborate and submit a single combined schematic design package, which demonstrates cohesive design between Blocks 2 East and West, particularly for the ground floor and mid-block pedestrian mews; and

- use the same general contractor or joint venture for construction and coordinate construction timing between Blocks 2 East and West, either by construction of both sites at the same time or phased development.

Status: Complete, the Block 2 East and 2 West teams have been working closely together since conceptual design and submitted Schematic Design packages demonstrating a cohesive design between East and West. The Sponsor and the 2 West developer have both hired the joint-venture of Swinerton/Rubecon Builders as contractor. The teams have been holding biweekly joint owner/architect/contractor meetings since 2021, led by Swinerton, and the developers meet weekly with OCII to discuss construction and schedule.

- Sponsor will cooperate with OCII and the sponsor of Block 2 West to competitively solicit a general contractor with the intent of creating a joint venture or similar partnership opportunity, to the extent practicable and economically feasible, between a general contractor and an OCII-recognized SBE contractor. Furthermore, Sponsor will require the general contractor to exercise good faith efforts to select subcontractors who are SBEs or are willing to create joint ventures or similar partnership opportunities with SBEs.

Status: In progress, partially complete. The Sponsor worked collaboratively with the Block 2 West developer to select the joint venture of Swinerton/Rubecon Builders as contractor, with Rubecon as the SBE/MBE. The contractor has made good faith efforts to solicit bids from SBE from design-build trades and will continue to do so throughout the construction bid process. This condition is modified based on the development status and carried forward as Condition 8.

- Sponsor will seek a childcare provider through a competitive RFP process. Sponsor will coordinate with the selected provider to refine space designs and support the provider, as appropriate, in seeking tenant improvement assistance.

Status: Complete, Sponsor selected Wu Yee as the childcare provider in March 2022. Sponsor has engaged with Wu Yee at all stages of design to date. Wu Yee has identified funding for tenant improvements.

- Sponsor will work with OCII, MOHCD, and HSH to:
 - finalize the number of permanent supportive units, ensuring consistency with best practice case management ratios;
 - review AMI levels for LOSP-supported units to ensure that the levels are appropriate to accommodate anticipated tenant needs; and
 - refine the services plan and budget.

Status: Complete, Sponsor has determined, in partnership with OCII, MOHCD, and HSH, that the Project will include 40 permanent supportive housing units. The units are restricted at 50% MOHCD AMI, but are further restricted for other funding sources. The most restrictive are: 32 units at 20% TCAC AMI, and 8 units at 30% TCAC AMI (see chart in Section 7.8).

- Sponsor will evaluate the need for 24-hour desk coverage for the Project and will explore the potential for shared after hours front desk coverage/security between Blocks 2 East and West to improve efficiency and reduce costs.

Status: Complete, the Sponsors of Blocks 2 East and West studied the possibility of shared desk coverage/security and found it infeasible due to the lack of shared sightlines into each building and into shared public spaces,

and the overall number of residents that will be served in the two buildings. The Sponsor determined 24-hour desk coverage is necessary and will be provided.

- Sponsor will seek to maximize permanent debt, while maintaining an AMI mix as agreed upon with OCII and ensuring an adequate debt service coverage ratio.

Status: In progress. *Sponsor optimized AMI levels needed for competitive scoring applications for AHSC, CDLAC/TCAC, and IIG. If feasible, the Sponsor will incorporate units at a 50% AMI tier. While a permanent loan is not currently reflected as a source, the Sponsor will study this further and provide an analysis of the feasibility of permanent debt (see Condition 4).*

- Sponsor will monitor available funding sources such as AHP, AHSC, IIG, and others, review regulations, and submit timely applications, as appropriate. If necessary, Sponsor will recommend strategies and program modifications for OCII approval to improve the Project's likelihood of securing awards.

Status: In progress, continued in part as Condition 10. *Sponsor submitted applications for AHSC in April 2023, and for IIG in July 2023. Sponsor determined that Block 2 East would not be competitive for AHP funding in 2023 based on current scoring criteria until it can achieve readiness and full site control points. Sponsor will evaluate AHP scoring for future rounds and apply as directed by OCII. If funds are secured, the OCII loan will be reduced accordingly.*

- Sponsor will ensure that commercial spaces are designed in accordance with the specifications established in the MOHCD Commercial Space Underwriting Guidelines and will provide a commercial financing plan for OCII review and approval.

Status: In progress, *Sponsor has monitored and analyzed the updated MOHCD Commercial Space Underwriting Guidelines and has provided OCII with a commercial financing plan. Pursuant to Condition 2, Sponsor will provide an updated commercial plan and budgets prior to the close of construction financing.*

- Sponsor will conduct early outreach to local small business organizations, non-profit entrepreneur organizations, and other entities, groups and organizations, as appropriate, to market the Project's retail space. In addition, Sponsor will engage with the San Francisco Office of Economic and Workforce Development regarding the retail space and the availability of the City's small business, legacy business, and other programs to identify and assist potential local business tenants.

Status: In progress, *Sponsor provided preliminary commercial leasing plan which describes the Sponsor's initial outreach to potential retail tenants. Pursuant to Condition 2, Sponsor will continue this outreach throughout predevelopment and construction.*

- Sponsor will coordinate with OCII and the sponsor of Block 2 West to establish project boundaries and secure a subdivision map for Transbay Block 2.

Status: In progress, *carried forward as Condition 1. The tentative map was approved in May 2023. Final parcel map approval is expected in November 2023.*

- Prior to submittal of a site permit application and subdivision map application, Sponsor, in collaboration with the sponsor of Block 2 West, will recommend for OCII approval, a specific plan for the development of public or common use areas in Transbay Block 2, e.g. the mid-block pedestrian mews, that establishes the lot lines, allocation of development costs, a mechanism for ensuring public access, and responsibilities for construction and ongoing maintenance and security.

Status: Partially complete, carried forward as Condition 1. While Sponsor has determined the lot line, other aspects of development of the mid-block pedestrian mews are still to be determined.

- Sponsor will provide for OCII review any RFP for debt and equity providers before it is finalized and released.

Status: In progress, carried forward as Condition 3. Sponsor anticipates issuing an RFP or solicitation package after securing a CDLAC allocation.

- Sponsor and the sponsor of Block 2 West will work collaboratively on a community outreach plan, will conduct ongoing outreach to the Transbay community to solicit input, address concerns, and educate community members on various aspects of the Project. Sponsor will take the lead in obtaining OCII approval for the community outreach plan.

Status: In progress and carried forward as Condition 12. Sponsor, in collaboration with the Block 2 West sponsor, conducted presentations to the East Cut Central Business District, IDEATE SF (Transbay resident and business advocacy group), as well as the Transbay CAC. Sponsors will continue to conduct community outreach at key milestones to keep the community informed of project progress.

6.4 Proposed Predevelopment Financing

6.4.5 Predevelopment Sources Evaluation Narrative.

As noted above, the Project has changed considerably in size from the original predevelopment loan approval. With the previously approved \$3.5M predevelopment loan, the Sponsor is seeking an additional \$4,500,000 for predevelopment activities. The added budget will include design fees for design-build scopes (mechanical, electrical, plumbing and fire), additional design fees, city permit fees, and utility connection fees. The budget is summarized in the table below.

Original Loan	\$3,500,000
Original Loan drawn to date	\$2,746,429
Original Loan remaining balance	\$753,571
Additional Loan funds	\$4,500,000
Professional design work by construction subcontractors – design/build	\$1,612,777
Architecture and engineering	\$1,005,708
City fees for construction permits	\$1,004,000
Utility fees	\$425,000
Other professional contracts	\$190,040
Contingency	\$262,475
Total	\$8,000,000

While the proposed total of predevelopment funding at \$8M is higher than is typical for OCII/MOHCD projects, staff recommends approval. The process to entitle the Project at the current significantly increased scale was longer and more resource intensive than is typical for OCII projects. Work included a lengthy conceptual design phase to determine height and bulk, preparation of a CEQA addendum, and regulatory approvals. The mid-rise design, overall scale of the building, the logistically challenging infill site, and the need for coordination between the Block 2 project and neighboring Block 3 park project also added to predevelopment costs.

The largest additional cost is attributed to professional design work by construction subcontractors under design/build contracts. These scopes include mechanical, electrical, plumbing and fire. Procuring these subcontractors for contracts that include both design and build services was recommended by the general contractor to improve efficiency during the construction period, allowing coordination amongst these trades to occur while designs are still under development, improving the accuracy of construction drawings, and resulting in more predictable construction bid pricing. Other costs include additional architecture and engineering to fund services through construction documentation, connection fees to utility providers, and city permit fees. Allocating funds for city permit fees, due at the issuance of first construction addendum, will allow the Project to further advance subsequent permit addenda prior to issuance of a notice to proceed on a complex infill site.

6.4.6 Predevelopment Uses Evaluation:

Predevelopment Budget		
Underwriting Standard	Meets Standard? (Y/N)	Notes
Acquisition Cost is based on appraisal	N/A	
Holding costs are reasonable	N/A	
Architecture and Engineering Fees are within standards	Y	Architecture and engineering fees total \$2,417,518 during predevelopment.
Consultant and legal fees are reasonable	Y	
Entitlement fees are accurately estimated	Y	
Construction Management Fees are within standards	Y	Construction management fees are \$114,685 in predevelopment, which is within the standards based on the predevelopment period

Developer Fee is within standards	Y	See Section 6.5.5 for a breakdown of the proposed developer fee. \$550k of the project management is payable during predevelopment, consistent with the developer fee policy.
Soft Cost Contingency is 10% per standards	Y	Soft Cost Contingency is 10% of the soft costs for the additional predevelopment loan amount

6.5 Proposed Permanent Financing

6.5.1 Permanent Sources Evaluation Narrative.

The Borrower proposes to use the following permanent financing sources:

- 4% Tax Credit Equity (\$98,536,983): Budget assumes a price of \$0.98 per credit (consistent with pricing secured on two recently closed OCII projects: Hunters Point Shipyard Block 56 and Blocks 52/42). Pursuant to Condition 3, the Sponsor will provide the debt/equity request for proposals or solicitation package for OCII review and will share responses and draft term sheets.
- AHSC Loan (\$28,000,000): Sponsor submitted an application for AHSC funding in April 2023 in an amount totaling \$41,011,377. The total includes the \$28,000,000 residential loan as well as \$13,011,377 grant to BART to fund BART cars and to the Department of Public Works to fund streetscape improvements on Howard Street near the Project site. According to the NOFA timeline, awards will be announced in August 2023.
- OCII Loan (\$72,972,179) (this request): The total OCII loan amount is consistent with the maximum budgeted in the Fiscal Year 2023-24 Recognized Obligation Payment Schedule and is subject to approval by the OCII Commission. The total loan amount may be adjusted to be reduced, or reallocated between the residential and commercial portions, with the final allocation documented in the Project's Final Financial Plan. In addition, subject to Final Financial Plan approval, unused site preparation funds under the Horizontal Ground Lease may be allocated to either the residential or commercial loan.
 - Residential Loan (\$61,961,845): Amount is inclusive of the existing and requested predevelopment loan amounts. Term of 55 years, interest is assumed at 3% but may be adjusted to as low as 0% if the need to do so is demonstrated in a true debt analysis (the final interest rate will be reflected in the Final Financial Plan). Repayment is based on residual receipts.
 - Commercial Loan (\$8,676,682): Term is 55 years with a 3% interest rate. Repayment will be based on residual receipts. Per Condition 2, Sponsor will pursue a permanent commercial loan to repay a portion of this loan following the conversion to permanent residential financing and stabilized occupancy of the commercial spaces.

- Horizontal Project (\$2,333,653): OCII will fund site preparation work under a Horizontal Ground Lease. This funding is provided as a reimbursement of costs incurred, with no repayment (this funding is not structured as a loan).
 - Deferred Developer Fee (\$540,000): Due to HCD restrictions on a cash developer fee, the Sponsor will take the difference between the maximum allowed under MOHCD Guidelines and the maximum allowed by HCD as deferred fee, payable out of the Sponsor's portion of residual receipts.
 - Construction Loan (\$98,621,620): While not a permanent source, the budget assumes a tax-exempt construction loan with an interest rate of 7.48% for 30 months. Pursuant to Condition 3, the Sponsor will provide the debt/equity request for proposals for OCII review and will share responses and draft term sheets.
 - IIG Loan/Grant: While not reflected in the sources herein, Sponsor applied for an IIG grant of \$8M in July 2023 under the 2023 HCD SuperNOFA. Based on the current HCD schedule, funds will be awarded in winter 2023/2024. Funding is expected to be highly competitive and Sponsor is only modestly optimistic about securing an award. In addition, in the event that awards fall behind the anticipated schedule (as occurred in the 2022 SuperNOFA), they may be too late to be included for a May 2024 closing should the Project succeed in securing a CDLAC/TCAC award in the third round of 2023. Should the Project secure a timely IIG award, the funds will be incorporated into the budget and the OCII loan will be reduced accordingly. If necessary, the Sponsor will request a time extension from CDLAC.
 - AHP: The budget does not currently assume an AHP award. For 2023, the Sponsor conducted a scoring analysis and found that the Project would not be competitive at this stage, primarily because it would not yet qualify for full readiness points with the site permit still pending. Pursuant to Condition 10, the Sponsor will evaluate AHP in future rounds and apply as appropriate. If AHP funds are awarded, the OCII loan will be reduced accordingly.
 - Permanent Loan: Based on projected cash flow, the Project cannot currently support a permanent loan. Debt cannot be secured on LOSP units and the rent from the non-subsidized units with rents at 40-80% is insufficient to service debt. Pursuant to Condition 3, Sponsor will continue to monitor cash flow as financial projections are refined and explore the potential for a permanent loan and/or to adjust AMI tiering.
- 6.5.2 CDLAC Tax-Exempt Bond Application.

Block 2 East will apply for low-income housing tax credits and a tax-exempt bond allocation in the third round of 2023 (application due September 6, 2023). The Project's financial consultant, CHPC, is cautiously optimistic about the Project's likelihood of securing an award. The Sponsor has endeavored to optimize scoring and bring down the residential cost by pursuing site preparation funding through the Horizontal Ground Lease and a separate commercial loan.

CDLAC Self-Score	
Opportunity Map Resource Level	Moderate Resource
TCAC Housing Type	Large Family
Bond Allocation Request Amount	Approx. \$105,144,000
Total Self-Score (out of 120 points)	119
Tiebreaker Score	135.02%

6.5.3 Commercial Space Sources and Uses Narrative:

The cost of constructing the commercial spaces to warm shell is estimated at approximately \$8,676,682. Hard costs and certain soft costs for the commercial spaces are estimated based on a pro rata per square foot basis between residential and commercial.

To improve competitive CDLAC scoring by bringing down the total development cost of the residential project, the capital cost of constructing the commercial spaces will be funded through a separate commercial loan from OCII and is not included in the capital budget for the residential project. The Sponsor will establish an affiliate limited liability company for construction and ownership of the commercial improvements. In addition to a separate loan agreement, OCII will enter into a separate commercial ground lease subject to terms in accordance with the MOHCD Commercial Space Underwriting Guidelines. The OCII commercial loan and ground lease will go into effect concurrently with the residential gap loan and ground lease at the close of construction financing.

The Sponsor intends to finish the spaces to a warm shell condition. This includes restrooms with fixtures and accessories, finished floors, HVAC ductwork, exterior signage, and water and electrical meters. To build to this finish level in compliance with the MOHCD Commercial Space Underwriting Guidelines, the Sponsor has agreed to lease to tenants who meet the definition of Community Serving Use (see Condition 2).

In addition to a warm shell initial finish, the commercial capital budget includes a \$293,700 tenant improvement allowance (\$150 per retail square foot) for the retail spaces. A tenant improvement allowance is not an eligible use of MOHCD/OCII funds according to the Commercial Space Underwriting Guidelines. The Sponsor requests, and OCII staff preliminarily recommends, the inclusion of this allowance in this circumstance. As noted above, lease-up of the retail spaces to locally owned neighborhood serving businesses is a priority of the OCII Commission. The tenant improvement allowance is intended to reduce barriers for prospective local businesses and to enhance the Project's likelihood of securing community serving tenants in the current uniquely difficult market conditions. High downtown commercial vacancy rates and overall reduced activity make retail leasing particularly difficult. Prior to finalizing the commercial loan, the Sponsor and Mercy Commercial shall seek to identify other potential tenant improvement sources such as programs offered through the Office of Economic and Workforce Development. In addition, the amount will be reviewed and may be

reduced based on market study findings provided with the updated Commercial Space Plan should market conditions improve and/or the Plan or study identify uses or tenants that require less costly initial improvements (generally, uses that do not include food service). See Condition 2. The allowance is subject to OCII Commission approval along with the commercial loan and lease. In the event that the allowance is deemed unnecessary, can be reduced based on market data, or is not approved by the OCII Commission, the commercial loan amount will be reduced accordingly. Additionally, the Final Financial Plan for the Project will be approved by the MOHCD Director and OCII Executive Director just prior to the close of construction financing. This document will also allow the final loan amount to be reduced if the allowance is deemed to be unnecessary.

As noted in Section 4.7, Wu Yee has secured funding for ECEC tenant improvements through the Low Income Investment Fund (“LIIF”). On another project (1515 South Van Ness), the developer is exploring a structure in which, in addition to tenant improvements, LIIF would pay for construction to a warm shell. LIIF would own the improvements and lease them to the provider. As noted in Condition 2, Sponsor will review this structure for the Block 2 East ECEC to determine if it may be a desirable structure.

6.5.4. Permanent Uses Evaluation:

Development Budget		
Underwriting Standard	Meets Standard? (Y/N)	Notes
Hard cost per unit is within standards	N	\$869,751/unit Hard costs exceed those of comparable projects. See Section 4.6 for discussion. Hard costs include escalation to the planned start of construction in May 2024. Pursuant to Condition 8, the Sponsor will closely monitor costs and identify measures for cost maintenance or reduction.
Construction Hard Cost contingency is at least 5% (new construction)	Y	Hard Cost Contingency is 5%
Architecture and engineering fees are within standards	Y	Architecture and engineering fees total \$3,900,000, which is approximately 3% of hard costs (excluding contingencies)
Construction management fees are within standards	Y	18 months of predevelopment at \$4,200/month, and 23 months of construction at \$6,000/month.

Developer Fee is within standards, see also disbursement chart below	N	Project management fee: \$1,100,000 At risk fee: \$1,400,000 Deferred fee: \$540,000 Commercial fee: \$425,000 Total fee: \$3,565,000 See discussion below
Consultant and legal fees are reasonable	Y	
Entitlement fees are accurately estimated	Y	
Construction loan interest is appropriately sized	Y	Construction loan interest assumes a rate of 7.48% for 30 months
Soft cost contingency is 10% per standards	Y	Soft Cost Contingency is 10%
Capitalized Operating Reserves are a minimum of 3 months	Y	Capitalized Operating Reserve is 3 months
Furnishings	Y	\$2,500/unit for common area x 184 units = \$460,000 PSH units: \$3,650/studio x 1 Studio = \$3,650 \$2,650/1BR x 8 1BRs = \$21,200 \$4,650/2BR x 21 2BRs = \$97,650 \$5,650/3BR x 10 3BRs = \$56,500 Total unit furnishings = \$179,000 Total budget = \$639,000

6.5.5 Developer Fee Evaluation: The milestones for the payment of the developer fee to the sponsor are specified below:

Total Developer Fee:	\$3,565,000	
Project Management Fee paid to date:	\$453,750	41%
Amount of remaining Project Management Fee:	\$646,250	59%
Amount of fee at Risk (the "At Risk Fee"):	\$1,400,000	
Amount of Deferred Fee:	\$540,000	
Amount of Commercial Space Developer Fee (the "Commercial Fee"):	\$425,000	
Milestones for disbursement of that portion of Developer Fee remaining and payable for Project Management	Amount Paid at Milestone	Percentage Project Management Fee
During predevelopment	\$96,250	50%
Close of construction financing	\$220,000	20%
Construction completion	\$220,000	20%
Project close-out	\$110,000	10%

Milestones for disbursement of that portion of Developer Fee defined as At Risk Fee		Percentage At Risk Fee
100% lease up and draft cost certification	\$280,000	20%
Permanent conversion	\$700,000	50%
Project close-out	\$420,000	30%
Milestones for Disbursement of that portion of Developer Fee defined as Commercial Fee		Percentage Commercial Fee
Completion of commercial parcel mapping	\$75,000	20%
Signed letters of intent for all commercial spaces	\$175,000	40%
Signed leases for all commercial spaces	\$87,500	20%
100% commercial occupancy	\$87,500	20%

The amount of the At-Risk Fee requested is lower than the maximum allowable pursuant to the MOHCD Policy on Development Fees for Tax Credit Projects. The maximum allowable cash-out fee is \$3,040,000 (\$2,200,000 + (\$10,000 x 84)). Due to HCD restrictions, the Sponsor instead proposes to take \$2,500,000 in cash-out fee, and \$540,000 in Deferred Fee.

To keep residential costs as low as possible, the Developer Fee does not currently reflect a General Partner Equity contribution. This will be reassessed and may be included to the extent that it contributes to increased tax credit equity but does not negatively impact tiebreaker scoring in the CDLAC/TCAC application. If General Partner Equity is recommended, it will be addressed in the Final Financial Plan.

7. PROJECT OPERATIONS (See Attachment I and J for Operating Budget and Proforma)

7.5. Annual Operating Budget.

Project income is comprised of residential tenant rent and LOSP funds. Proposed tenant rent is projected at the greater of the maximum allowable per MOHCD rent restrictions or the maximum viable as set forth in the market study.

The Sponsor will seek a 15-year grant agreement for LOSP from MOHCD (see Condition 5).

Annual LOSP revenue is based on the pro rata share of operating expenses attributable to the 40 LOSP units, which comprise 22% of affordable units. Based on direction from HSH, the tenant paid portion of rent for LOSP units is \$225 per unit per month. For lottery units, rent revenue is based on maximum rents reflected in the 2023 MOHCD rent limit schedule.

Expenses are split pro rata between LOSP and non-LOSP with the exception of the following:

- Other Salaries/Benefits and Security Payroll/Contract: split is 75% LOSP/ 25% non-LOSP. These costs are for 24-hour desk coverage. This split is consistent with that of other MOHCD sponsored LOSP projects.
- Supportive Services: attributable 100% to non-LOSP units (supportive services for LOSP units are funded through a separate contract with HSH as discussed in Section 8).

Pursuant to Condition 5, the Sponsor will work with OCII, MOHCD, and HSH to finalize the LOSP budget and secure approval for a LOSP Agreement. Any proposed deviations from a pro rata cost split are subject to review and approval.

7.6. Annual Operating Expenses Evaluation.

Operating Proforma		
Underwriting Standard	Meets Standard? (Y/N)	Notes
Debt Service Coverage Ratio is minimum 1.1:1 in Year 1 and stays above 1:1 through Year 17	Y	
Vacancy rate meets TCAC standards	Y	Vacancy rate is 5%
Annual Income Growth is increased at 2.5% per year or 1% for LOSP tenant rents	Y	Income escalation factor is 2.5%, 1% for LOSP
Annual Operating Expenses are increased at 3.5% per year	Y	Expense escalation factor is 3.5%
Base year operating expenses per unit are reasonable per comparables	Y	Total Operating Expenses are \$16,838 per unit per year, including reserves, base rent and bond fees.
Property Management Fee is at allowable HUD Maximum	Y	Total Property Management Fee is \$155,520 or \$70 PUPM
Property Management staffing level is reasonable per comparables	Y	Proposed staffing: 1 FTE Senior Property Manager (SPM) 2 FTE Assistant PMs 4.5 FTE Desk Staff (24/7 coverage) 1 FTE Maintenance Manager 1 FTE Maintenance Tech 1 FTE Janitor Total: 9.5 FTE
Asset Management and Partnership Management Fees meet standards	Y	Annual AM Fee is \$26,920 Annual PM Fee is \$26,920 Amounts are consistent with the MOHCD Operating Fees policy, escalated to 2026.
Replacement Reserve Deposits meet or exceed TCAC minimum standards	Y	Replacement Reserves are \$500 per unit per year
Limited Partnership Asset Management Fee meets standards	Y	\$5,000 per year with no escalation

7.7. Capital Needs Assessment & Replacement Reserve Analysis. N/A

7.8. Income Restrictions for All Sources.

UNIT SIZE		MAXIMUM INCOME LEVEL	
NON-LOTTERY	No. of Units	OCII/MOHCD	TCAC/CDLAC/HCD
1 BR – LOSP*	6	50% MOHCD AMI	20% TCAC AMI
1 BR – LOSP*	2	50% MOHCD AMI	30% TCAC AMI
2 BR – LOSP*	18	50% MOHCD AMI	20% TCAC AMI
2 BR – LOSP*	4	50% MOHCD AMI	30% TCAC AMI
3 BR – LOSP*	8	50% MOHCD AMI	20% TCAC AMI
3 BR – LOSP*	2	50% MOHCD AMI	30% TCAC AMI
Sub-Total	40		
LOTTERY			
Studio	17	60% MOHCD AMI	50% TCAC AMI
Sub-Total	17		
1 BR	3	40% MOHCD AMI	30% TCAC AMI
1 BR	41	60% MOHCD AMI	50% TCAC AMI
1 BR	23	80% MOHCD AMI	60% TCAC AMI
Sub-Total	76		
2 BR	2	40% MOHCD AMI	30% TCAC AMI
2 BR	16	60% MOHCD AMI	50% TCAC AMI
2 BR	13	80% MOHCD AMI	60% TCAC AMI
Sub-Total	52		
3 BR	1	40% MOHCD AMI	50% TCAC AMI
3 BR	26	60% MOHCD AMI	50% TCAC AMI
Sub-Total	37		
STAFF UNITS			
1 BR	1		
2 BR	1		
Total	184		
PROJECT AVERAGE		61%	45%
AVERAGE FOR LOTTERY UNITS ONLY		64%	52%

* While LOSP units will be restricted at 50% MOHCD AMI to allow for maximum flexibility, tenants referred to LOSP units are typically extremely low-income, at or below 30% AMI.

7.9. MOHCD/OCII Restrictions.

Unit Size	No. of Units	Maximum Income Level	Rental/Operating Subsidy
Studio	17	60% of Median Income	
1-BR	3	40% of Median Income	
1-BR	8	50% of Median Income	LOSP
1-BR	41	60% of Median Income	
1-BR	23	80% of Median Income	
1-BR	1	Manager's Unit	
2-BR	2	40% of Median Income	
2-BR	22	50% of Median Income	LOSP
2-BR	16	60% of Median Income	
2-BR	13	80% of Median Income	
2-BR	1	Manager's Unit	
3-BR	1	40% of Median Income	
3-BR	10	50% of Median Income	LOSP
3-BR	26	60% of Median Income	

8. SUPPORT SERVICES

8.5. Services Plan.

Mercy will provide resident services for low-income families and Episcopal Community Services (“ECS”) will provide supportive services for formerly homeless families. Anticipated staffing is as follows:

Position	FTE	Description
Senior Case Manager – ECS (serving families in supportive units)	1.6	Provides psychological assessments, supportive counseling, and individualized wrap-around case management. Services aligned with Positive Parenting Program.
Senior Case Manager, Bilingual – ECS (serving families in supportive units)	1	Provides psychological assessments, supportive counseling, and individualized wrap-around case management. Focus on monolingual/ESL Spanish-speaking families. Services aligned with Positive Parenting Program.
Support Services Manager – ECS (support for families in supportive units)	0.6	Provides leadership and supervision to ensure quality and resident safety. Responsible for case management program operations including staff supervision and budget oversight.
Resident Services Coordinator II – Mercy (serving all residents)	1.3	Coordinates on site services programs, partnerships with outside organizations, and property management. Implements youth programming, community engagement, health and wellness initiatives, and housing stability.
Resident Services Manager (serving all residents)	0.2	Provides oversight and supervision to support resident services staff and programs.
Total FTE	4.7	

ECS Housing Case Management staff will operate under a Housing First and Harm Reduction philosophy, utilizing a person-centered approach that meets people where they are. Supportive services will be provided with the goal is to support families in achieving greater stability in their lives, assist them in moving toward increased self-sufficiency, maintain their housing. ECS will do this by fostering community-building and providing focused case management services. This includes clinical assessments, crisis management, conflict resolution, legal and financial advocacy, basic needs access, eviction prevention, housing stabilization, and hand-in-glove coordination with onsite property management and wraparound supportive services partners, including for workforce training, adult learning, housing ladder opportunities, and others as identified during resident-directed service planning.

Mercy’s family resident services will emphasize housing and financial stability, health and wellness, afterschool programs, and community engagement. Mercy’s afterschool program goals are to provide homework support and enrichment activities aimed at helping youth aged 6-18 promote on time and provide social emotional learning and educational skills.

Mercy provides financial stability education through individual or group workshops on the following topics: EITC education, job readiness support, and technology literacy. Services teams also work with residents to aid with resume preparation and job searches as well as referrals to local workforce development programs.

- 8.6. Services Budget. Services will be funded through a separate contract with HSH and through the operating budget. HSH will fund case management services for the LOSP units at a rate of \$1,075/unit/month (\$516,000/year), consistent with HSH’s standard for family buildings.

The balance of services will be funded through the operating budget. With 1.5 FTE, the resident services staffing and related operational cost is consistent with the underwriting standards.

Cost Type	FTE	HSH Budget	Operating Budget	Total
Senior Case Manager	1.6	\$112,000	--	\$112,000
Senior Case Manager, Bilingual	1.0	\$73,500	--	\$73,500
Support Services Manager	0.6	\$63,000	--	\$63,500
Resident Services Manager	0.2	--	\$18,000	\$18,000
Resident Services Coordinator	1.3	--	\$87,750	\$87,750
Fringe (ECS 42%, Mercy 34%)		\$104,370	\$35,955	\$140,685
Operating expenses		\$95,825	\$46,700	\$142,525
Indirect (15%)		\$67,304	\$27,732	\$95,036
Total		\$516,000	\$216,137	\$732,496

8.7. HSH Assessment of Service Plan and Budget.

HSH staff has reviewed the services plan and budget and confirmed that the cost is consistent with HSH standards and the amount budgeted for this Project. The staff plan meets the HSH case management staff FTE to LOSP household ratio requirement of 1:20. Per condition 7, Mercy and ECS will work with HSH to finalize the services plan and enter into a contract for supportive services.

9. STAFF RECOMMENDATIONS

9.5. Proposed Loan/Grant Terms

Financial Description of Proposed Loan (Residential)	
Loan Amount:	\$61,156,531
Loan Term:	55 years
Loan Maturity Date:	2078
Loan Repayment Type:	Residual Receipts
Loan Interest Rate:	Up to 3% (interest rate may be adjusted to between 0% and 3% to conform with a future true debt analysis. Rate is to be determined prior to construction loan closing with approval of the OCII Executive Director and MOHCD Director and will be set forth in the Final Financial Plan.)
Date Loan Committee approves prior expenses can be paid:	November 12, 2020

Financial Description of Proposed Horizontal Project Cost Reimbursement (Horizontal Ground Lease)	
Amount:	\$2,333,653
Term:	Terminates for each Block 2 East and West upon the effective date of vertical ground leases.
Maturity Date:	N/A
Repayment Type:	N/A (no repayment, costs are paid on a reimbursement basis)
Interest Rate:	N/A
Date Loan Committee approves prior expenses can be paid:	August 4, 2023

Financial Description of Proposed Loan (Commercial)	
Loan Amount:	\$8,676,682
Loan Term:	55 years
Loan Maturity Date:	2078

Loan Repayment Type:	Residual Receipts, 40% net commercial cash flow due to OCII
Loan Interest Rate:	3%
Date Loan Committee approves prior expenses can be paid:	November 12, 2020

9.6. Recommended Loan Conditions

1. Sponsor will work closely with the sponsor of Block 2 West throughout predevelopment and construction and will:
 - a. Finalize the parcel map for the overall Block 2 site.
 - b. Collaborate on the scope and schedule of the Horizontal Project to ensure that work is complete prior to the Block 2 West project close of construction financing. Sponsor and CCDC shall amend the existing JDA to reflect the site work structure and/or enter into a memorandum of understanding or similar agreement.
 - c. Identify and implement strategies to improve construction efficiencies and optimize logistics between the Block 2 East and Block 2 West projects.
 - d. Determine and document roles and responsibilities for the shared maintenance of the publicly accessible pedestrian mews and any other shared open space elements, subject to the advance review and approval of OCII.
2. Sponsor shall continue to refine the commercial capital and operating budgets and, prior to the close of construction financing, Sponsor shall:
 - a. Submit an updated Commercial Space Plan that documents further outreach to prospective tenants, describes racial equity efforts and expected outcomes, and outlines plans to achieve community benefits pursuant to the below-referenced Community Commercial Services Agreement. The updated Commercial Space Plan shall include a third party prepared market study. In addition, the updated Commercial Space Plan shall include an analysis of resources available to fund tenant improvements such as, but not limited to, programs from OEWD.
 - b. Based on findings from the updated Commercial Space Plan and market study as referenced above, provide a recommended tenant improvement allowance responsive to current market conditions and anticipated tenant uses and related improvement cost estimates for OCII review and approval. The final tenant improvement allowance will be included as an attachment to the OCII commercial loan agreement, subject to OCII Commission approval, and approval by the MOHCD Director and OCII Director as part of the Final Financial Plan.

- c. Make good faith efforts to secure letters of intent with Community Serving Use tenants (as defined in the MOHCD Commercial Space Underwriting Guidelines).
- d. Enter into a Community Commercial Services Agreement (as referenced in the MOHCD Commercial Space Underwriting Guidelines) or similar agreement to establish the terms and annual community benefit reporting requirements for the commercial spaces.
- e. Subject to OCII review and approval, execute a reciprocal easement agreement or similar document to establish the terms for access to spaces shared between the residential and commercial projects and the allocation of costs and responsibilities.
- f. Enter into a commercial space loan agreement and ground lease with OCII.
- g. In collaboration with OCII and MOHCD, explore alternative ownership, construction financing, and leasing structures for the childcare space with the intent of reducing or eliminating the OCII commercial loan for this space.

Following initial lease-up and a period of stabilized commercial occupancy as mutually agreed upon by the Sponsor, Mercy Commercial, and OCII, pursue a permanent commercial loan to reimburse OCII's commercial loan to the extent feasible.

3. Sponsor shall provide for OCII advance review and approval: a) the request for proposals and/or solicitation package for equity investors and lenders before it is finalized and distributed; b) all raw financial data from developer or financial consultant prior to selection; c) proposals from all investors and lenders; and d) all letters of intent from financial partners.
4. Sponsor shall continue to refine the income levels for the non-subsidized units and seek to incorporate units at a 50% AMI tier, with the intention of maximizing opportunities for COP holders, to the extent that it aligns with restrictions from other lenders. Any adjustments to AMI tiering will be balanced to ensure that cash flow remains positive for the first 20 years of operation. Final AMI tiering shall be reflected in the Final Financial Plan. In addition, Sponsor shall study the potential for permanent debt.
5. Sponsor shall work with OCII, MOHCD and HSH to finalize the LOSP budget and secure approval for a LOSP grant agreement in accordance with the timeframe and procedure set forth in the LOSP manual. Any proposed deviation(s) from a pro rata cost split between LOSP and the operating budget are subject to Loan Committee review and approval, and must be justified by the Sponsor.
6. If directed by OCII, MOHCD, and/or HSH, Sponsor shall submit an application for Continuum of Care rent and supportive services subsidies for all or a portion of the LOSP units.

7. Sponsor shall continue to refine the supportive services plan and budget for review and approval by OCII and HSH, and shall work with HSH to finalize a supportive services contract for the Project.
8. Sponsor, in cooperation with OCII, shall continue to require the general contractor to exercise good faith efforts to select subcontractors who are either SBEs or, if they are not SBEs, are willing to create joint ventures or similar partnership opportunities with SBEs. In addition, Sponsor will work closely with the general contractor and design team to monitor construction costs and identify opportunities for cost savings and efficiencies.
9. Sponsor shall provide an Early Outreach Plan one month after the start of construction and an initial draft Marketing Plan within 12 months of anticipated TCO, outlining the affirmative steps they will take to market the Project to OCII's preference program participants, including COP Holders, Displaced Tenants, and Neighborhood Residents. In addition, the Marketing Plan will describe how the marketing is consistent with the Mayor's Racial Equity Statement and promotion of positive outcomes for African American San Franciscans. Along with the Marketing Plan submittal, Sponsor shall provide a lease-up staffing plan for OCII and MOHCD review.
10. Sponsor will evaluate scoring criteria for AHP and provide a self-score to OCII in 2024 and future rounds as appropriate. Sponsor will submit an application for AHP funding as directed by OCII.
11. Sponsor shall submit to OCII final permanent residential and commercial sources and uses budgets and operating budgets, compliant with underwriting standards for OCII review and approval. The final budgets will be incorporated into the Final Financial Plan, subject to approval by OCII and MOHCD. Among other items, the Final Financial Plan may include as appropriate:
 - a. Adjustments to the allocation of funds between the residential and commercial loans to optimize scoring and/or maximize tax credit basis.
 - b. Unused funds from the site preparation work under the Horizontal Ground Lease, if any, may be allocated to the residential or commercial loan if needed.
 - c. An increase to Developer Fee to add General Partner Equity, with an equal amount added as a source, if needed to maximize tax credit basis.
12. Sponsor, in coordination with the sponsor of Block 2 West, will continue to conduct outreach to the Transbay community throughout predevelopment and construction to solicit input, address concerns, and educate community members on various aspects of the Project. Outreach should include updates to the Transbay CAC and other community organizations at key Project milestones.

10. LOAN COMMITTEE MODIFICATIONS

LOAN COMMITTEE RECOMMENDATION

Approval indicates approval with modifications, when so determined by the Committee.

APPROVE. DISAPPROVE. TAKE NO ACTION.

Eric D. Shaw, Director
Mayor's Office of Housing

Date: _____

APPROVE. DISAPPROVE. TAKE NO ACTION.

Salvador Menjivar, Director of Housing
Department of Homelessness and Supportive Housing

Date: _____

APPROVE. DISAPPROVE. TAKE NO ACTION.

Thor Kaslofsky, Executive Director
Office of Community Investment and Infrastructure

Date: _____

APPROVE. DISAPPROVE. TAKE NO ACTION.

Anna Van Degna, Director
Controller's Office of Public Finance

Date: _____

- Attachments:
- A. Project Milestones/Schedule
 - B. Borrower Org Chart
 - C. Developer Resumes
 - D. Asset Management Analysis of Sponsor
 - E. Threshold Eligibility Requirements and Ranking Criteria
 - F. Site Map with amenities
 - G. Elevations and Floor Plans
 - H. Comparison of City Investment in Other Housing Developments
 - I. Predevelopment Budget
 - J. Development Budget
 - K. 1st Year Operating Budget
 - L. 20-year Operating Pro Forma
 - M. Commercial Development Budget
 - N. Commercial Operating Budget
 - O. Horizontal Project Budget

From: [Shaw, Eric \(MYR\)](#)
To: [Amaya, Vanessa \(MYR\)](#)
Cc: [Cameron, Ituala \(MYR\)](#); [Obstfeld, Kimberly \(CII\)](#)
Subject: RE: Please Vote: \$72,972,179 Permanent Gap Loan, for Transbay Block 2 East -Loan Committee 8-04-23
Date: Monday, August 7, 2023 11:47:35 AM

I approve

From: Amaya, Vanessa (MYR) <Vanessa.Amaya@sfgov.org>
Sent: Monday, August 7, 2023 11:43 AM
To: Shaw, Eric (MYR) <eric.shaw@sfgov.org>
Cc: Cameron, Ituala (MYR) <ituala.cameron@sfgov.org>; Obstfeld, Kimberly (CII) <kimberly.obstfeld@sfgov.org>
Subject: Please Vote: \$72,972,179 Permanent Gap Loan, for Transbay Block 2 East -Loan Committee 8-04-23

Hello Director Shaw,

Please provide your vote as soon as possible as the sponsor needs to submit for a funding application.

Please be sure to Reply All to include Kim Obstfeld .

Thank you.

[Vanessa Amaya](#)

[Assistant Housing Loan Administrator](#)

[San Francisco Mayor's Office of Housing and Community Development](#)

[1 South Van Ness Ave, 5th Floor, San Francisco, CA 94103](#)

[\(628\) 652-5967](#)

PERMANENT GAP LOAN, PERMANENTCOMMERCIAL LOAN, AND SITE PREPARATION FUNDING FOR TRANSBAY BLOCK 2 EAST

Menjivar, Salvador (HOM)

Fri 8/4/2023 12:23 PM

To: Shaw, Eric (MYR) <eric.shaw@sfgov.org>

Cc: Amaya, Vanessa (MYR) <Vanessa.Amaya@sfgov.org>

I approve Mercy Housing California request for funding from OCII in a total amount of up to \$72,972,179 for Transbay Block 2 East, a 100% affordable rental housing project located on the eastern half of Block 2 of the Transbay Redevelopment Project Area. The project includes 184 units ranging in size from studios to four bedrooms serving households with incomes ranging from 40% to 80% of the area median income, two manager's units, a childcare facility, and two ground floor retail spaces. 40 units will serve families experiencing homelessness with subsidy from the Local Operating Subsidy Program.

Best,

Salvador

Transbay 2E Permanent Funding

Colomello, Elizabeth (CII)

Fri 8/4/2023 11:49 AM

To: Amaya, Vanessa (MYR) <Vanessa.Amaya@sfgov.org>

Cc: Shaw, Eric (MYR) <eric.shaw@sfgov.org>; Kaslofsky, Thor (CII) <Thor.Kaslofsky@sfgov.org>

Hi Vanessa-

I approve the subject request on behalf of OCII.

Thanks-

Elizabeth



Elizabeth Colomello

Housing Program Manager

📍 One South Van Ness Avenue, 5th Floor

San Francisco, CA 94103

📞 415.749-2488, Cell 415.407-1908

🏠 www.sfocii.org

Re: \$72,972,179 Permanent Gap Loan, Permanent Commercial Loan, and Site Preparation Funding for Transbay Block 2 East

Trivedi, Vishal (CON)

Fri 8/4/2023 11:52 AM

To: Amaya, Vanessa (MYR) <Vanessa.Amaya@sfgov.org>

Cc: Shaw, Eric (MYR) <eric.shaw@sfgov.org>

I vote yes on this item.

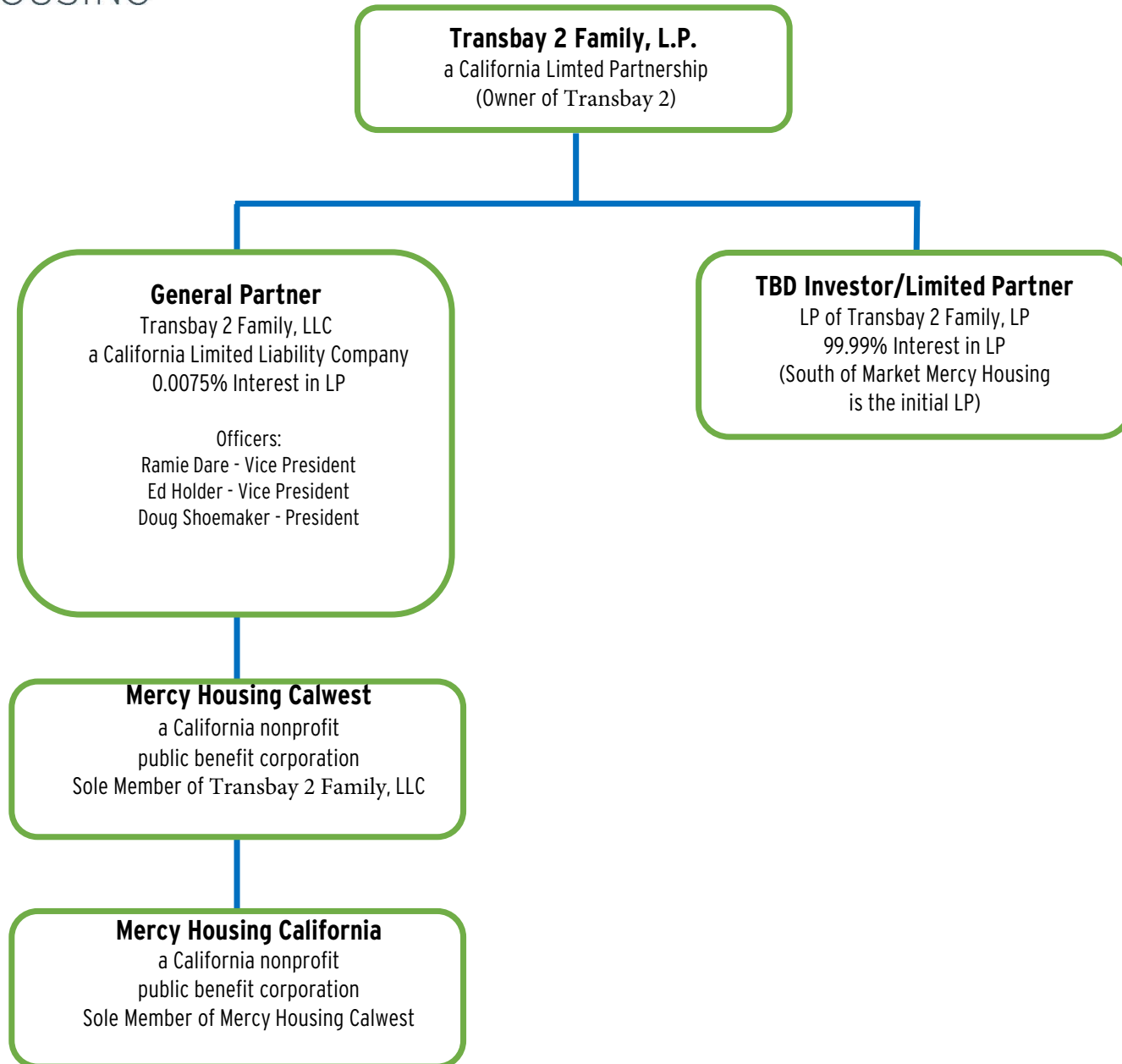
Vishal Trivedi | Financial Analyst
Office of Public Finance | City & County of San Francisco
Email | vishal.trivedi@sfgov.org

Attachment A: Project Milestones and Schedule

No.	Performance Milestone	Estimated or Actual Date	Notes
A.	Prop I Noticing (if applicable)	N/A	N/A
1	Acquisition/Predev Financing Commitment	June 2021	Complete
2.	Site Acquisition (Ground Lease)	May 2024	
3.	Development Team Selection		
a.	Architect	Nov 2020	Complete
b.	General Contractor	Jun 2021	Complete
c.	Owner's Representative	Apr 2021	Complete
d.	Property Manager	Nov 2020	Complete
e.	Service Provider	Nov 2020	Complete
4.	Design		
a.	Submittal of Schematic Design & Cost Estimate	Nov 2022	Complete
b.	Submittal of Design Development & Cost Estimate	Aug 2023	
c.	Submittal of 50% CD Set & Cost Estimate	Oct 2023	
d.	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	Jan 2024	
5.	Commercial Space		
a.	Commercial Space Plan submission (preliminary)	May 2023	Complete
b.	Commercial Space Plan submission (updated)	Oct 2023	
b.	LOI/s executed (target)	May 2024	
6.	Environ Review/Land-Use Entitlements		
b.	CEQA Environ Review Submission	Oct 2022	Complete
c.	NEPA Environ Review Submission	N/A	
7.	PUC/PG&E		
a.	Temp Power Application Submission	Mar 2023	Complete
b.	Perm Power Application Submission	Nov 2022	Complete
8.	Permits		
a.	Building / Site Permit Application Submitted	Aug 2022	Complete
b.	Addendum #1 Submitted	Aug 2023	
c.	Addendum #2 Submitted	Dec 2023	
9.	Request for Bids Issued	Sep 2023	
10.	Service Plan Submission		
a.	Preliminary	May 2023	Complete

b.	Final	Oct 2023	
11.	Additional City Financing		
a.	Gap Financing Application (this request)	Jun 2023	Complete
12.	Other Financing		
a.	HCD IIG Application	Jul 2023	Complete
b.	Construction Financing RFP	Sep 2023	
c.	AHP Application	Mar 2024 or 2025	
d.	CDLAC/TCAC Application	Sep 2023	
g.	LOSP Funding Request	Nov 2024	
13.	Closing		
a.	Construction Loan Closing	May 2024	
b.	Conversion of Construction Loan to Permanent Financing	Nov 2026	
14.	Construction		
a.	Notice to Proceed	May 2024	
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	Apr 2026	
15.	Marketing/Rent-up		
a.	Early Outreach Plan Submission	Jun 2024	
b.	Marketing Plan Submission	Jun 2025	
c.	Commence Marketing	Sep 2025	
d.	95% Occupancy	Sep 2026	
16.	Cost Certification/8609	Sep 2027	
17.	Close Out MOH/OCII Loan(s)	Sep 2027	

Attachment B: Borrower Org Chart



Transbay 2 Commercial LLC

**A California Limited Liability Company
Owner of Transbay Block 2 Commercial Development**

Mercy Housing Calwest

**A California nonprofit public benefit corporation,
Its sole member/manager of Transbay 2 Commercial LLC**

Mercy Housing California

**A California nonprofit public benefit corporation,
Sole member of Mercy Housing Calwest**

Attachment C: Development Staff Resumes

Tauji Louisville is an Assistant Project Manager at Mercy Housing California. Tauji joined Mercy Housing in August of 2022 after graduating from UCLA with a bachelor's degree in Anthropology. While obtaining her degree, she worked as a Bruin Connector in the office of Strategic Partnerships and Community Engagement where she visited faith-based organizations and LAUSD schools to educate students about college admissions. Previously, Tauji worked at Satellite Affordable Housing Associates as an asset management analyst where she assisted with requests for proposals for Project Based Vouchers and prepared reserve draw requests.

Sean Wils is a Senior Project Manager at Mercy Housing California. In addition to Block 2 East, Sean is leading the development of 1939 Market, a 17-story, 184-unit, 100% affordable housing project. Before joining Mercy, Sean most recently completed two new construction projects in San Francisco totaling 237 permanent supportive housing units, and brought a 58-unit permanent supportive housing historic rehabilitation project from predevelopment to construction closing. Prior to developing San Francisco affordable housing, Sean worked in Brooklyn, New York, managing a 1.8 million square foot mixed-use development with 200 affordable units.

Michael Kaplan is an Associate Director of Development at Mercy Housing California. With over 13 years of community development experience, including eight years in affordable housing, he has been involved in the creation or renovation of over 700 units of affordable housing valued at over \$500M. He has entitiled housing across a spectrum of neighborhoods, ranging from disadvantaged communities to upscale suburbs across the Bay Area, and has worked with a diverse group of stakeholders, partners, and public agencies to get housing built.

Ramie Dare is the Director of Real Estate at Mercy Housing California. Her nearly three decades as a developer of affordable housing and mixed-use buildings represents her dedication to community development and building the social and physical infrastructure of urban neighborhoods. She is skilled in problem solving and project managing complex financing structures and regulatory overlays, large project teams, politically sensitive processes, and an array of public/private partnership developments. Throughout her career, Ramie has remained steadfast in her commitment to thoughtfully engaging communities in her work and intelligently identifying community needs and maximizing neighborhood assets to achieve shared goals in planning, design, and operations of the buildings she develops.

Attachment D: Asset Management Evaluation of Project Sponsor

Mercy Housing California (MHC) provides asset management for all its properties and will provide asset management for Block 2 East. Asset Management falls under the National Portfolio Management department of Mercy Housing Inc, which is led by Senior Vice President Melissa Clayton based in Denver, CO.

Total Number of Projects and Average Number of Units Per Project Currently in Developer's Asset Management Portfolio:

California represents the largest portion of Mercy's national portfolio with 155 operating properties across the state, 55 of which are located in San Francisco.

Yelena Zilberfayn is the Vice President of Asset Management at Mercy Housing where she has worked for the past 23 years, 10 of which in the Asset Management Department, and is responsible for a portfolio of real estate assets serving families, seniors, and special needs individuals. She leads a team of five Asset Managers (including 4 Asset Managers and 1 Commercial Asset Manager), three in San Francisco, two in Sacramento. Two Asset Management Analysts and one Commercial Asset Management Analyst based in the National Office in Denver, CO, and one Commercial Asset Manager based in San Francisco are supporting Yelena's team. In addition, there are two Asset Managers overseeing other regions in CA and one Capital Project Investment Manager, reporting directly to Melissa Clayton.

Yelena is in the San Francisco office and interfaces directly with Doug Shoemaker, President of Mercy Housing California (MHC). Yelena and her team act as Mercy Housing's representatives in relation to the physical and financial status of each asset and protect its financial health and long-term viability.

Mercy's portfolio management also includes a Transaction Team comprised of two staff devoted to other specialized needs such as year 15 buy-outs and refinancing.

All positions in CA are full-time and are currently filled. Bay Area staff positions are as follows:

- (1) Vice President of Asset Management
- (1) Director of Portfolio Analysis
- (4) Asset Managers
- (2) Asset Management Analysts
- (1) Commercial Asset Management Analyst
- (1) Commercial Asset Manager

Each Asset Manager oversees a portfolio of up to 25 assets. Asset Managers in the San Francisco office currently have 90 assets in their portfolio, or 18 per Asset Manager. Eight of these properties are in predevelopment, under construction or in rehab. In San Francisco, Asset Managers manage fewer than the maximum of 25 assets in order to free up capacity for future developments.

The portfolio is analyzed monthly through a Portfolio Scorecard, which looks at physical and economic occupancy, trade and intercompany payables. In addition, the team performs quarterly risk ratings according to Affordable Housing Investment Council

(AHIC) standards, of every property to evaluate occupancy, reserves, management, capital needs and available reserves. If a property is placed on the watchlist, there is a quarterly meeting with the Asset Management team, Mercy Housing Management Group and the Mercy Housing California President to discuss the issue and identify a solution.

Asset Managers are responsible for tracking the capital needs of their portfolio on a quarterly basis as part of Mercy's watchlist process. They are assisted by various staff of Mercy Housing Management Group, including the Regional Facilities Manager and the various Area Directors of Operations assigned to the properties. Using various analysis including our watchlist and budget planning, reviewing CNAs, and Reserve analysis, the Asset Managers determine when the necessary capital needs can be completed in the short and long term.

The analyst team submits reserve replacement requests bi-annually. In addition, the analyst team helps with the compliance with financing requirements and various reporting regulatory requirements by sending quarterly and annual reporting to investors and funders.

Portfolio preservation planning is accomplished through balancing the use of reserves with the payment of scheduled partnership and deferred development fees through cash flow.

Mercy's Asset Management annual staffing budget is approximately \$3.3M.

Mercy anticipates that the California portfolio will grow from 155 buildings to approximately 170 buildings over the next five years. Two new Asset Manager positions based in San Francisco were added in 2017 and one in 2019.

MOHCD Asset Management assessment of Sponsor's asset management capacity: The Sponsor's description of their asset management functions, duties and coordination with related teams within the organization demonstrates an adequate asset management operation for their existing portfolio. With 7 FTE asset managers statewide and a portfolio of 155 projects in California, the project/asset management staff ratio is 22, which is in line with the industry standard of 20-25 recommended by NeighborWorks America. In addition, the Sponsor's asset management staff also includes Asset Management Analysts who support the Asset Managers. The full range of asset management responsibilities are covered by the asset managers and the analysts. With an increase of 15 projects in the Sponsor's portfolio anticipated over the next 5 years, the ratio will increase but remain within the industry standard.

Attachment E: Threshold Eligibility Requirements and Ranking Criteria

The RFP, issued by OCII on June 22, 2020, defined minimum threshold requirements to be considered for selection. The Sponsors satisfied these requirements.

The Sponsor was selected, as part of a team along with the Sponsor of Block 2 West, based on their submittal in response to the RFP. The team led by Mercy and CCDC had the highest score of the five proposals received, with 90 out of 100 possible points. Scoring criteria was as follows:

Maximum Points	Criteria
50	Proposed Development Concept
20	Proposed massing concept
15	Financial feasibility and level of OCII subsidy
10	Proposed services plan
5	Proposed marketing plan
50	Developer Team Experience and Capacity
10	Developer's experience: comparable mixed-use projects
10	Developer's experience: affordable housing financing; workload capacity
10	Workforce and contracting action plan
10	Architect experience and capacity
5	Service provider experience and capacity
5	Property manager experience and capacity
100	Maximum Total Points

Attachment F: Site Map with amenities



SITE LOCATION

15-MIN WALK RADIUS (3/4-MILE)

TRANSBAY BLOCK 2 AMENITIES

- GROCERY STORE / PHARMACY
 - RESTAURANT
 - CAFE
 - DAYCARE
 - BANK
 - PARK
 - EDUCATION
 - POST OFFICE / UPS
 - MUSEUM
 - TRANSIT STATION
 - TRANSBAY REDEVELOPMENT PROJECT AREA
 - TRANSBAY ZONE 1 SUB-AREA
 - TRUE NORTH
 - SOMA NORTH
- 0' 125' 250' 500'

Attachment G: Elevations and Floor Plans

Floor Plan - Level 01

E E

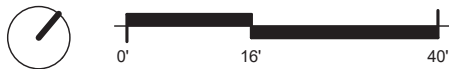
- 1 BR
- 2 BR
- 3 BR
- BACK OF HOUSE
- CIRCULATION
- COMMON LAUNDRY
- OFFICE
- S O O S O
- S O O S O
- RETAIL CHILDCARE
- STUDIO
- TOWNHOUSE

LINE
T E LINE
A C

▶ MAIN BUILDING ENTRY

Retail Notes:

- Louvers will be integrated into the retail and childcare space exterior facades with no projection into open spaces or right-of-way.
- Retail storefront is fenestrated for greater than 60% of the storefront area. At least 75% of the window and door surfaces is transparent.
- All entrances area at grade.
- See "Enlarged Storefront Elevation - Retail" for additional information.
- Venting / Exhaust Standard: Space for the location of ducts, exhaust pipes and other appurtenances associated with commercial uses adjacent to the open space parcels to be integrated into the building. No ducts or exhaust pipes will encroach in areas designated for open space.
- At retail and childcare the louvers at exterior facade allow flexibility for conditioning the space and integration of type 2 exhaust for retail venting.
- At retail, electrical and network wiring is roughed-in to central location for tenant flexibility.
- At retail, restroom will be provided and plumbing will be roughed-in to central location for tenant flexibility.
- There will be no gas provided for the project
- The final landscape design at the childcare courtyard will be designed and reviewed during Design Development.

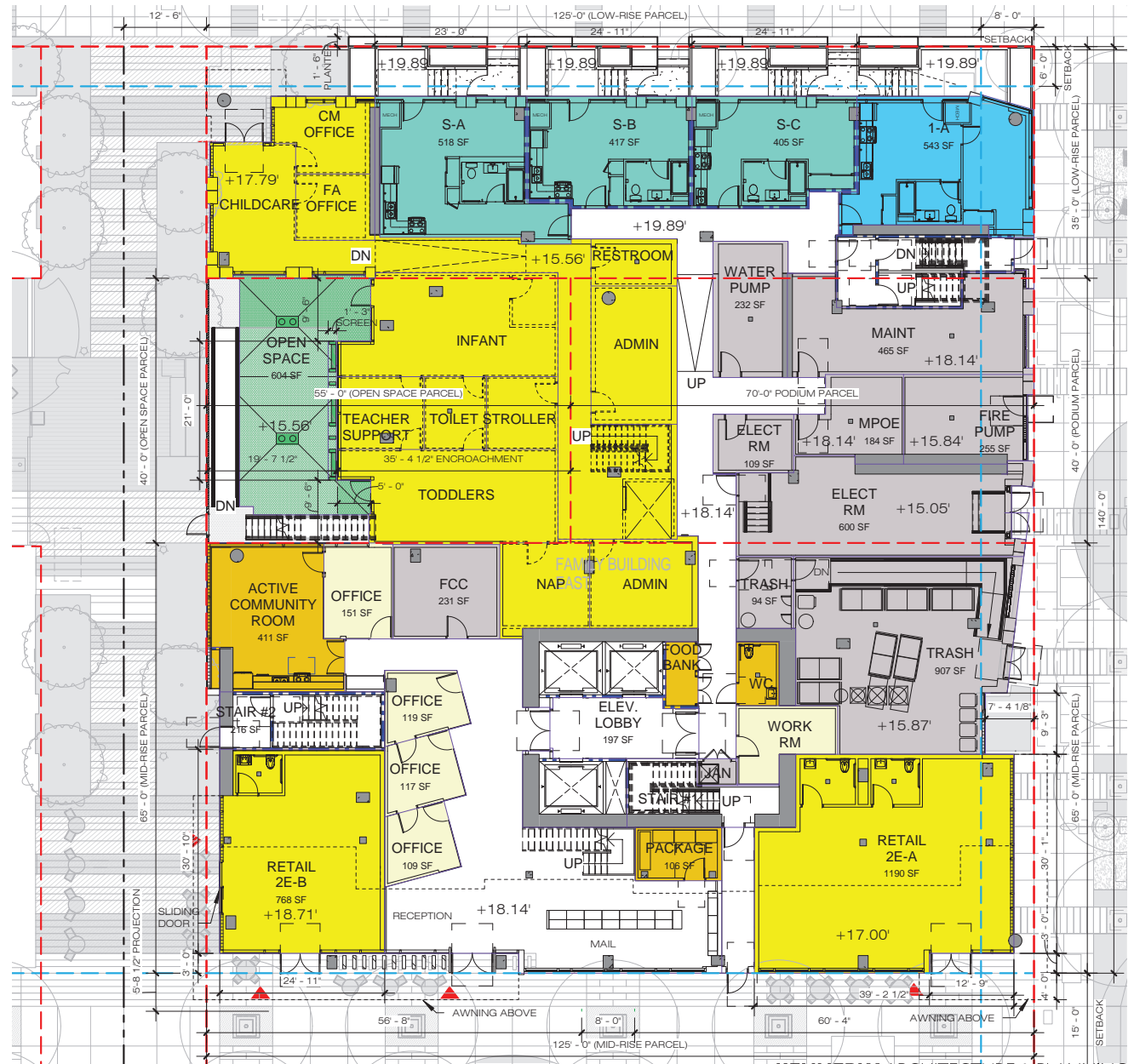


Transbay Block 2 East

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KENNERLY ARCHITECTURE & PLANNING



Floor Plan - Level 02

E E

- 1 BR
- 2 BR
- 3 BR
- BACK OF HOUSE
- CIRCULATION
- COMMON LAUNDRY
- OFFICE
- S O O S O
- S O O S O
- RETAIL CHILDCARE
- STUDIO
- TOWNHOUSE

LINE
T E LINE
A C

MAIN BUILDING ENTRY

Retail Notes:

- Louvers will be integrated into the retail and childcare space exterior facades with no projection into open spaces or right-of-way.
- Retail storefront is fenestrated for greater than 60% of the storefront area. At least 75% of the window and door surfaces is transparent.
- All entrances area at grade.
- See "Enlarged Storefront Elevation - Retail" for additional information.
- Venting / Exhaust Standard: Space for the location of ducts, exhaust pipes and other appurtenances associated with commercial uses adjacent to the open space parcels to be integrated into the building. No ducts or exhaust pipes will encroach in areas designated for open space.
- At retail and childcare the louvers at exterior facade allow flexibility for conditioning the space and integration of type 2 exhaust for retail venting.
- At retail, electrical and network wiring is roughed-in to central location for tenant flexibility.
- At retail, restroom will be provided and plumbing will be roughed-in to central location for tenant flexibility.
- There will be no gas provided for the project
- The final landscape design at the childcare courtyard will be designed and reviewed during Design Development.

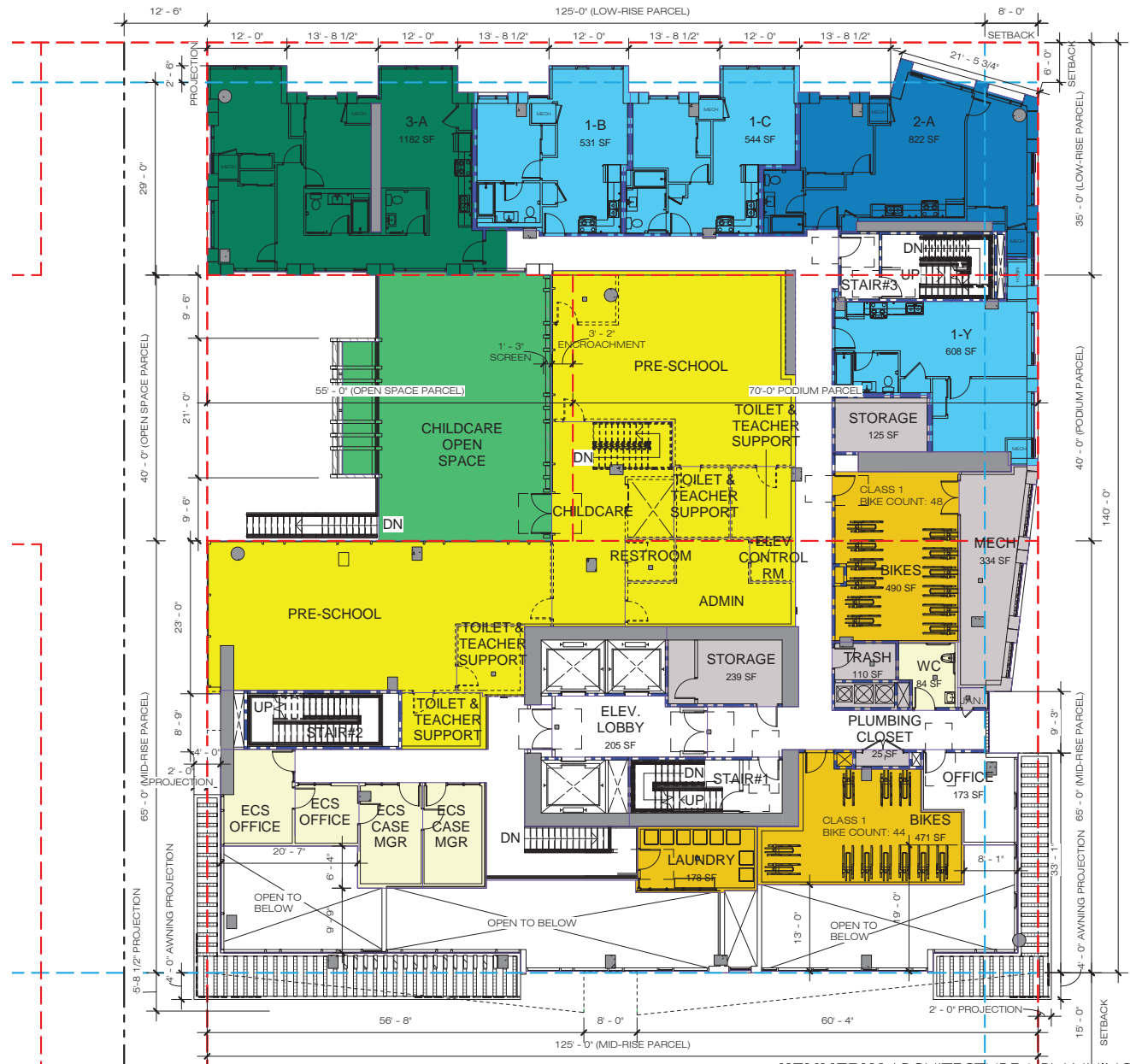


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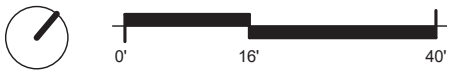
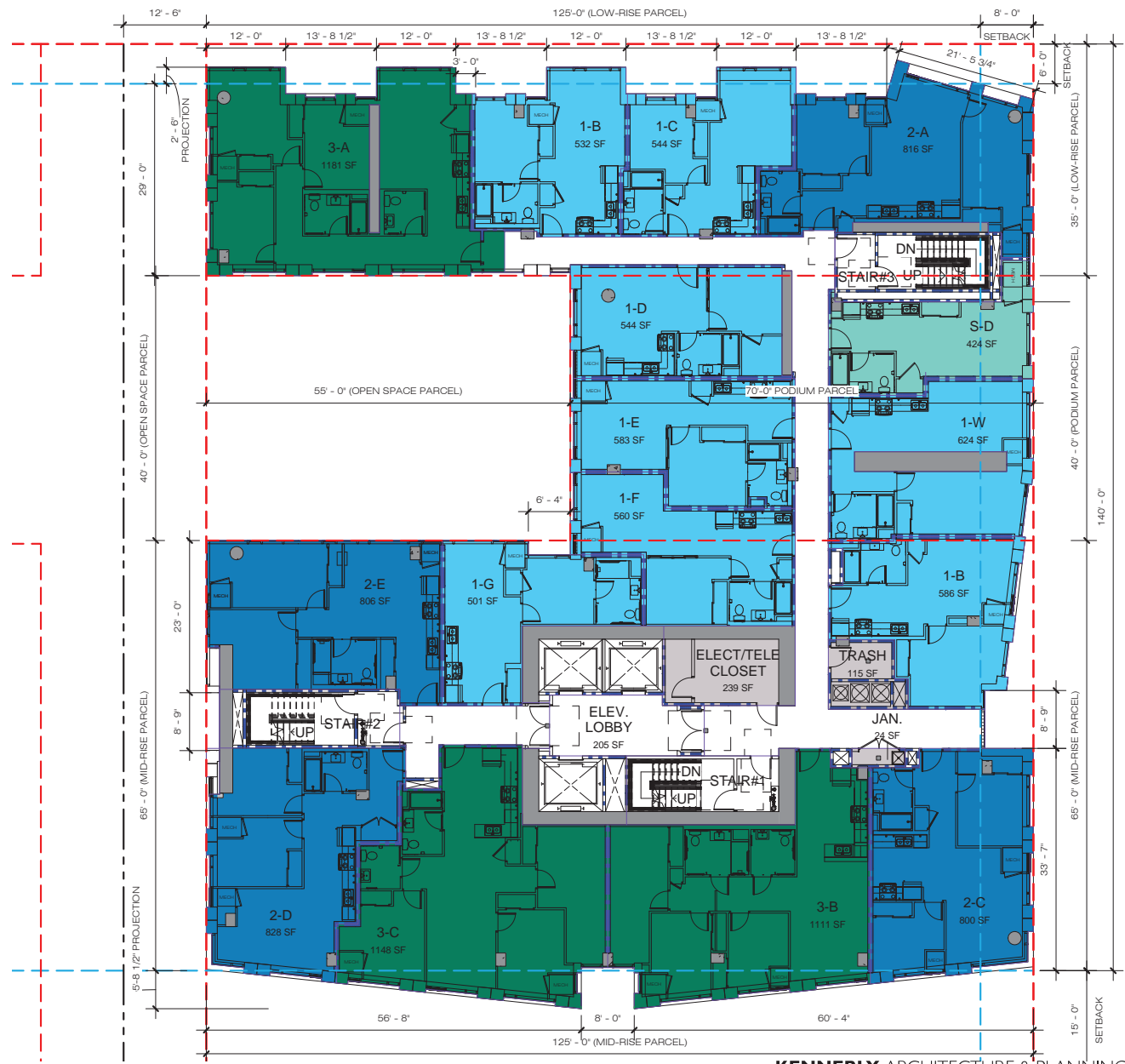


KENNERLY ARCHITECTURE & PLANNING



Floor Plan - Level 03-5

- E E**
- 1 BR
 - 2 BR
 - 3 BR
 - BACK OF HOUSE
 - CIRCULATION
 - COMMON LAUNDRY
 - OFFICE
 - S O D O
 - S O D O
 - RETAIL CHILDCARE
 - STUDIO
 - TOWNHOUSE
- LINE
 T E LINE
 A C
▶ MAIN BUILDIN ENTRY



Transbay Block 2 East

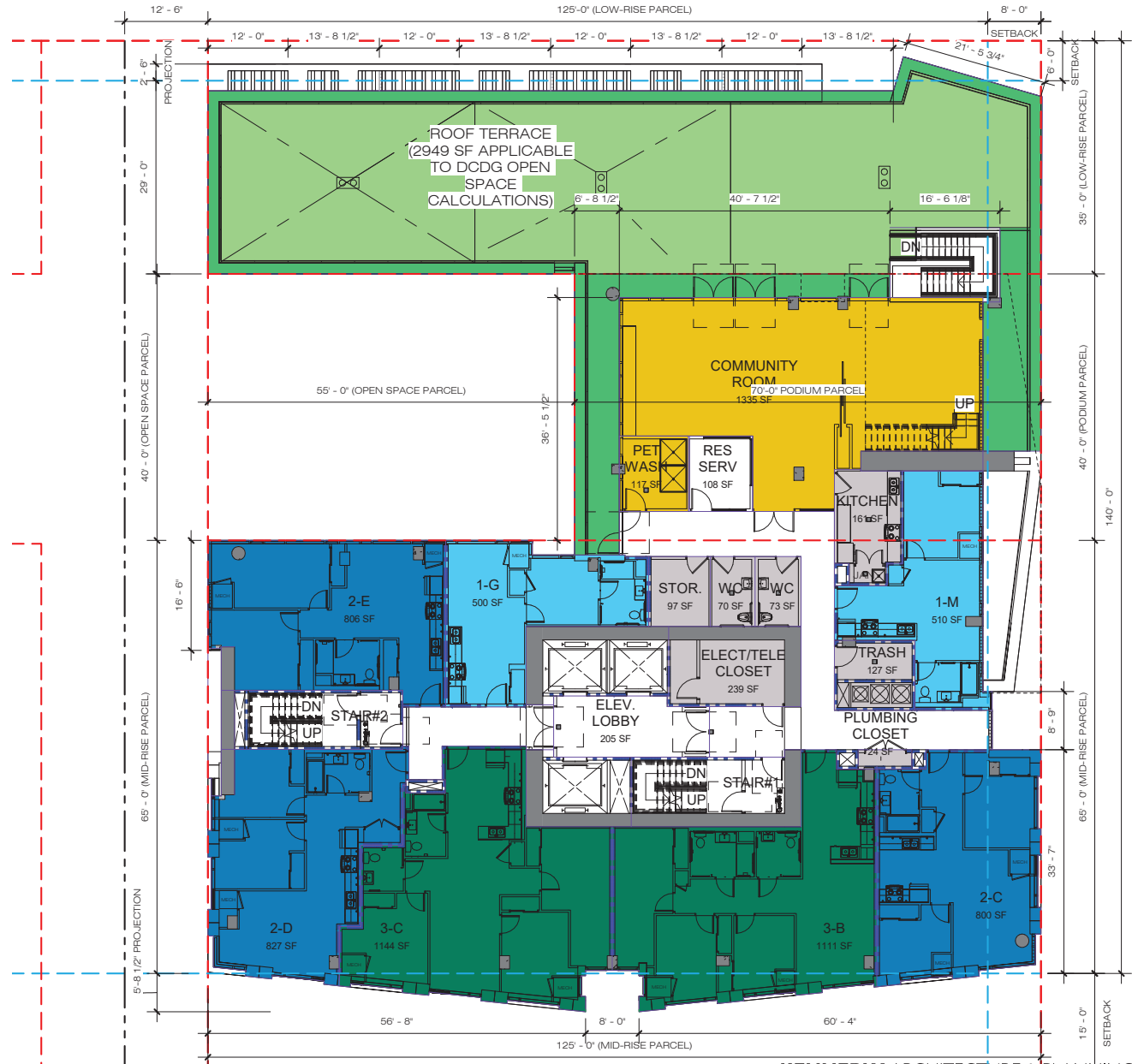
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KENNERLY ARCHITECTURE & PLANNING



Floor Plan - Level 06

- E E**
- 1 BR
 - 2 BR
 - 3 BR
 - BACK OF HOUSE
 - CIRCULATION
 - COMMON LAUNDRY
 - OFFICE
 - O
 - S
 - RETAIL CHILD CARE
 - STUDIO
 - TOWNHOUSE
- LINE
 T E LINE
 A C
▶ MAIN BUILDING ENTRY



Transbay Block 2 East

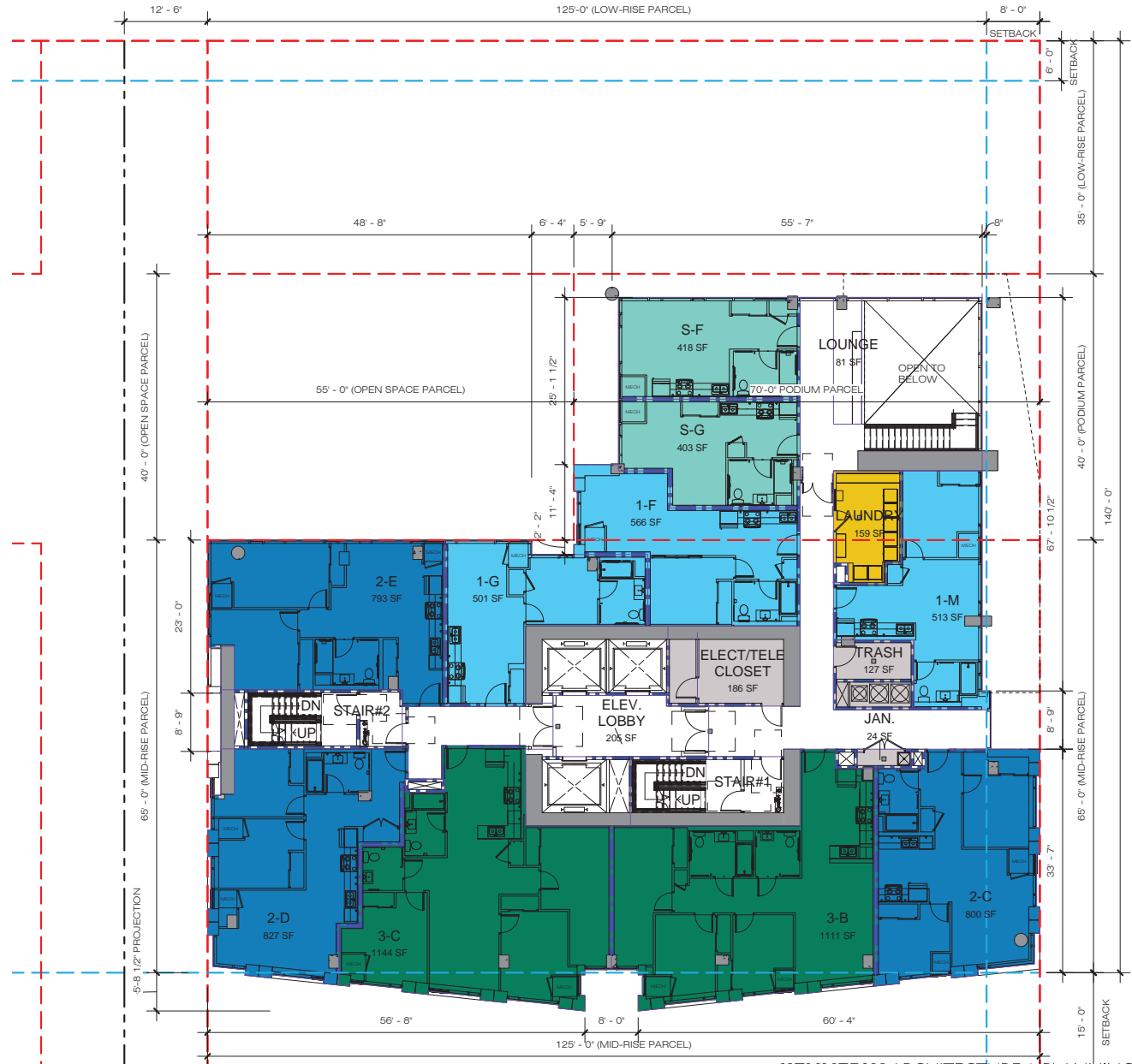
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KENNERLY ARCHITECTURE & PLANNING



Floor Plan - Level 07

- E E**
- 1 BR
 - 2 BR
 - 3 BR
 - BACK OF HOUSE
 - CIRCULATION
 - COMMON LAUNDRY
 - OFFICE
 - S O D O
 - S O D O
 - RETAIL CHILDCARE
 - STUDIO
 - TOWNHOUSE
- LINE
 T E LINE
 A C
▶ MAIN BUILDIN ENTRY



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KENNERLY ARCHITECTURE & PLANNING



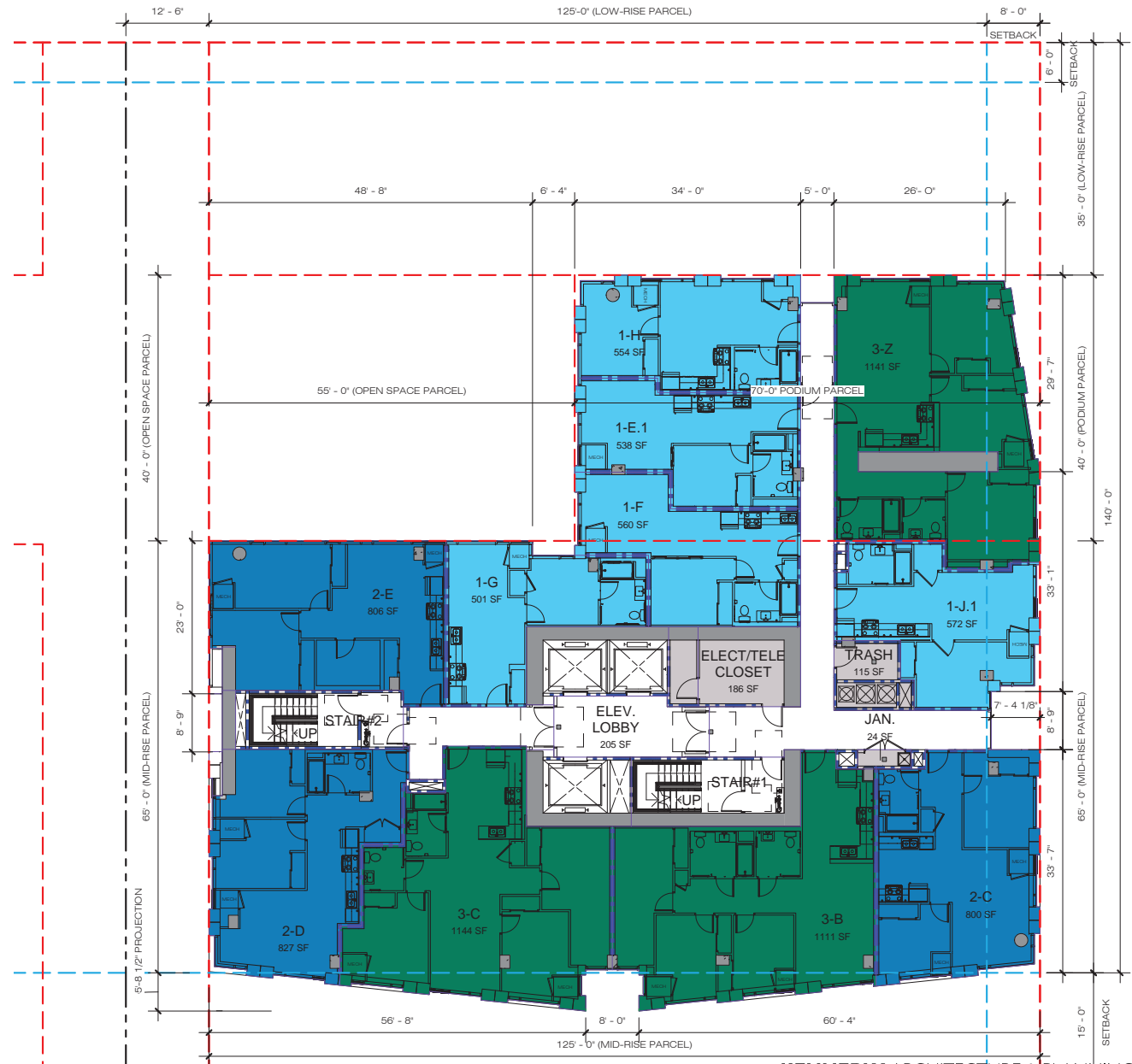
Floor Plan - Level 08-10

- E E**
- 1 BR
 - 2 BR
 - 3 BR
 - BACK OF HOUSE
 - CIRCULATION
 - COMMON LAUNDRY
 - OFFICE
 - S O D O
 - S O D O
 - RETAIL CHILDCARE
 - STUDIO
 - TOWNHOUSE
- LINE
 T E LINE
 A C
▶ MAIN BUILDIN ENTRY



Transbay Block 2 East

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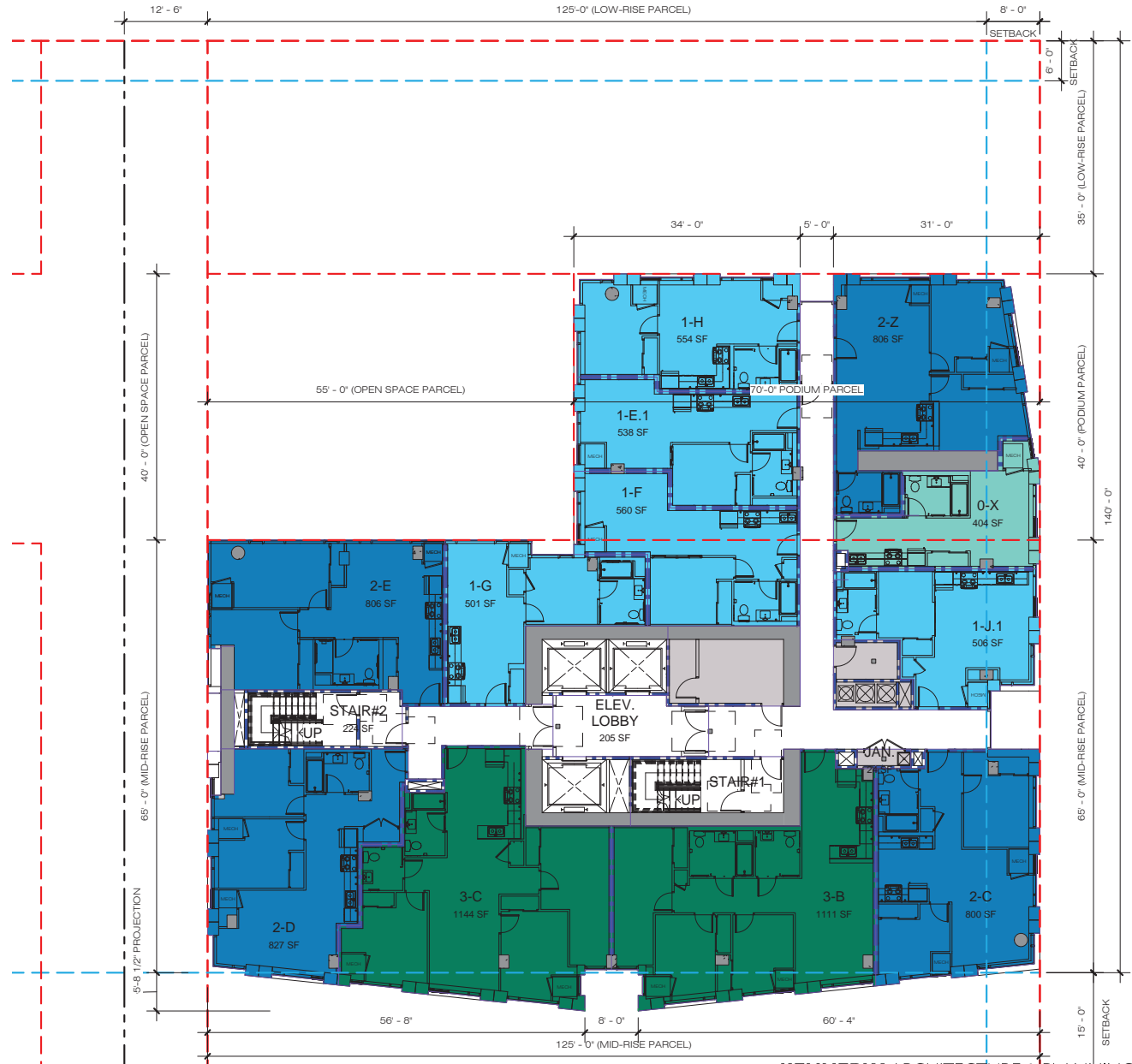


KENNERLY ARCHITECTURE & PLANNING



Floor Plan - Level 11-15

- E E**
- 1 BR
 - 2 BR
 - 3 BR
 - BACK OF HOUSE
 - CIRCULATION
 - COMMON LAUNDRY
 - OFFICE
 - S O D O
 - S O D O
 - RETAIL CHILD CARE
 - STUDIO
 - TOWNHOUSE
- LINE
 T E LINE
 A C
▶ MAIN BUILDING ENTRY



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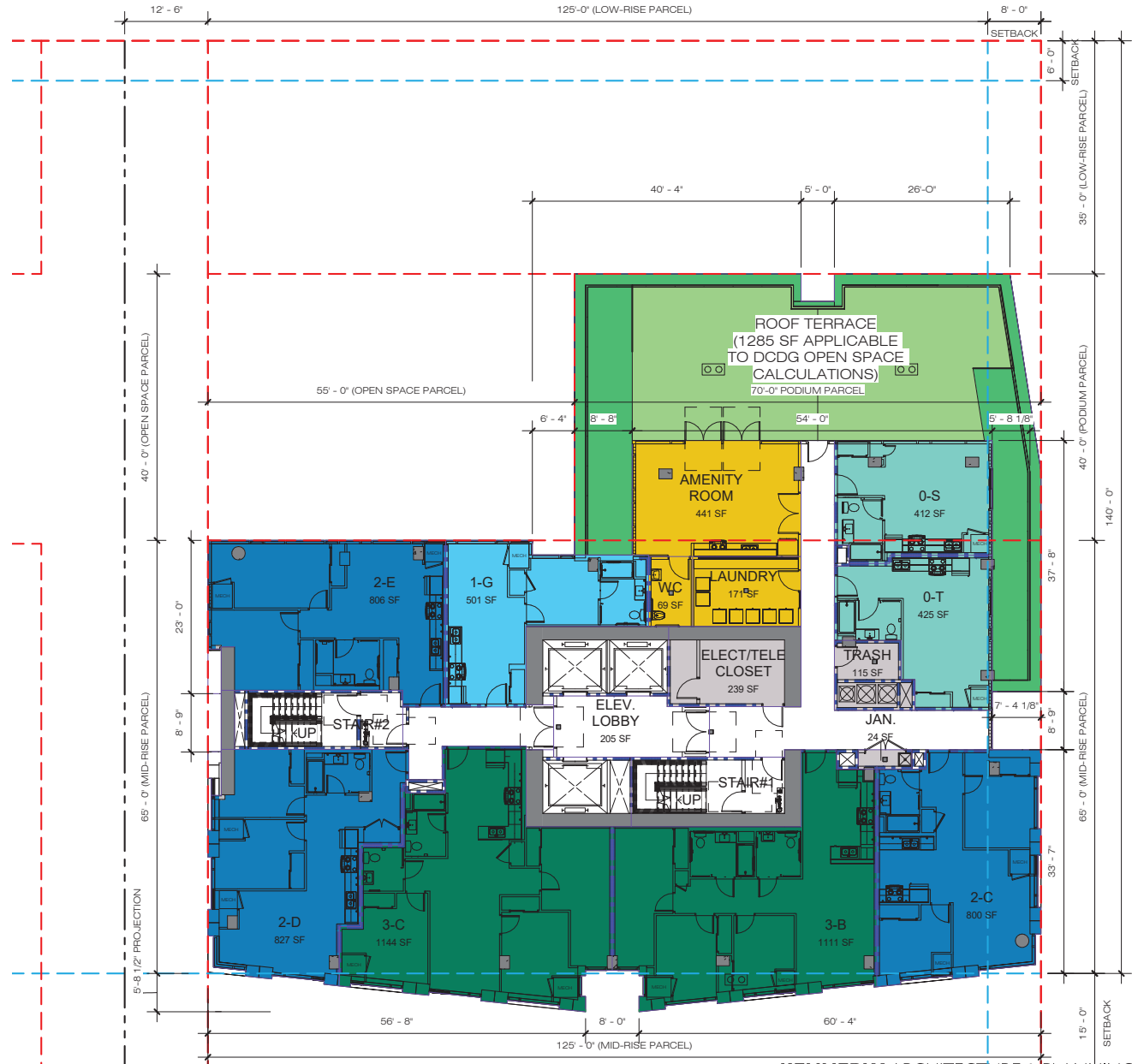
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KENNERLY ARCHITECTURE & PLANNING



Floor Plan - Level 16

- E E**
- 1 BR
 - 2 BR
 - 3 BR
 - BACK OF HOUSE
 - CIRCULATION
 - COMMON LAUNDRY
 - OFFICE
 - STUDIO
 - RETAIL CHILD CARE
 - TOWNHOUSE
- LINE
T E LINE
A C
- MAIN BUILDING ENTRY



Transbay Block 2 East

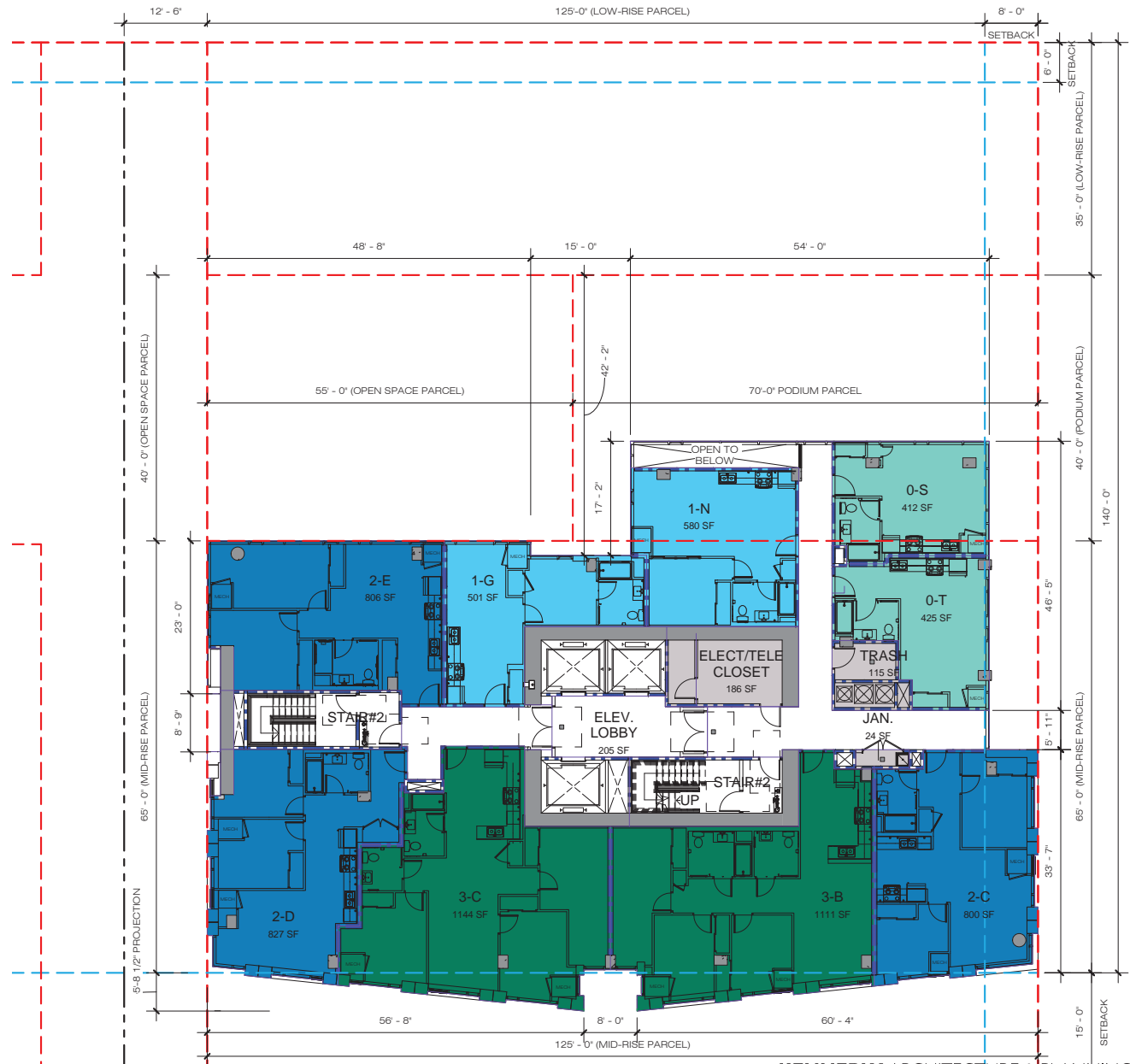
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KENNERLY ARCHITECTURE & PLANNING



Floor Plan - Level 17

- E E**
- 1 BR
 - 2 BR
 - 3 BR
 - BACK OF HOUSE
 - CIRCULATION
 - COMMON LAUNDRY
 - OFFICE
 - S O D O
 - S O D O
 - RETAIL CHILDCARE
 - STUDIO
 - TOWNHOUSE
- LINE
--- T E LINE
--- A C
▶ MAIN BUILDIN ENTRY



Transbay Block 2 East

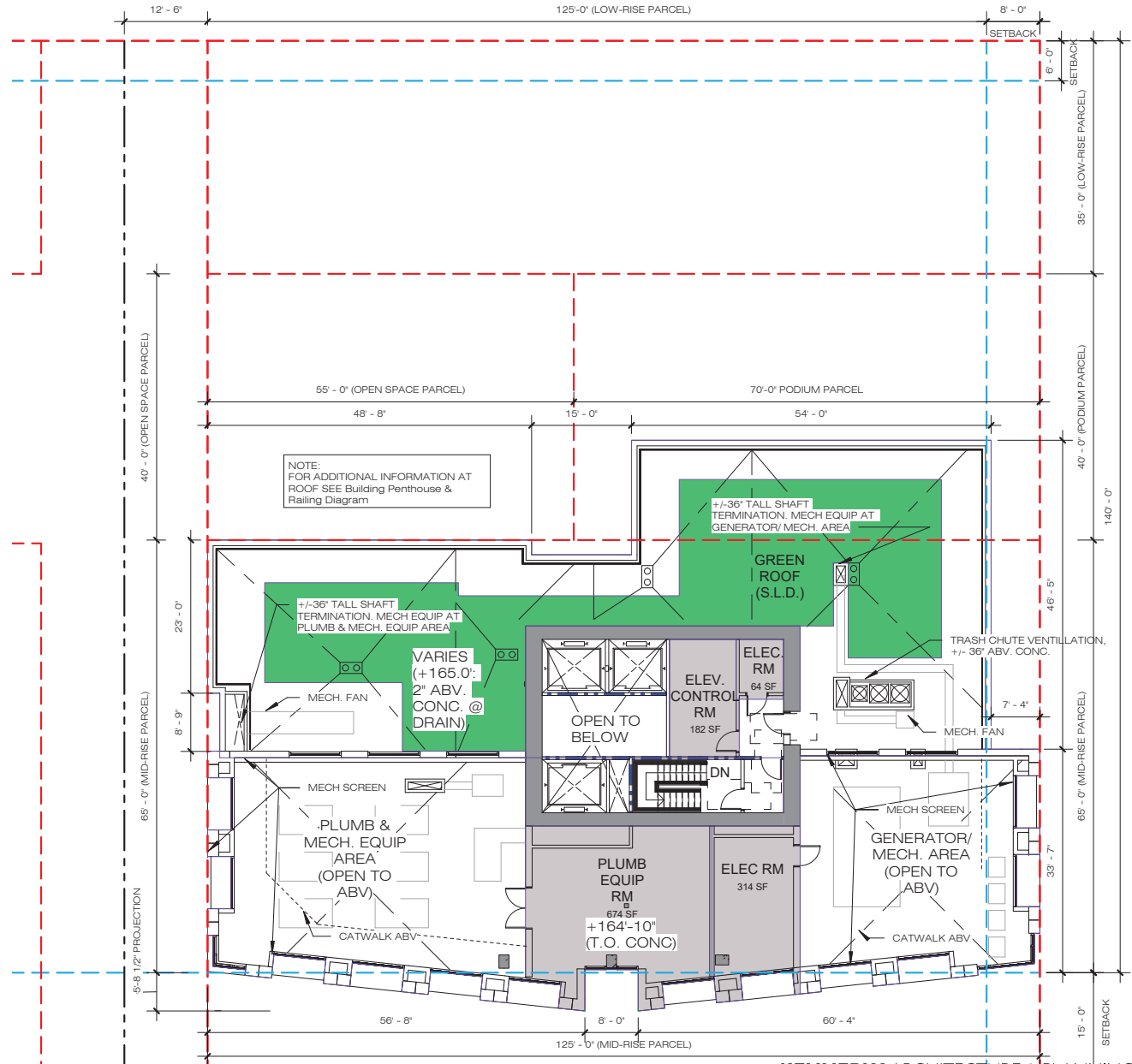
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KENNERLY ARCHITECTURE & PLANNING



Floor Plan - Low Roof

- E E**
- 1 BR
 - 2 BR
 - 3 BR
 - BACK OF HOUSE
 - CIRCULATION
 - COMMON LAUNDRY
 - OFFICE
 - S O D O S
 - S O D O S
 - RETAIL CHILDCARE
 - STUDIO
 - TOWNHOUSE
- LINE
 T E LINE
 A C
▶ MAIN BUILDIN ENTRY



Transbay Block 2 East

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KENNERLY ARCHITECTURE & PLANNING

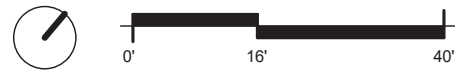
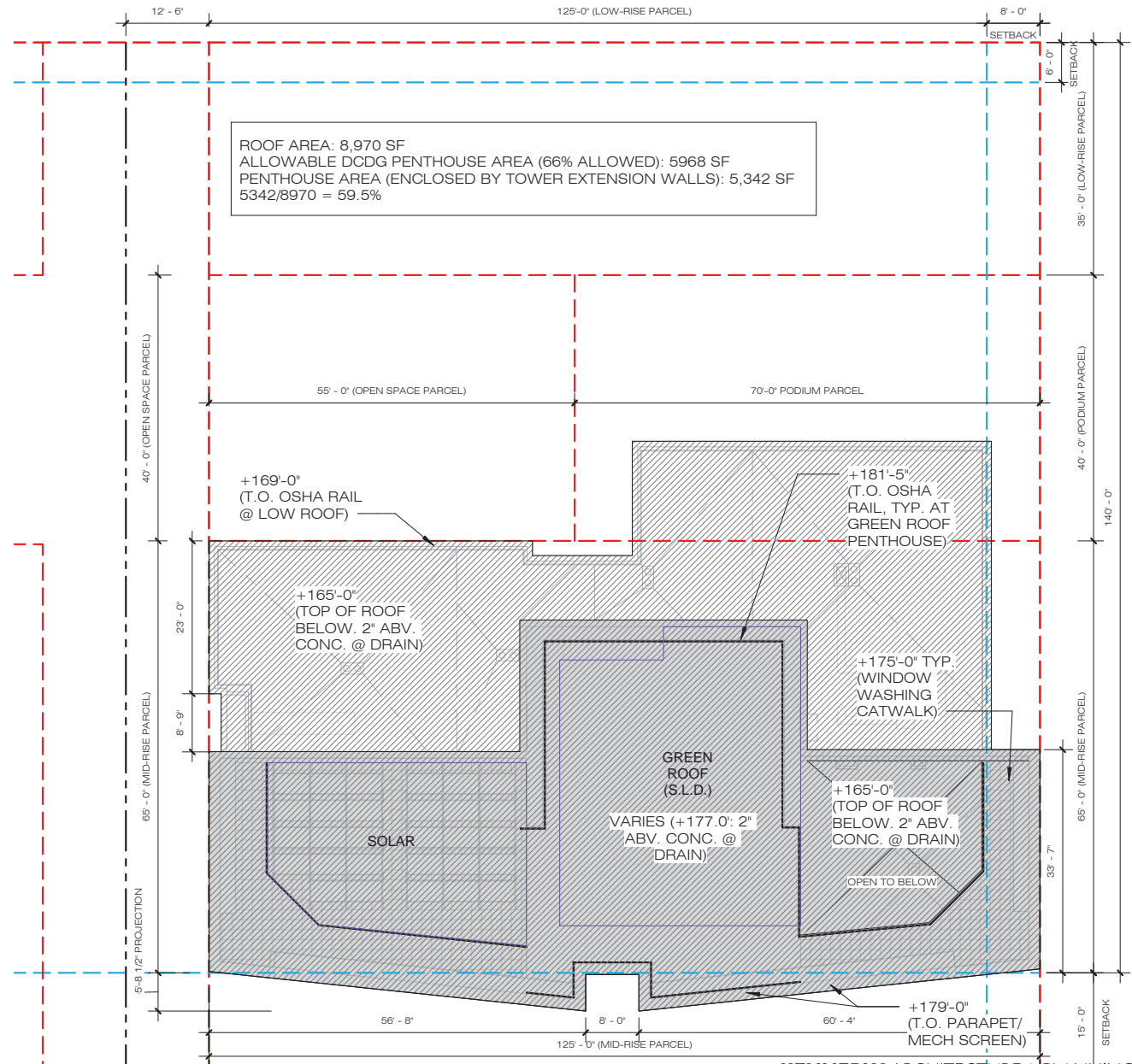


Floor Plan - High Roof

E E

- 1 BR
- 2 BR
- 3 BR
- BACK OF HOUSE
- CIRCULATION
- COMMON LAUNDRY
- OFFICE
- S O D O S O
- S O D O S O
- RETAIL CHILDCARE
- STUDIO
- TOWNHOUSE

--- LINE
--- T E LINE
--- A C
▶ MAIN BUILDIN ENTRY



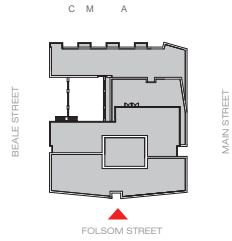
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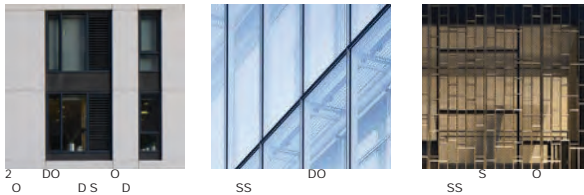
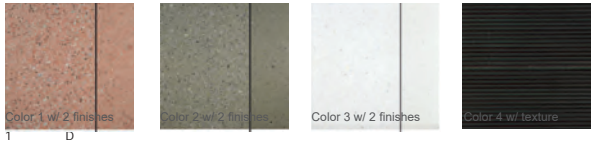
KENNERLY ARCHITECTURE & PLANNING



Building Elevation - South (Folsom Street)



Legend	Description
	Color 1 w/ 2 finishes
	Color 2 w/ 2 finishes
	Color 3 w/ 2 finishes
	Color 4 w/ texture



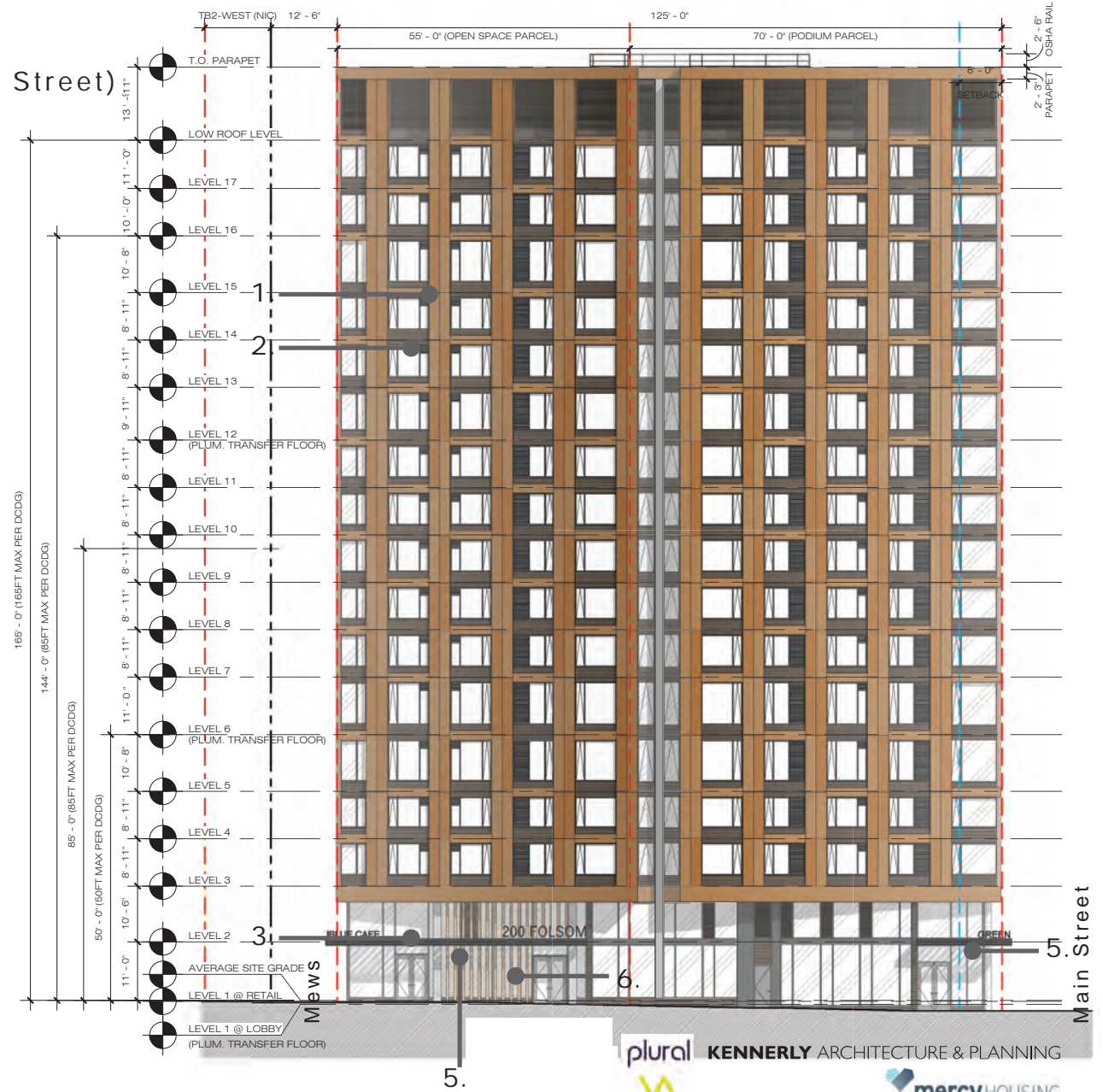
1. retail establishments and residential units in accordance with local codes or natural ventilation in our areas
2. The glazing at the storefront and residential ground-floor glazing will be clear non-tinted and low reflectivity.
3. Graffiti coating will be applied at ground floor unitized concrete panels and exposed concrete.

T B 2 E

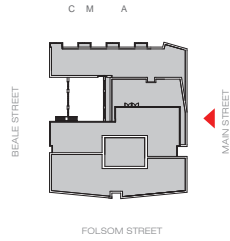
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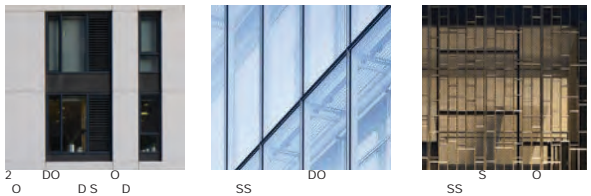
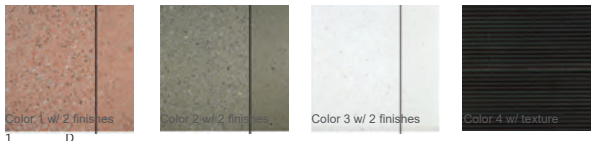
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Building Elevation - East (Main Street)



Legend	Material/Finish
	Orange in o
	Dark grey
	Color 1 w/ 2 finishes
	Color 2 w/ 2 finishes
	Color 3 w/ 2 finishes
	Color 4 w/ texture



- 1. retail establishments and residential units in o s t a o or natura entation o in oor areas
- 2. The glazing at the storefront and residential ground-floor glazing will be clear non-tinted and low reflectivity.
- 3. Graffiti coating will be applied at ground floor unitized concrete panels and exposed concrete.

T B 2 E

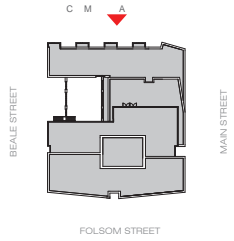
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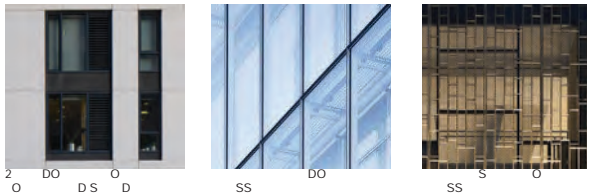
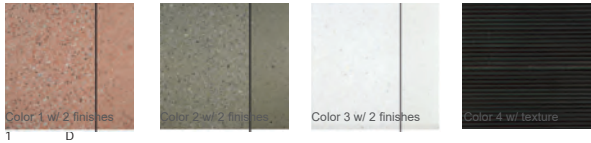
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Building Elevation - North (Clementina)



Legend	Description
	Operable window
	Door
	Color 1 w/ 2 finishes
	Color 2 w/ 2 finishes
	Color 3 w/ 2 finishes
	Color 4 w/ texture



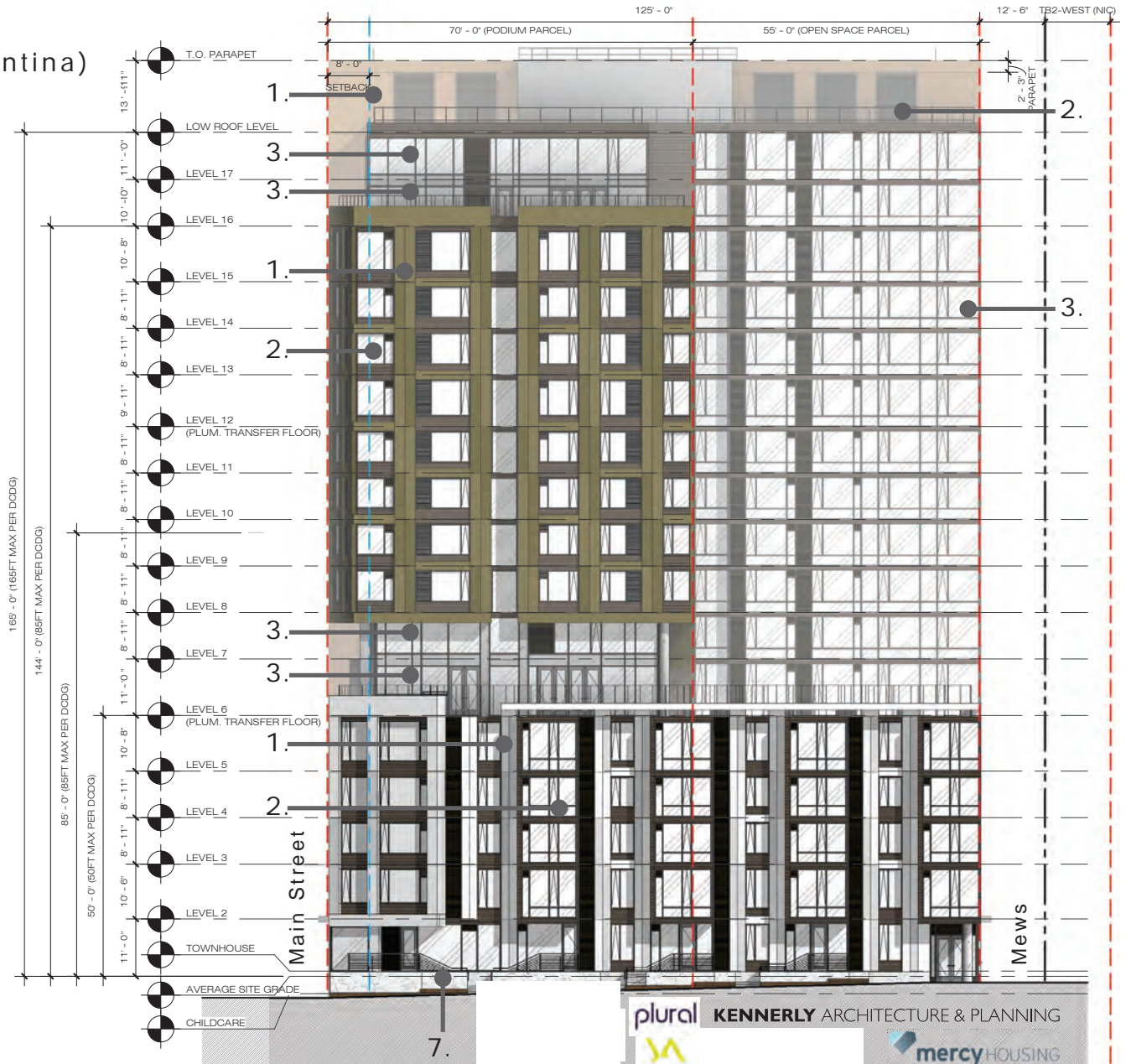
- 1. retail establishments and residential units in operable window storefront or natural ventilation in our areas
- 2. The glazing at the storefront and residential ground-floor glazing will be clear non-tinted and low reflectivity.
- 3. Graffiti coating will be applied at ground floor unitized concrete panels and exposed concrete.

T B 2 E

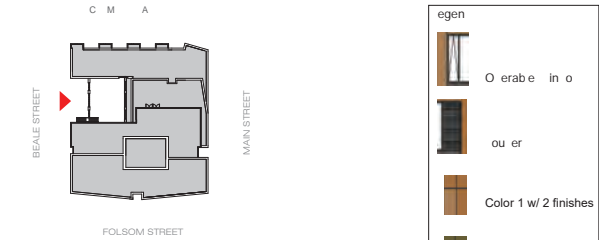
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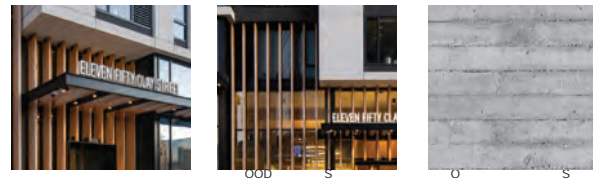
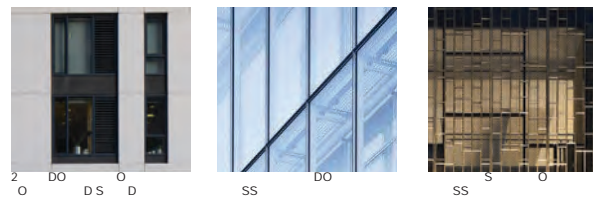
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Building Elevation - West (Mews)

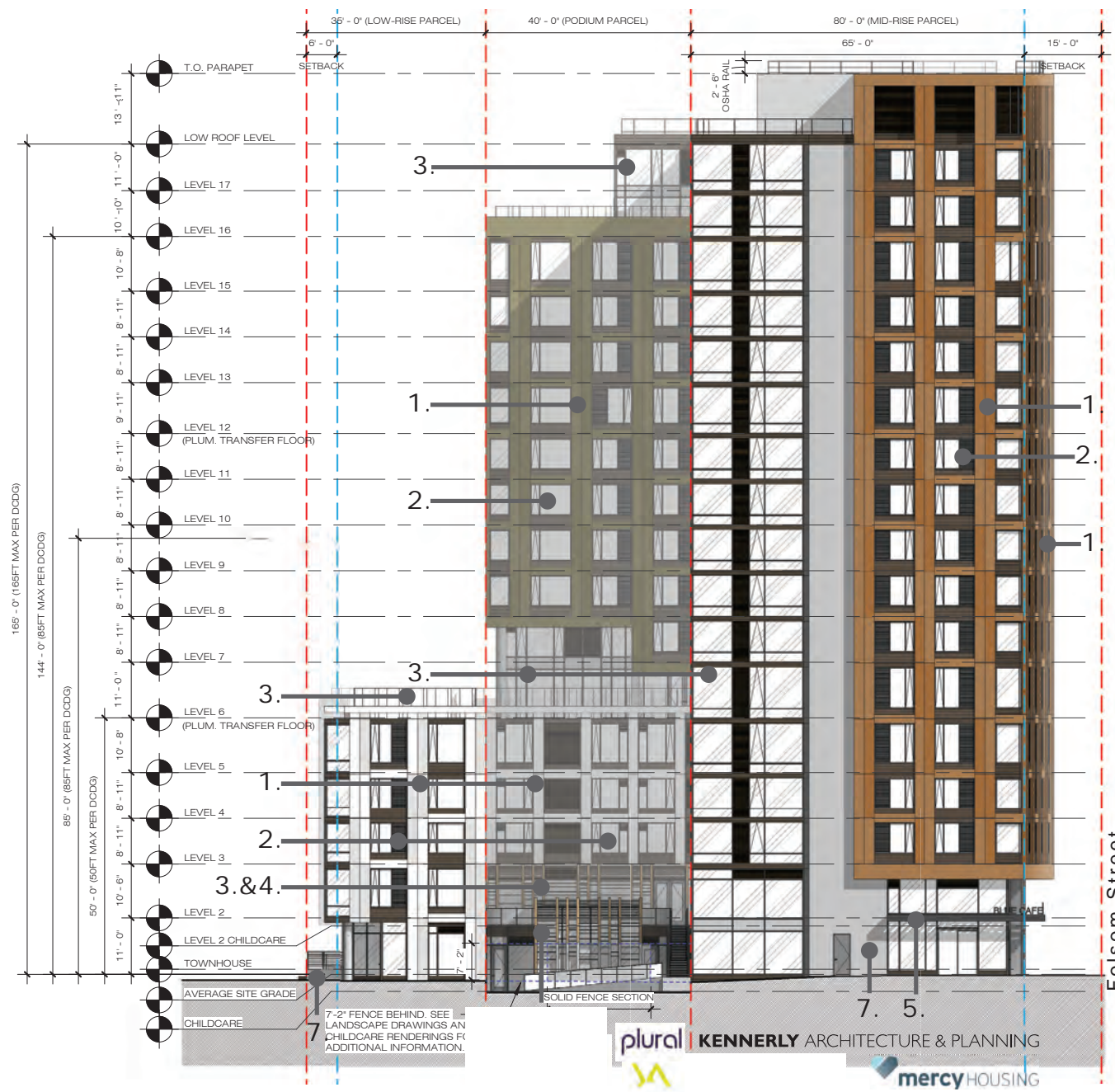


Material	Color / Finish
Window	Color 1 w/ 2 finishes
Door	Color 2 w/ 2 finishes
Panel	Color 3 w/ 2 finishes
Panel	Color 4 w/ texture



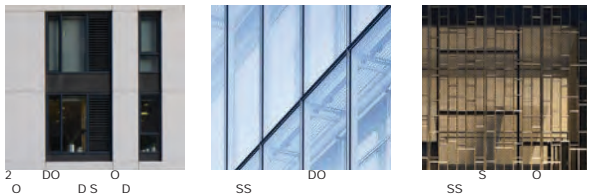
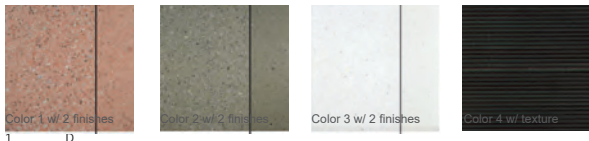
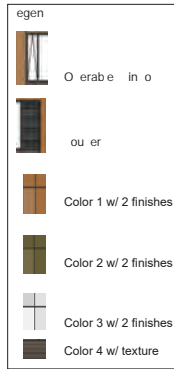
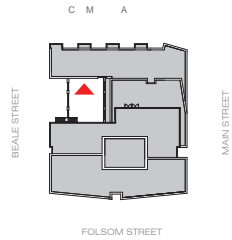
- 1. retail establishments and residential units in accordance with local code or natural ventilation in our areas
- 2. The glazing at the storefront and residential ground-floor glazing will be clear non-tinted and low reflectivity.
- 3. Graffiti coating will be applied at ground floor unitized concrete panels and exposed concrete.

T B 2 E



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mercyHOUSING

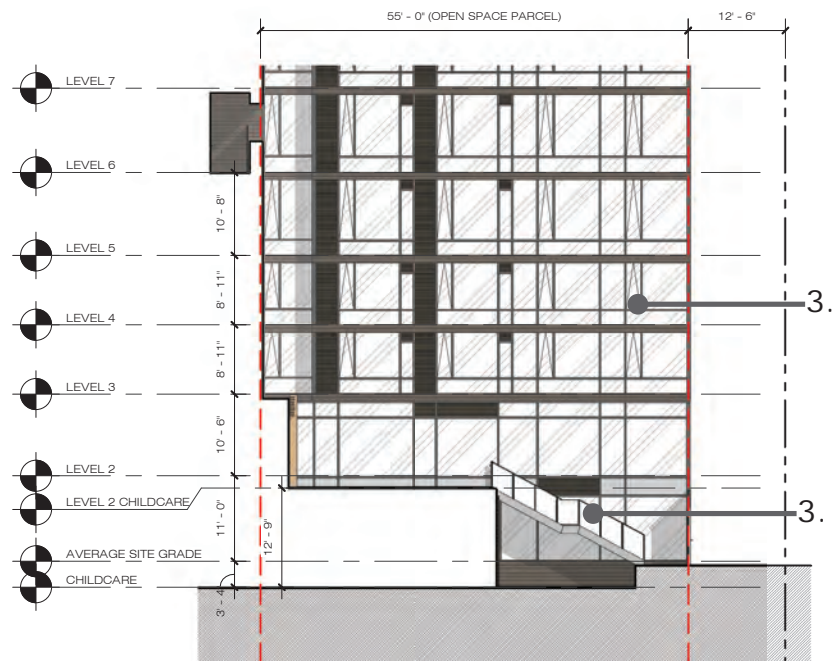
Building Elevation - Courtyard North



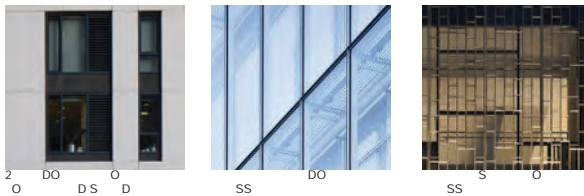
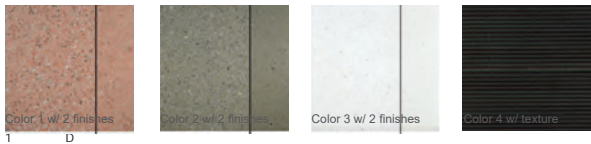
- 1. retail establishments and residential units include orange finish to add natural ventilation in our areas
- 2. The glazing at the storefront and residential ground-floor glazing will be clear non-tinted and low reflectivity.
- 3. Graffiti coating will be applied at ground floor unitized concrete panels and exposed concrete.

T B 2 E

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Building Elevation - Courtyard West



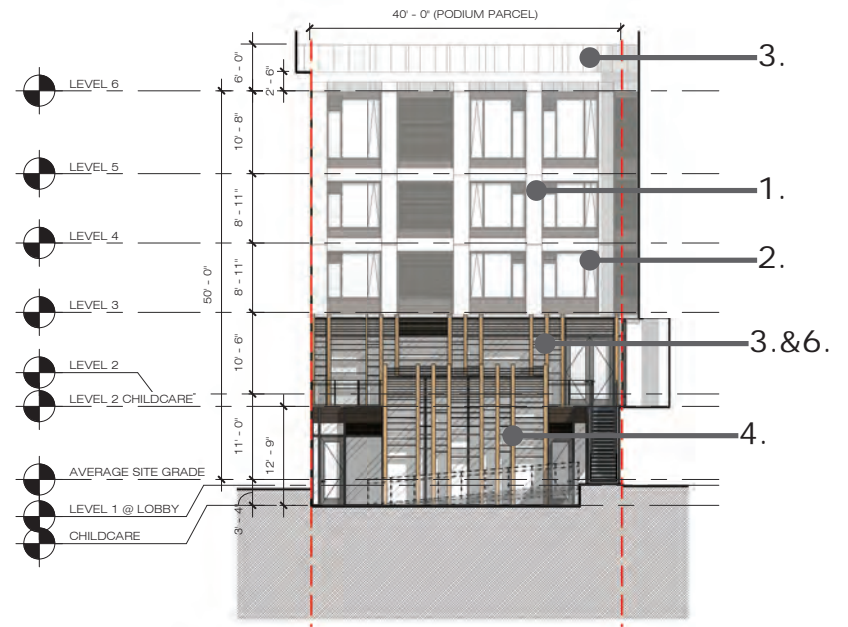
- 1. retail establishments and residential units include operable windows to allow for natural ventilation in our areas
- 2. The glazing at the storefront and residential ground-floor glazing will be clear non-tinted and low reflectivity.
- 3. Graffiti coating will be applied at ground floor unitized concrete panels and exposed concrete.

T B 2 E

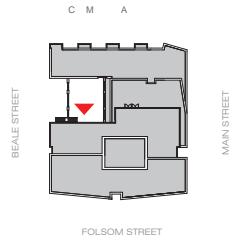
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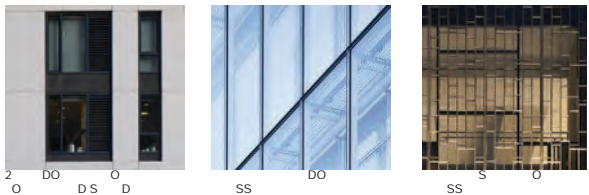
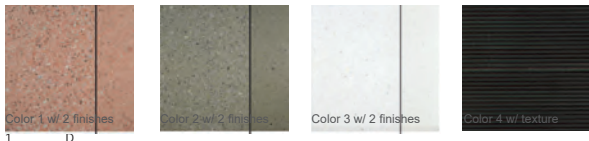
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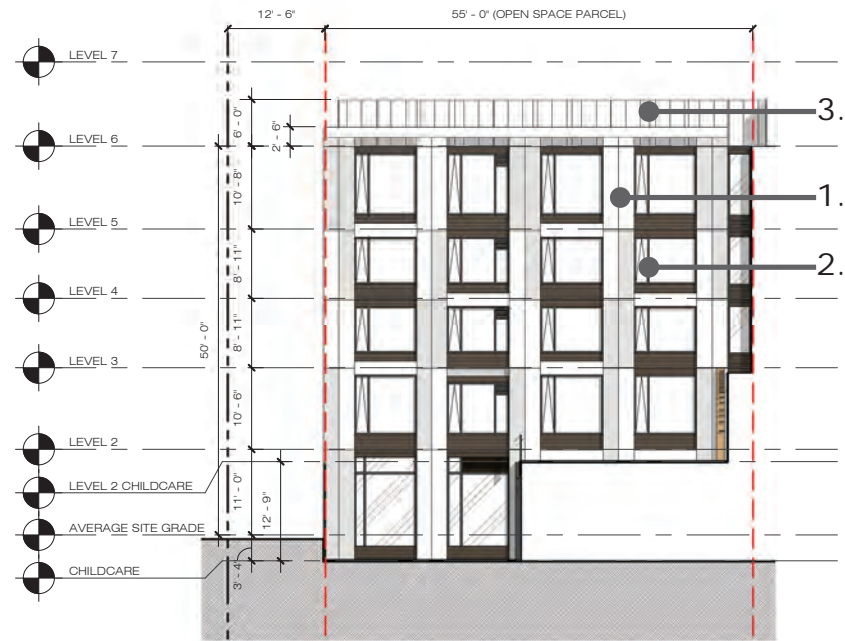
Building Elevation - Courtyard South



Legend	
	Operable in office
	Door
	Color 1 w/ 2 finishes
	Color 2 w/ 2 finishes
	Color 3 w/ 2 finishes
	Color 4 w/ texture

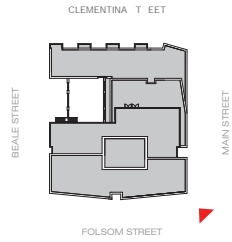


- 1. retail establishments and residential units include operable in office or natural ventilation in office areas
- 2. The glazing at the storefront and residential ground-floor glazing will be clear non-tinted and low reflectivity.
- 3. Graffiti coating will be applied at ground floor unitized concrete panels and exposed concrete.



T B 2 E

Building Rendering at Folsom



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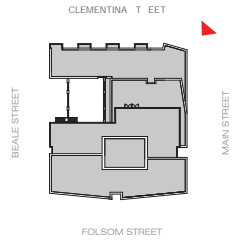
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Building Rendering at Main



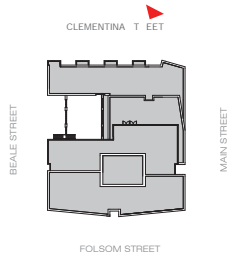
Transbay Block 2 East

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KENNERLY ARCHITECTURE & PLANNING



Building Rendering from Park



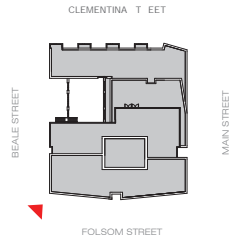
Transbay Block 2 East

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Building Rendering at Retail and Lobby



Transbay Block 2 East

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Attachment H: Comparison of City Investment in Other Housing Developments

Affordable Multifamily Housing New Construction Cost Comparison - San Francisco

Updated	7/28/2023	Acquisition by Unit/Bed/SF			Construction by Unit/Bed/SF			Soft Costs by Unit/Bed/SF			Total Development Cost (Incl. Land)			Subsidy	
		Acq/Unit	Acq/BR	Acq/lot sq.ft	Const/Unit	Const/BR	Const/ sq.ft ⁴	Soft/Unit	Soft/BR	Soft/ sq.ft ⁴	Gross TDC/Unit	Gross TDC/BR	Gross TDC/ sq.ft ⁴	Subsidy / unit	Leveraging ⁷
Delta of Subject and Comparable Projects		\$ (27,264)	\$ (16,955)	\$ (145)	\$ 211,021	\$ 103,289	\$ 234	\$ (10,681)	\$ (11,706)	\$ (2)	\$ 171,154	\$ 73,433	\$ 205	\$ 46,561	72.8%
Delta Percentage		-100%	-100%	-100%	32%	25%	39%	-6%	-11%	-1%	20%	14%	26%	16%	110%
Comparable Projects		Average: \$ 27,264	\$ 16,955	\$ 144.77	\$ 658,730	\$ 409,641	\$ 598	\$ 168,315	\$ 104,669	\$ 153	\$ 856,231	\$ 532,480	\$ 778	\$ 290,168	66.1%

Costs lower than comparable average (within 10%) Costs higher than comparable average (within 10%)

ALL PROJECTS	Average:	Building Square Footage			Total Project Costs			Notes on Financing	Building Type	Stories	Comments						
		Lot sq.ft	Completion/ start date	# of Units	# of BR ¹	Res. ²	Non-Res. Sq. ft.					Total	Acq. Cost ³	Const. Cost ⁴	Soft Cost	Total Dev. Cost w/land	Local Subsidy
ALL PROJECTS	Average:	24,648		131	210	130,288	14,355	144,124	\$ 3,568,314	\$ 86,214,288	\$ 22,029,012	\$ 112,063,151	\$ 37,979,656	\$ 108,562,473			
Comparable Projects Completed (filtered)	Average:	23,736		119	200	111,920	17,103	129,023	\$ 5,964,703	\$ 74,952,503	\$ 18,042,020	\$ 98,959,227	\$ 31,547,191	\$ 92,994,524			
Comparable Projects Under Construction (filtered)	Average:	31,833		176	272	177,891	16,821	194,712	\$ 3,522,782	\$ 108,829,817	\$ 28,414,821	\$ 140,767,420	\$ 52,472,378	\$ 137,244,638			
Comparable Projects In Predevelopment (filtered)	Average:	18,374		98	160	101,054	9,141	108,638	\$ 1,217,458	\$ 74,860,544	\$ 19,630,195	\$ 96,462,807	\$ 29,919,399	\$ 95,448,258			
Total Comparable Projects	Average:	24,648		131	210	130,288	14,355	144,124	\$ 3,568,314	\$ 86,214,288	\$ 22,029,012	\$ 112,063,151	\$ 37,979,656	\$ 108,562,473			
SUBJECT PROPERTY		21,313	May-26	184	312	192,301	-	192,301	\$ -	\$ 160,034,130	\$ 29,094,698	\$ 189,038,828	\$ 61,961,845	\$ 189,038,828	HCD AHSC Loan	Type I	17
Delta of Subject and Comp Project Averages		-3,335		53	102	62,013	-14,355	48,177	(\$3,568,314)	\$ 73,819,842	\$ 6,975,686	\$ 76,975,677	\$ 23,082,189	\$ 80,476,355			
Delta Percentage		-14%		41%	48%	48%	-100%	33%	-100%	86%	32%	69%	63%	74%			

PROJECTS COMPLETED																		
Project Name	Address	Lot sq.ft	Compl. Date	# of Units	# of BR ¹	Building Square Footage			Total Project Costs			Total Dev. Cost w/land	Local Subsidy ⁶	Total Dev. Cost w/o land	Notes on Financing	Building Type	Stories	Comments
						Res. ²	Non-Res.	Total	Acq. Cost ³	Const. Cost ⁴	Soft Cost							
Tremblay 7 - Naples Club Comm	222 Beale Street	29,208	Oct-18	130	208	118,261	5,000	123,261	\$ 36,000	\$ 73,434,539	\$ 16,314,468	\$ 89,774,107	\$ 25,560,000	\$ 89,774,107	HCD AHSC Loan	Type I/Phased	4-8	3 Buildings - Public structural system, plus childcare shell
Mission Family Housing	1038 Mission	15,200	Oct-18	88	134	92,462	6,955	99,417	\$ 5,551,020	\$ 49,161,140	\$ 6,583,453	\$ 61,795,622	\$ 17,704,400	\$ 66,199,580	2 HCD Loans (MHP & TC)	Type IB	9	
Edby and Taylor Family Housing	222 Taylor	22,344	Jun-19	113	211	108,440	21,088	129,528	\$ 9,300,500	\$ 68,478,336	\$ 14,837,459	\$ 92,616,095	\$ 22,187,436	\$ 83,318,095	2 HCD Loans (MHP & TC)	Type IB	8	Extensive PG&E regional switch required
480 South Van Ness	480 S. Van Ness Avenue	14,250	Apr-21	81	121	51,039	28,985	80,024	\$ 18,500,000	\$ 56,600,483	\$ 13,393,811	\$ 89,554,294	\$ 28,982,000	\$ 70,054,294		Type IA	7+	Over partial basement
1950 Mission Street	1950 Mission Street	35,580	Mar-21	197	262	113,432	48,142	161,574	\$ 9,775,000	\$ 102,229,680	\$ 15,171,456	\$ 124,176,144	\$ 44,943,740	\$ 124,461,144	HCD AHSC Loan	Type IA	9	30% of all soft and PDR spaces and Phase Des Actes
2060 Folson Street	2060 Folson	29,075	May-21	127	252	155,648	11,810	167,458	\$ 134,931	\$ 87,849,151	\$ 20,100,112	\$ 108,088,254	\$ 31,697,110	\$ 107,849,323	HCD AHSC Loan	Type IB	9	50MM
1890 Folson Street	1890 Folson	29,047	Sep-21	143	226	138,824	15,003	153,827	\$ 8,407,360	\$ 84,821,788	\$ 25,816,512	\$ 109,045,660	\$ 46,711,496	\$ 120,438,300		Type I and Type VA	2 & 8	Mixed type - Townhomes + 8 story Type I
560 Turk Street (555 Larkin)	560 Turk Street	18,906	Dec-22	108	186	101,752	7,839	109,591	\$ 1,893,899	\$ 64,251,481	\$ 29,815,020	\$ 95,960,378	\$ 32,400,000	\$ 84,068,481	HCD AHSC Loan	Type I	8	Type I 8 stories on constrained site
181 Florida	181 Florida	19,000	Oct-22	130	199	120,800	3,250	124,050	\$ 125,091	\$ 80,300,582	\$ 22,545,793	\$ 100,931,466	\$ 33,828,907	\$ 100,788,375	HCD MHP Loan	Type IB	9	8,400+/- PDR
Completed Projects (average):		Average:		119	200	111,920	17,103	129,023	\$ 5,964,703	\$ 74,952,503	\$ 18,042,020	\$ 98,959,227	\$ 31,547,191	\$ 92,994,524				

PROJECTS UNDER CONSTRUCTION																		
Project Name	Address	Lot sq.ft	Compl. Date	# of Units	# of BR ¹	Building Square Footage			Total Project Costs			Total Dev. Cost w/land	Local Subsidy ⁶	Total Dev. Cost w/o land	Notes on Financing	Building Type	Stories	Comments
						Res. ²	Non-Res.	Total	Acq. Cost ³	Const. Cost ⁴	Soft Cost							
821 Howard	921 Howard Street	28,993	Aug-23	203	299	238,680	1,970	240,650	\$ 14,981,128	\$ 111,280,280	\$ 36,248,774	\$ 191,589,183	\$ 46,488,128	\$ 147,809,034	CalHFA MHP 4% LMTC	Type IA	18	Incl 3 parking spaces & retail (CMP 4/19/21)
BRVU - Balboa Park Upper Yard	2430 San Jose Ave	30,699	Jul-23	131	214	164,638	10,741	175,377	\$ -	\$ 84,653,892	\$ 24,658,580	\$ 119,312,472	\$ 22,459,458	\$ 119,312,472	4% Credits: HCD IIG & A	Type IB	8-9	Blks (CMP Draft Contract 9/21)
609 7th Street (incl. 801 Blarman)	609 7th Street	37,800	Jul-24	221	334	181,634	4,223	185,787	\$ 10,000	\$ 124,195,810	\$ 22,815,501	\$ 147,021,411	\$ 65,777,411	\$ 147,021,411	4% Credits: HCD IIG & N	Type I	8	Blks (CMP 7/2022) commercial semi-warm shell 4 spaces
Mission Bay S. B. 9A-HomeOwn	400 China Basin Street	29,939	Jul-24	148	281	129,712	50,351	180,063	\$ -	\$ 105,209,208	\$ 29,936,428	\$ 135,145,636	\$ 75,184,522	\$ 135,145,636	COIL IIG	Type I	8	Homeownership, (Loan End August 2021 date)
Under Construction:		Average:		176	272	177,891	16,821	194,712	\$ 3,522,782	\$ 108,829,817	\$ 28,414,821	\$ 140,767,420	\$ 52,472,378	\$ 137,244,638				

PROJECTS IN PREDEVELOPMENT																		
Project Name	Address	Lot sq.ft	Start Date (anticipated)	# of Units	# of BR ¹	Building Square Footage			Total Project Costs			Total Dev. Cost w/land	Local Subsidy	Total Dev. Cost w/o land	Notes on Financing	Building Type	Stories	Comments
						Res. ²	Non-Res.	Total	Acq. Cost ³	Const. Cost ⁴	Soft Cost							
266 4th Street (4th & Folson)	266 4th Street	8,400	TBD	70	99	60,515	1,580	62,095	\$ 133,100	\$ 49,982,213	\$ 13,843,417	\$ 64,088,730	\$ 15,629,817	\$ 63,926,630	4% Credits: AHSC, St. Ct	Type I	8	Unlikely to move forward (6/2022) Over MUNI substation tunnel, structurally complex, small footprint
120 Stearns	120 Stearns Street	37,813	Jun-25	160	282	173,090	10,728	183,758	\$ -	\$ 126,694,688	\$ 25,943,948	\$ 153,251,004	\$ 69,528,921	\$ 153,251,004	4% Credits: HCD MHP	Type I	8	Site specific, complex design (4/21/2023) Cap, 80% CD
The Railway	240 Van Ness	18,313	Dec-24	112	144	84,001	1,349	85,350	\$ 24,590	\$ 69,202,640	\$ 19,297,224	\$ 88,923,864	\$ 27,103,003	\$ 88,499,264	4% LHTC; IG; AHSC	Type IB	8	11/19/2022 gap eval, bid set 80% CD
2550 Irving	2550 Irving Street	19,125	Apr-24	90	161	107,821	1,078	107,818	\$ -	\$ 70,979,268	\$ 24,846,857	\$ 95,826,122	\$ 25,573,912	\$ 95,826,122	4% LHTC; HCD - IG, MI	Type I	7	10/11/2022: pig sticker system; 31 rezon estimate w/10% sup
160 Franklin	160 Franklin	13,091	May-24	85	154	91,944	10,282	102,226	\$ 20,000	\$ 75,256,791	\$ 19,236,327	\$ 98,814,847	\$ 22,577,361	\$ 98,284,846	4% Credits: MHP, AHF	Type IB	9	100% DD cost estimate and 50% CD set
Homeless Personal Program Hqs (2x30 18th)	2630 18th Street	13,504	Feb-24	73	117	70,010	10,760	81,778	\$ 9,900,600	\$ 68,078,288	\$ 14,413,365	\$ 79,401,264	\$ 20,102,281	\$ 72,491,684	4% Credits: MHP, IG, A	Type I	8	100% SD 31/1/22
In Predevelopment		Average:		98	160	101,054	9,141	108,638	\$ 1,217,458	\$ 74,860,544	\$ 19,630,195	\$ 96,462,807	\$ 29,919,399	\$ 95,448,258				

Attachment I: Predevelopment Budget

Application Date: 7/1/23 # Units: 184
 Project Name: Transbay Block 2 East Family # Bedrooms:
 Project Address: 200 Folsom St # Beds:
 Project Sponsor: Mercy Housing California
 LOSP Project

Don't forget to fill in D135:D138!

SOURCES	3,500,000	4,500,000					Total Sources	Comments
Name of Sources:	MOHCD/OCII	OCII Predev 2					8,000,000	

USES

ACQUISITION

Acquisition cost or value							0	
Legal / Closing costs / Broker's Fee							0	
Holding Costs							0	
Transfer Tax							0	
TOTAL ACQUISITION	0	0	0	0	0	0	0	

CONSTRUCTION (HARD COSTS)

Unit Construction/Rehab	471,030		1,468,372				1,939,402	Design Build Costs
Commercial Shell Construction							0	
Demolition							0	Demolition of existing bus terminal
Environmental Remediation							0	Hazardous soil allowance and grading
Onsite Improvements/Landscaping							0	
Offsite Improvements							0	
Infrastructure Improvements							0	Demolition of existing site conditions
Parking							0	
GC Bond Premium/GC Insurance/GC Taxes			75,378				75,378	
GC Overhead & Profit			51,527				51,527	
CG General Conditions							0	
Sub-total Construction Costs	471,030	0	1,595,277	0	0	0	2,066,307	
Design Contingency (remove at DD)							0	5% up to \$30MM HC, 4% \$30-\$45MM, 3% \$45MM+
Bid Contingency (remove at bid)							0	5% up to \$30MM HC, 4% \$30-\$45MM, 3% \$45MM+
Plan Check Contingency (remove/reduce during Plan Review)							0	4% up to \$30MM HC, 3% \$30-\$45MM, 2% \$45MM+
Hard Cost Construction Contingency		0					0	5% new construction / 15% rehab
Sub-total Construction Contingencies	0	0	0	0	0	0	0	
TOTAL CONSTRUCTION COSTS	471,030	0	1,595,277	0	0	0	2,066,307	

Construction line item costs as a % of hard costs

SOFT COSTS

Architecture & Design								
Architect design fees	954,119		373,655				1,327,774	See MOHCD A&E Fee Guidelines: http://sfmohcd.org/documents-reports-and-forms
Design Subconsultants to the Architect (incl. Fees)	674,968		470,284				1,145,252	Landscape architect, structural design, code consultant, fire consultant, architectural design consultant, MEPF consultant, elevator consultant.
Architect Construction Admin							0	
Reimbursables	75						75	
Additional Services							0	
Sub-total Architect Contract	1,629,162	0	843,939	0	0	0	2,473,101	
Other Third Party design consultants (not included under Architect contract)								Shadow design, civil engineer, trash design, joint trench, infiltration pit, smoke control consultant, transit consultant, security consultant, corrosion consultant, acoustics consultant, exterior building maintenance consultant.
	162,483		167,133				329,615	
Total Architecture & Design	1,791,645	0	1,011,071	0	0	0	2,802,716	
Engineering & Environmental Studies								
Survey	13,260						13,260	
Geotechnical studies	156,343		1,957				158,300	
Phase I & II Reports	35,000		5,000				40,000	
CEQA / Environmental Review consultants	51,969						51,969	Lead and asbestos study, sustainability and green point rated consulting, SFDPH site mitigation review, trash management, review of phase 1 and 2.
NEPA / 106 Review							0	
CNA/PNA (rehab only)							0	
Other environmental consultants	15,950		33,279				49,229	Archaeology
Total Engineering & Environmental Studies	272,521	0	40,236	0	0	0	312,757	
Financing Costs								
Construction Financing Costs								
Construction Loan Origination Fee							0	
Construction Loan Interest							0	
Title & Recording							0	
CDLAC & CDIAAC fees							0	
Bond Issuer Fees							0	
Other Bond Cost of Issuance							0	
Other Lender Costs (specify)							0	
Sub-total Const. Financing Costs	0	0	0	0	0	0	0	
Permanent Financing Costs								
Permanent Loan Origination Fee							0	
Credit Enhance. & Appl. Fee							0	
Title & Recording							0	
Sub-total Perm. Financing Costs	0	0	0	0	0	0	0	
Total Financing Costs	0	0	0	0	0	0	0	
Legal Costs								
Borrower Legal fees	36,398		113,702				150,100	
Land Use / CEQA Attorney fees							0	
Tax Credit Counsel							0	
Bond Counsel							0	
Construction Lender Counsel							0	
Permanent Lender Counsel							0	
Other Legal (specify)							0	
Total Legal Costs	36,398	0	113,702	0	0	0	150,100	
Other Development Costs								
Appraisal	10,000						10,000	
Market Study	15,000						15,000	
Insurance							0	
Property Taxes							0	
Accounting / Audit							0	
Organizational Costs	820						820	LLC tax and entity fee.
Entitlement / Permit Fees	200,000		1,004,000				1,204,000	LP tax and entity fee, SFDPH hazardous waste fees, SFFD permit fees, site permit fees, building permit fees, SF planning fees.
Marketing / Rent-up							0	
Furnishings							0	\$2,000/unit: See MOHCD U/W Guidelines: http://sfmohcd.org/documents-reports-and-forms
PGE / Utility Fees	25,000		425,000				450,000	
TCAC App / Alloc / Monitor Fees	10,000						10,000	
Financial Consultant fees	63,713		23,787				87,500	
Construction Management fees / Owner's Rep	52,739		22,861				75,600	
Security during Construction							0	
Relocation							0	
Other (specify)							0	
Other (specify)							0	
Other (specify)							0	
Total Other Development Costs	377,272	0	1,475,648	0	0	0	1,852,920	
Soft Cost Contingency								
Contingency (Arch, Eng, Fin, Legal & Other Dev)	1,134	0	264,066	0	0	0	265,200	Should be either 10% or 5% of total soft costs.
TOTAL SOFT COSTS	2,478,970	0	2,904,723	0	0	0	5,383,693	5.2%

Total Soft Cost Contingency as % of Total Soft Costs

RESERVES

Operating Reserves							0	
Replacement Reserves							0	
Tenant Improvements Reserves							0	
Other (specify)							0	
Other (specify)							0	
Project Management Fee		0					0	
TOTAL RESERVES	0	0	0	0	0	0	0	

DEVELOPER COSTS

Developer Fee - Cash-out Paid at Milestones	550,000						550,000	
Developer Fee - Cash-out At Risk							0	
Commercial Developer Fee							0	
Developer Fee - GP Equity (also show as source)							0	
Developer Fee - Deferred (also show as source)							0	
Development Consultant Fees							0	Need MOHCD approval for this cost, N/A for most projects
Project Management Fee - Early Work		0					0	
TOTAL DEVELOPER COSTS	550,000	0	0	0	0	0	550,000	

TOTAL DEVELOPMENT COST

	3,500,000	0	4,500,000	0	0	0	8,000,000	
Development Cost/Unit by Source	19,022	0	24,457	0	0	0	43,478	
Development Cost/Unit as % of TDC by Source	43.8%	0.0%	56.2%	0.0%	0.0%	0.0%	100.0%	

Acquisition Cost/Unit by Source

	0	0	0	0	0	0	0	
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Construction Cost (inc Const Contingency)/Unit By Source

	2,560	0	8,670	0	0	0	11,230	
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Construction Cost (inc Const Contingency)/SF

	2.35	0.00	7.95	0.00	0.00	0.00	10.30	
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*Possible non-eligible GO Bond/COP Amount:

	535,563
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City Subsidy/Unit

	19,022
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Tax Credit Equity Pricing:

Fill in with value or 'N/A' if not applicable.

Construction Bond Amount:

Fill in with value or 'N/A' if not applicable.

Construction Loan Term (in months):

Fill in with value or 'N/A' if not applicable.

Construction Loan Interest Rate (as %):

Fill in with value or 'N/A' if not applicable.

Attachment J: Development Budget

Application Date: 7/1/23 # Units: 184
 Project Name: Transbay Block 2 East Family # Bedrooms: 312
 Project Address: 200 Folsom St # Beds:
 Project Sponsor: Mercy Housing California LOSP Project

SOURCES	61,961,845	28,000,000	540,000	98,536,983	-	-	Total Sources	189,038,828	Comments	72,972,178
Name of Sources:	MOHCD/OCl	HCD AHSC	Deferred Developer Fee	Tax Credit Equity						

USES

ACQUISITION									
Acquisition cost or value									0
Legal / Closing costs / Broker's Fee									0
Holding Costs									0
Transfer Tax									0
TOTAL ACQUISITION	0	0	0	0	0	0	0	0	0

CONSTRUCTION (HARD COSTS)

* Unit Construction/Rehab	1,939,402	28,000,000		88,099,096			118,038,498		0
* Commercial Shell Construction									0
* Demolition									0
Environmental Remediation	1,029,915						1,029,915		
* Onsite Improvements/Landscaping	381,910						381,910		
* Offsite Improvements									0
* Infrastructure Improvements	3,814,190						3,814,190		
Parking									0
GC Bond Premium/GC Insurance/GC Taxes	7,783,799						7,783,799	Insurance, Bond Premium, B&O & Other Taxes, GC Contingency	5.5%
GC Overhead & Profit	3,368,839						3,368,839		2.4%
CG General Conditions	7,224,271						7,224,271		5.1%
Sub-total Construction Costs	25,542,326	28,000,000	0	88,099,096	0	0	141,647,422		
Design Contingency (remove at DD)				4,249,243			4,249,243	5% up to \$30MM HC, 4% \$30-\$45MM, 3% \$45MM+	3.0%
Bid Contingency (remove at bid)				4,249,243			4,249,243	5% up to \$30MM HC, 4% \$30-\$45MM, 3% \$45MM+	3.0%
Plan Check Contingency (removed/reduce during Plan Revk)	2,832,828						2,832,828	4% up to \$30MM HC, 3% \$30-\$45MM, 2% \$45MM+	2.0%
Hard Cost Construction Contingency	5,121,992			1,939,402			7,061,394	5% new construction / 15% rehab	5.0%
Sub-total Construction Contingencies	7,954,821	0	0	10,437,887	0	0	18,392,708		
TOTAL CONSTRUCTION COSTS	33,497,147	28,000,000	0	98,536,983	0	0	160,034,130		

SOFT COSTS

Architecture & Design									
Architect design fees	2,500,000						2,500,000	See MOHCD A&E Fee Guidelines: http://sfmohcd.org/documents-reports-and-forms	
Design Subconsultants to the Architect (incl. Fees)	1,400,000						1,400,000	Landscape architect, structural design, code consultant, fire consultant, architectural design consultant, MEPF consultant, elevator consultant.	
Architect Construction Admin									0
Reimbursables									0
Additional Services									0
Sub-total Architect Contract	3,900,000	0	0	0	0	0	3,900,000		
Other Third Party design consultants (not included under Architect contract)								Shadow design, civil engineer, trash design, joint trench, infiltration pit, smoke control consultant, transit consultant, security consultant, corrosion consultant, acoustics consultant, exterior building maintenance consultant.	
	550,000						550,000		
Total Architecture & Design	4,450,000	0	0	0	0	0	4,450,000		
Engineering & Environmental Studies									
Survey	11,000						11,000		
Geotechnical studies	158,300						158,300		
Phase I & II Reports	50,000						50,000		
CEQA / Environmental Review consultants	71,982						71,982	Lead and asbestos study, sustainability and green point rated consulting, SFPDPH site mitigation review, trash management, review of phase 1 and 2.	
NEPA / 105 Review									0
CNA/PNA (rehab only)									0
Other environmental consultants	78,018						78,018	Archaeology	
Total Engineering & Environmental Studies	369,300	0	0	0	0	0	369,300		
Financing Costs									
Construction Financing Costs									
Construction Loan Origination Fee	760,672						760,672		
Construction Loan Interest	10,574,178						10,574,178		
Title & Recording	120,000						120,000		
CDLAC & CDIAAC fees	38,716						38,716		
Bond Issuer Fees	671,393						671,393		
Other Bond Cost of Issuance	50,000						50,000		
Trustee Fee During Construction	12,000						12,000		
Sub-total Const. Financing Costs	12,226,959	0	0	0	0	0	12,226,959		
Permanent Financing Costs									
Permanent Loan Origination Fee									0
Credit Enhance. & Appl. Fee									0
Title & Recording									0
Sub-total Perm. Financing Costs	0	0	0	0	0	0	0		
Total Financing Costs	12,226,959	0	0	0	0	0	12,226,959		
Legal Costs									
Borrower Legal fees	150,000						150,000		
Land Use / CEQA Attorney fees									0
Tax Credit Counsel									0
Bond Counsel	10,000						10,000		
Construction Lender Counsel	138,000						138,000		
Permanent Lender Counsel									0
HCD Closing Title policy									0
Total Legal Costs	298,000	0	0	0	0	0	298,000		
Other Development Costs									
Appraisal	15,000						15,000		
Market Study	25,000						25,000		
Insurance	2,000,000						2,000,000		
Property Taxes									0
Accounting / Audit	40,000						40,000		
Organizational Costs	820						820	LLC tax and entity fee, LP tax and entity fee, SFPDPH hazardous waste fees, SFPDPH permit fees, site permit fees, building permit fees, SF planning fees.	
Entitlement / Permit Fees	1,204,000						1,204,000		
Marketing / Rent-up	540,171						540,171	Shared with OCl Development Specialist.	
Furnishings	639,000						639,000	\$2,000/unit. See MOHCD U/W Guidelines on: http://sfmohcd.org/documents-reports-and-forms	
PG&E / Utility Fees	450,000						450,000		
TCAC Appl. Alloc. / Monitor Fees	167,591						167,591		
Financial Consultant fees	85,000						85,000		
Construction Management fees / Owner's Rep	213,600						213,600		
Security during Construction	100,000						100,000		
Relocation									0
Other (specify)									0
Other (specify)									0
Other (specify)									0
Total Other Development Costs	5,480,182	0	0	0	0	0	5,480,182		
Soft Cost Contingency									
Contingency (Arch, Eng, Fin, Legal & Other Dev)	2,282,444						2,282,444	Should be either 10% or 5% of total soft costs.	10.0%
TOTAL SOFT COSTS	25,106,885	0	0	0	0	0	25,106,885		

RESERVES

* Operating Reserves	857,813						857,813	3 months
* Replacement Reserves								0
* Tenant Improvements Reserves								0
* Other (specify)								0
* Other (specify)								0
* Other (specify)								0
TOTAL RESERVES	857,813	0	0	0	0	0	857,813	

DEVELOPER COSTS

Developer Fee - Cash-out Paid at Milestones	1,100,000						1,100,000	
Developer Fee - Cash-out At Risk	1,400,000						1,400,000	
Commercial Developer Fee								Per new commercial guidelines
Developer Fee - GP Equity (also show as source)								0
Developer Fee - Deferred (also show as source)			540,000				540,000	
Development Consultant Fees								Need MOHCD approval for this cost, N/A for most projects
Other (please specify)								0
TOTAL DEVELOPER COSTS	2,500,000	0	540,000	0	0	0	3,040,000	

TOTAL DEVELOPMENT COST	61,961,845	28,000,000	540,000	98,536,983	0	0	189,038,828	
Development Cost/Unit by Source	336,749	152,174	2,935	535,527	0	0	1,027,385	
Development Cost/Unit as % of TDC by Source	32.8%	14.8%	0.3%	52.1%	0.0%	0.0%	100.0%	

Acquisition Cost/Unit by Source	0	0	0	0	0	0	0	
Construction Cost (inc Const Contingency)/Unit By Source	182,050	152,174	0	535,527	0	0	869,751	
Construction Cost (inc Const Contingency)/SF	166.90	139.51	0.00	490.95	0.00	0.00	797.35	

*Possible non-eligible GO Bond/COP Amount:
 City Subsidy/Unit: 336,749

Tax Credit Equity Pricing: 0.980
 Construction Bond Amount: 98,621,620
 Construction Loan Term (in months): 30 months
 Construction Loan Interest Rate (as %): 7.48%

Attachment K: 1st Year Operating Budget

Application Date: 7/1/2023
 Total # Units: 184
 First Year of Operations (provide data assuming that Year 1 is a full year, i.e. 12 months of operations): 2026

Project Name: Transbay Block 2 East Family
 Project Address: 200 Folsom St
 Project Sponsor: Mercy Housing California

Non-LOSP Units	
LOSP Units	Non-LOSP Units
40	144
LOSP/non-LOSP Allocation	
22%	78%

Correct errors noted in Col N!

INCOME	LOSP	non-LOSP	Total	Comments	
Residential - Tenant Rents	108,000	2,928,876	3,036,876	Links from 'New Proj - Rent & Unit Mix' Worksheet	Alternative LOSP Split
Residential - Tenant Assistance Payments (Non-LOSP)	0	0	0	Links from 'New Proj - Rent & Unit Mix' Worksheet	Residential - Tenant Assistance Payments (N
Residential - LOSP Tenant Assistance Payments	689,555		689,555		
Commercial Space				from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	
Residential Parking	0	0	0	Links from 'Utilities & Other Income' Worksheet	
Miscellaneous Rent Income	412	1,460	1,872	Links from 'Utilities & Other Income' Worksheet	Alternative LOSP Split
Supportive Services Income	0	0	0		Supportive Services Income
Interest Income - Project Operations	0	0	0	Links from 'Utilities & Other Income' Worksheet	
Laundry and Vending	2,603	9,227	11,830	Links from 'Utilities & Other Income' Worksheet	Projected LOSP Split
Tenant Charges	0	0	0	Links from 'Utilities & Other Income' Worksheet	Tenant Charges
Miscellaneous Residential Income	0	0	0	Links from 'Utilities & Other Income' Worksheet	
Other Commercial Income	0	0	0	from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	Alternative LOSP Split
Withdrawal from Capitalized Reserve (deposit to operating account)	0	0	0		Withdrawal from Capitalized Reserve (depos
Gross Potential Income	800,569	2,939,564	3,740,133		
Vacancy Loss - Residential - Tenant Rents	(5,400)	(146,444)	(151,844)	Vacancy loss is 5% of Tenant Rents.	
Vacancy Loss - Residential - Tenant Assistance Payments	0	0	0	#DIV/0!	
Vacancy Loss - Commercial	0	0	0	from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	
EFFECTIVE GROSS INCOME	795,169	2,793,120	3,588,289	PUPA: 19,502	

OPERATING EXPENSES					
Management					
Management Fee	34,214	121,306	155,520	\$72 PUPM	Alternative LOSP Split
Asset Management Fee	5,922	20,998	26,920		Management Fee
					Asset Management Fee
Sub-total Management Expenses	40,137	142,303	182,440	PUPA: 992	

Salaries/Benefits					
Office Salaries	29,817	105,716	135,533	2 FTE APM	Alternative LOSP Split
Manager's Salary	26,887	95,327	122,214	1 FTE SPM	Office Salaries
Health Insurance and Other Benefits	48,896	173,360	222,256	0.32	Manager's Salary
Other Salaries/Benefits	154,440	51,480	205,920	4.5 FTE Desk Clerk	Health Insurance and Other Benefits
Administrative Rent-Free Unit	0	0	0		Other Salaries/Benefits
Sub-total Salaries/Benefits	260,041	425,882	685,923	PUPA: 3,728	Administrative Rent-Free Unit

Administration					
Advertising and Marketing	1,135	4,025	5,160		
Office Expenses	4,400	15,600	20,000		
Office Rent	0	0	0		Projected LOSP Split
Legal Expense - Property	3,300	11,700	15,000		Legal Expense - Property
Audit Expense	2,814	10,330	13,244		
Bookkeeping/Accounting Services	5,676	20,124	25,800		Projected LOSP Split
Bad Debts	0	0	0		Bad Debts
Miscellaneous	5,752	20,392	26,144	Telecom	
Sub-total Administration Expenses	23,177	82,171	105,348	PUPA: 573	

Utilities					
Electricity	44,000	156,000	200,000		Projected LOSP Split
Water	33,000	117,000	150,000	NGC and 10th and Mission comparisons	Electricity
Gas	0	0	0		
Sewer	33,000	117,000	150,000		
Sub-total Utilities	110,000	390,000	500,000	PUPA: 2,717	

Taxes and Licenses					
Real Estate Taxes	1,892	6,708	8,600		Alternative LOSP Split
Payroll Taxes	0	0	0		Real Estate Taxes
Miscellaneous Taxes, Licenses and Permits	3,399	12,053	15,452	Local fees	Payroll Taxes
Sub-total Taxes and Licenses	5,291	18,761	24,052	PUPA: 131	

Insurance					
Property and Liability Insurance	126,500	448,500	575,000	Based on NGC	
Fidelity Bond Insurance	0	0	0		Alternative LOSP Split
Worker's Compensation	8,243	29,224	37,466		Worker's Compensation
Director's & Officers' Liability Insurance	0	0	0		
Sub-total Insurance	134,743	477,724	612,466	PUPA: 3,329	

Maintenance & Repair					
Payroll	51,707	183,323	235,030		Alternative LOSP Split
Supplies	6,244	22,136	28,380		Payroll
Contracts	43,327	153,613	196,940	HVAC, elevator, EBM, fire alarm, fire sprinkler, etc...	Supplies
Garbage and Trash Removal	33,110	117,390	150,500		Contracts
Security Payroll/Contract	27,000	9,000	36,000		Alternative LOSP Split
HVAC Repairs and Maintenance	0	0	0		Security Payroll/Contract
Vehicle and Maintenance Equipment Operation and Repairs	0	0	0		
Miscellaneous Operating and Maintenance Expenses	3,960	14,040	18,000	Grounds	
Sub-total Maintenance & Repair Expenses	165,347	499,503	664,850	PUPA: 3,613	

Supportive Services	0	216,137	216,137	Resident Services	Alternative LOSP Split
Commercial Expenses			0	from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	Supportive Services

TOTAL OPERATING EXPENSES 738,735 2,252,481 2,991,216 PUPA: 16,257

Reserves/Ground Lease Base Rent/Bond Fees					
Ground Lease Base Rent	3,300	11,700	15,000	Ground lease with MOHCD	
Bond Monitoring Fee	0	0	0		Alternative LOSP Split
Replacement Reserve Deposit	20,240	71,760	92,000	\$500 PUPA	Replacement Reserve Deposit
Operating Reserve Deposit	0	0	0		Operating Reserve Deposit
Other Required Reserve 1 Deposit	0	0	0		Other Required Reserve 1 Deposit
Other Required Reserve 2 Deposit	0	0	0		
Required Reserve Deposits, Commercial	0	0	0	from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	
Sub-total Reserves/Ground Lease Base Rent/Bond Fees	23,540	83,460	107,000	PUPA: 582	

TOTAL OPERATING EXPENSES (w/ Reserves/GL Base Rent/ Bond Fees)	762,275	2,335,941	3,098,216	PUPA: 16,838	
NET OPERATING INCOME (INCOME minus OP EXPENSES)	32,894	457,178	490,073	PUPA: 2,663	

DEBT SERVICE/MUST PAY PAYMENTS (hard debt/amortized loans)					
Hard Debt - First Lender	0	0	0		Alternative LOSP Split
Hard Debt - Second Lender (HCD Program 0.42% pymt, or other 2nd Len	25,872	91,728	117,600	HCD AHSC	Hard Debt - First Lender
Hard Debt - Third Lender (Other HCD Program, or other 3rd Lender)	0	0	0		Hard Debt - Second Lender (HCD Program 0.
Hard Debt - Fourth Lender	0	0	0		Hard Debt - Third Lender (Other HCD Program
Commercial Hard Debt Service	0	0	0	from 'Commercial Op. Budget' Worksheet; Commercial to Residential allocation: 0%	Hard Debt - Fourth Lender
TOTAL HARD DEBT SERVICE	25,872	91,728	117,600	PUPA: 639	

CASH FLOW (NOI minus DEBT SERVICE)	7,022	365,450	372,473		
Commercial Only Cash Flow			0		
Allocation of Commercial Surplus to LOSP/non-LOSP (residual income)	0	0	0		Allocation of Commercial Surplus to LOSP/
AVAILABLE CASH FLOW	7,022	365,450	372,473	4.17	

USES THAT PRECEDE MOHCD DEBT SERVICE IN WATERFALL					
"Below-the-line" Asset Mgt fee (uncommon in new projects, see policy)	0	0	0		
Partnership Management Fee (see policy for limits)	5,922	20,998	26,920		
Investor Service Fee (aka "LP Asset Mgt Fee") (see policy for limits)	1,100	3,900	5,000		Alternative LOSP Split
Other Payments	0	0	0		Other Payments
Non-amortizing Loan Pmnt - Lender 1 (select lender in comments field)	0	0	0		Non-amortizing Loan Pmnt - Lender 1 (select
Non-amortizing Loan Pmnt - Lender 2 (select lender in comments field)	0	0	0		Provide additional comments here, if needed.
Deferred Developer Fee (Enter amt =< Max Fee from cell I130)	0	182,669	182,669	Def. Develop. Fee split: 54%	Provide additional comments here, if needed.
TOTAL PAYMENTS PRECEDING MOHCD	7,022	207,567	214,589	PUPA: 1,166	

RESIDUAL RECEIPTS (CASH FLOW minus PAYMENTS PRECEDING MOHCD)	(0)	157,884	157,884		
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Residual Receipts Calculation
 Does Project have a MOHCD Residual Receipt Obligation? **Yes** Project has MOHCD ground lease? **Yes**
 Will Project Defer Developer Fee? **Yes**
 Max Deferred Developer Fee/Borrower % of Residual Receipts in Yr 1: **50%** Max Deferred Developer Fee Amt (Use for data entry above. Do not link.): **170,276** Sum of DD F from LOSP and non-LOSP: Ratio of Sum of DDF and calculated 50%:
 % of Residual Receipts available for distribution to soft debt lenders in **50%**

Soft Debt Lenders with Residual Receipts Obligations	(Select lender name/program from drop down)	Total Principal Amt	Distrib. of Soft Debt Loans
MOHCD/OCII - Soft Debt Loans	All MOHCD/OCII Loans payable from res. recs	\$61,961,845	68.76%
MOHCD/OCII - Ground Lease Value or Land Acq Cost	Ground Lease Value	\$150,000	0.17%
HCD (soft debt loan) - Lender 3	HCD AHSC	\$28,000,000	31.07%
Other Soft Debt Lender - Lender 4			0.00%
Other Soft Debt Lender - Lender 5			0.00%

MOHCD RESIDUAL RECEIPTS DEBT SERVICE			
MOHCD Residual Receipts Amount Due	108,825	108,825	50% of residual receipts, multiplied by 68.93% - MOHCD's pro rata share of all soft debt
Proposed MOHCD Residual Receipts Amount to Loan Repayment	63,301	63,301	Enter/override amount of residual receipts proposed for loan repayment.
Proposed MOHCD Residual Receipts Amount to Residual Ground Lease	0	0	If applicable, MOHCD residual receipts amt due LESS amt proposed for loan repaymt.

REMAINING BALANCE AFTER MOHCD RESIDUAL RECEIPTS DEBT SERVICE 49,058 Total Resid Receipts due not allocated, please revise F142

NON-MOHCD RESIDUAL RECEIPTS DEBT SERVICE			
HCD Residual Receipts Amount Due		49,058	50% of residual receipts, multiplied by 31.07% - HCD AHSC's pro rata share of all soft debt
Lender 4 Residual Receipts Due		0	
Lender 5 Residual Receipts Due		0	
Total Non-MOHCD Residual Receipts Debt Service		49,058	

REMAINDER (Should be zero unless there are distributions below)			
Owner Distributions/Incentive Management Fee		0	
Other Distributions/Uses		0	
Final Balance (should be zero)		0	

Application Date: 7/1/2023
 Total # Units: 184
 First Year of Operations (provide data assuming that Year 1 is a full year, i.e. 12 months of operations): 2026

INCOME			
Residential - Tenant Rents		non-LOSP	Approved By (reqd)
Residential - Tenant Assistance Payments (Non-LOSP)	non-LOSP		
Residential - LOSP Tenant Assistance Payments			
Commercial Space			
Residential Parking			
Miscellaneous Rent Income	LOSP	non-LOSP	Approved By (reqd)
Supportive Services Income			
Interest Income - Project Operations			
Laundry and Vending	LOSP	non-LOSP	(only acceptable if LOSP-specific expenses are being tracked at entry level in the project's accounting system)
Tenant Charges			
Miscellaneous Residential Income			
Other Commercial Income	LOSP	non-LOSP	Approved By (reqd)
Withdrawal from Capitalized Reserve (deposit to operating account)	to operating account		
Gross Potential Income			
Vacancy Loss - Residential - Tenant Rents			
Vacancy Loss - Residential - Tenant Assistance Payments			
Vacancy Loss - Commercial			
EFFECTIVE GROSS INCOME			

OPERATING EXPENSES			
Management			
Management Fee	LOSP	non-LOSP	Approved By (reqd)
Asset Management Fee			
Sub-total Management Expenses			
Salaries/Benefits			
Office Salaries	LOSP	non-LOSP	Approved By (reqd)
Manager's Salary			
Health Insurance and Other Benefits			
Other Salaries/Benefits	75.00%	25.00%	
Administrative Rent-Free Unit			
Sub-total Salaries/Benefits			
Administration			
Advertising and Marketing			
Office Expenses			
Office Rent	LOSP	non-LOSP	(only acceptable if LOSP-specific expenses are being tracked at entry level in the project's accounting system)
Legal Expense - Property	22.00%	78.00%	
Audit Expense			
Bookkeeping/Accounting Services	LOSP	non-LOSP	(only acceptable if LOSP-specific expenses are being tracked at entry level in the project's accounting system)
Bad Debts			
Miscellaneous			
Sub-total Administration Expenses			
Utilities			
Electricity	22.00%	78.00%	(only acceptable if LOSP-specific expenses are being tracked at entry level in the project's accounting system)
Water			
Gas			
Sewer			
Sub-total Utilities			

Taxes and Licenses			
Real Estate Taxes	LOSP	non-LOSP	Approved By (reqd)
Payroll Taxes			
Miscellaneous Taxes, Licenses and Permits			
Sub-total Taxes and Licenses			
Insurance			
Property and Liability Insurance			
Fidelity Bond Insurance	LOSP	non-LOSP	Approved By (reqd)
Worker's Compensation			
Director's & Officers' Liability Insurance			
Sub-total Insurance			
Maintenance & Repair			
Payroll	LOSP	non-LOSP	Approved By (reqd)
Supplies	22.00%	78.00%	(LOSP-specific expenses must be tracked at entry level in project's)
Contracts	22.00%	78.00%	
Garbage and Trash Removal	LOSP	non-LOSP	Approved By (reqd)
Security Payroll/Contract	75.00%	25.00%	
HVAC Repairs and Maintenance			
Vehicle and Maintenance Equipment Operation and Repairs			
Miscellaneous Operating and Maintenance Expenses			
Sub-total Maintenance & Repair Expenses			
Supportive Services	0.00%	100.00%	
Commercial Expenses			

TOTAL OPERATING EXPENSES			
Reserves/Ground Lease Base Rent/Bond Fees			
Ground Lease Base Rent			
Bond Monitoring Fee	LOSP	non-LOSP	Approved By (reqd)
Replacement Reserve Deposit			
Operating Reserve Deposit			
Other Required Reserve 1 Deposit			
Other Required Reserve 2 Deposit			
Required Reserve Deposits, Commercial			
Sub-total Reserves/Ground Lease Base Rent/Bond Fees			
TOTAL OPERATING EXPENSES (w/ Reserves/GL Base Rent/ Bond Fees)			
NET OPERATING INCOME (INCOME minus OP EXPENSES)			

DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized loans)			
Hard Debt - First Lender	LOSP	non-LOSP	Approved By (reqd)
Hard Debt - Second Lender (HCD Program 0.42% pymt. or other 2nd Lender)	0.00%	100.00%	
Hard Debt - Third Lender (Other HCD Program, or other 3rd Lender)	2% pymt. or other 2nd Lender		
Hard Debt - Fourth Lender	h, or other 3rd Lender		
Commercial Hard Debt Service			
TOTAL HARD DEBT SERVICE			
CASH FLOW (NOI minus DEBT SERVICE)			
Commercial Only Cash Flow			
Allocation of Commercial Surplus to LOPS/non-LOSP (residual income)	non-LOSP (residual income)		
AVAILABLE CASH FLOW			
USES OF CASH FLOW BELOW (This row also shows DSCR.)			
USES THAT PRECEDE MOHCD DEBT SERVICE IN WATERFALL			
"Below-the-line" Asset Mgt fee (uncommon in new projects, see policy)			
Partnership Management Fee (see policy for limits)			
Investor Service Fee (aka "LP Asset Mgt Fee") (see policy for limits)	LOSP	non-LOSP	Approved By (reqd)
Other Payments			
Non-amortizing Loan Pmt - Lender 1 (select lender in comments field)			
Non-amortizing Loan Pmt - Lender 2 (select lender in comments field)			
Deferred Developer Fee (Enter amt <= Max Fee from cell I130)	0.00%	100.00%	
TOTAL PAYMENTS PRECEDING MOHCD			

RESIDUAL RECEIPTS (CASH FLOW minus PAYMENTS PRECEDING MOHCD)			
Residual Receipts Calculation			
Does Project have a MOHCD Residual Receipt Obligation?			
Will Project Defer Developer Fee?			
Max Deferred Developer Fee/Borrower % of Residual Receipts in Yr 1:	182,669		
% of Residual Receipts available for distribution to soft debt lenders in	0.932158413		

Soft Debt Lenders with Residual Receipts Obligations			
MOHCD/OCII - Soft Debt Loans			
MOHCD/OCII - Ground Lease Value or Land Acq Cost			
HCD (soft debt loan) - Lender 3			
Other Soft Debt Lender - Lender 4			
Other Soft Debt Lender - Lender 5			
MOHCD RESIDUAL RECEIPTS DEBT SERVICE			
MOHCD Residual Receipts Amount Due			
Proposed MOHCD Residual Receipts Amount to Loan Repayment			
Proposed MOHCD Residual Receipts Amount to Residual Ground Lease			
REMAINING BALANCE AFTER MOHCD RESIDUAL RECEIPTS DEBT SERVICE			
NON-MOHCD RESIDUAL RECEIPTS DEBT SERVICE			
HCD Residual Receipts Amount Due			
Lender 4 Residual Receipts Due			
Lender 5 Residual Receipts Due			
Total Non-MOHCD Residual Receipts Debt Service			
REMAINDER (Should be zero unless there are distributions below)			
Owner Distributions/Incentive Management Fee			
Other Distributions/Uses			
Final Balance (should be zero)			

Attachment L: 20-year Operating Proforma

Transbay Block 2 East Family

Total # Units:	LOSP Units		Non-LOSP Units		Year 1 2026			Year 2 2027			Year 3 2028				
	184	40	144	22.00%	78.00%	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	
INCOME	% annual inc	LOSP	% annual increase	Comments (related to annual inc assumptions)			LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total
Residential - Tenant Rents	1.0%	2.5%				108,000	2,928,876	3,036,876	109,080	3,002,098	3,111,178	110,171	3,077,150	3,187,321	
Residential - Tenant Assistance Payments (Non-LOSP)	n/a	n/a													
Residential - LOSP Tenant Assistance Payments	n/a	n/a				689,555		689,555	714,517		714,517	740,378		740,378	
Commercial Space	n/a	3.0%													
Residential Parking	2.5%	2.5%													
Miscellaneous Rent Income	2.5%	2.5%				412	1,460	1,872	422	1,497	1,919	433	1,534	1,967	
Supportive Services Income	2.5%	2.5%													
Interest Income - Project Operations	2.5%	2.5%													
Laundry and Vending	2.5%	2.5%				2,603	9,227	11,830	2,668	9,458	12,126	2,734	9,695	12,429	
Tenant Charges	2.5%	2.5%													
Miscellaneous Residential Income	2.5%	2.5%													
Other Commercial Income	n/a	2.5%													
Withdrawal from Capitalized Reserve (deposit to operating account)	n/a	n/a													
Gross Potential Income						800,569	2,939,564	3,740,133	826,686	3,013,053	3,839,739	853,716	3,088,379	3,942,095	
Vacancy Loss - Residential - Tenant Rents	n/a	n/a				(5,400)	(146,444)	(151,844)	(5,454)	(150,105)	(155,559)	(5,509)	(153,858)	(159,366)	
Vacancy Loss - Residential - Tenant Assistance Payments	n/a	n/a													
Vacancy Loss - Commercial	n/a	n/a													
EFFECTIVE GROSS INCOME						795,169	2,793,120	3,588,289	821,232	2,862,948	3,684,180	848,208	2,934,521	3,782,729	
OPERATING EXPENSES															
Management															
Management Fee	3.5%	3.5%			1st Year to be set according to HUD schedule	34,214	121,306	155,520	35,412	125,551	160,963	36,651	129,946	166,597	
Asset Management Fee	3.5%	3.5%			per MOHCD policy	5,922	20,998	26,920	6,130	21,733	27,862	6,344	22,493	28,837	
Sub-total Management Expenses						40,137	142,303	182,440	41,542	147,284	188,825	42,996	152,439	195,434	
Salaries/Benefits															
Office Salaries	3.5%	3.5%				29,817	105,716	135,533	30,861	109,416	140,277	31,941	113,245	145,186	
Manager's Salary	3.5%	3.5%				26,887	95,327	122,214	27,828	96,663	126,491	28,802	102,117	130,919	
Health Insurance and Other Benefits	3.5%	3.5%				48,896	173,360	222,256	50,608	179,427	230,035	52,379	185,707	238,086	
Other Salaries/Benefits	3.5%	3.5%				154,440	51,480	205,920	159,845	53,282	213,127	165,440	55,147	220,587	
Administrative Rent-Free Unit	3.5%	3.5%													
Sub-total Salaries/Benefits						260,041	425,882	685,923	289,142	440,788	709,930	278,562	456,216	734,778	
Administration															
Advertising and Marketing	3.5%	3.5%				1,135	4,025	5,160	1,175	4,168	5,341	1,216	4,311	5,528	
Office Expenses	3.5%	3.5%				4,400	15,600	20,000	4,554	16,146	20,700	4,713	16,711	21,425	
Office Rent	3.5%	3.5%													
Legal Expense - Property	3.5%	3.5%				3,300	11,700	15,000	3,416	12,110	15,525	3,535	12,533	16,068	
Audit Expense	3.5%	3.5%				2,914	10,330	13,244	3,016	10,692	13,708	3,121	11,066	14,187	
Bookkeeping/Accounting Services	3.5%	3.5%				5,676	20,124	25,800	5,875	20,828	26,703	6,080	21,557	27,638	
Bad Debts	3.5%	3.5%													
Miscellaneous	3.5%	3.5%				5,752	20,392	26,144	5,953	21,106	27,059	6,161	21,845	28,006	
Sub-total Administration Expenses						23,177	82,171	105,348	23,988	85,047	109,335	24,827	88,024	112,851	
Utilities															
Electricity	3.5%	3.5%				44,000	156,000	200,000	45,540	161,460	207,000	47,134	167,111	214,245	
Water	3.5%	3.5%				33,000	117,000	150,000	34,155	121,095	155,250	35,350	125,333	160,684	
Gas	3.5%	3.5%													
Sewer	3.5%	3.5%				33,000	117,000	150,000	34,155	121,095	155,250	35,350	125,333	160,684	
Sub-total Utilities						110,000	390,000	500,000	113,850	403,650	517,500	117,835	417,778	535,613	
Taxes and Licenses															
Real Estate Taxes	3.5%	3.5%				1,892	6,708	8,600	1,958	6,943	8,901	2,027	7,186	9,213	
Payroll Taxes	3.5%	3.5%													
Miscellaneous Taxes, Licenses and Permits	3.5%	3.5%				3,399	12,053	15,452	3,518	12,474	15,993	3,642	12,911	16,553	
Sub-total Taxes and Licenses						5,291	18,761	24,052	5,477	19,417	24,894	5,669	20,097	25,766	
Insurance															
Property and Liability Insurance	3.5%	3.5%				126,500	448,500	575,000	130,928	464,198	595,125	135,510	480,444	615,954	
Fidelity Bond Insurance	3.5%	3.5%													
Worker's Compensation	3.5%	3.5%				8,243	29,224	37,466	8,531	30,247	38,778	8,830	31,305	40,135	
Director's & Officers' Liability Insurance	3.5%	3.5%													
Sub-total Insurance						134,743	477,724	612,466	139,459	494,444	633,903	144,340	511,750	656,089	
Maintenance & Repair															
Payroll	3.5%	3.5%				51,707	183,323	235,030	53,516	189,740	243,256	55,389	196,381	251,770	
Supplies	3.5%	3.5%				6,244	22,136	28,380	6,462	22,911	29,373	6,688	23,713	30,401	
Contracts	3.5%	3.5%				43,327	153,613	196,940	44,843	158,990	203,833	46,413	164,554	210,967	
Garbage and Trash Removal	3.5%	3.5%				33,110	117,390	150,500	34,269	121,499	155,768	35,468	125,515	161,219	
Security Payroll/Contract	3.5%	3.5%				27,000	9,000	36,000	27,945	9,315	37,260	28,923	9,641	38,564	
HVAC Repairs and Maintenance	3.5%	3.5%													
Vehicle and Maintenance Equipment Operation and Repairs	3.5%	3.5%													
Miscellaneous Operating and Maintenance Expenses	3.5%	3.5%				3,960	14,040	18,000	4,099	14,531	18,630	4,242	15,040	19,282	
Sub-total Maintenance & Repair Expenses						165,347	499,503	664,850	171,134	516,986	688,120	177,124	535,080	712,204	
Supportive Services	3.5%	3.5%					216,137	216,137		223,702	223,702		231,531	231,531	
Commercial Expenses															
TOTAL OPERATING EXPENSES						738,735	2,252,481	2,991,216	764,591	2,331,318	3,095,909	791,351	2,412,914	3,204,266	
Reserves/Ground Lease Base Rent/Bond Fees															
Ground Lease Base Rent						3,300	11,700	15,000	3,300	11,700	15,000	3,300	11,700	15,000	
Bond Monitoring Fee															
Replacement Reserve Deposit						20,240	71,760	92,000	20,240	71,760	92,000	20,240	71,760	92,000	
Operating Reserve Deposit															
Other Required Reserve 1 Deposit															
Other Required Reserve 2 Deposit															
Required Reserve Deposit/s, Commercial															
Sub-total Reserves/Ground Lease Base Rent/Bond Fees						23,540	83,460	107,000	23,540	83,460	107,000	23,540	83,460	107,000	
TOTAL OPERATING EXPENSES (w/ Reserves/GL Base Rent/Bond Fees)						762,275	2,335,941	3,098,216	788,131	2,414,778	3,202,909	814,891	2,496,374	3,311,266	
NET OPERATING INCOME (INCOME minus OP EXPENSES)						32,894	457,178	490,073	33,102	448,170	481,271	33,316	438,147	471,463	
DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized loans)															
Hard Debt - First Lender															
Hard Debt - Second Lender (HCD Program 0.42% pymt, or other 2nd Lender)						25,872	91,728	117,600	25,872	91,728	117,600	25,872	91,728	117,600	
Hard Debt - Third Lender (Other HCD Program, or other 3rd Lender)															
Hard Debt - Fourth Lender															
Commercial Hard Debt Service															
TOTAL HARD DEBT SERVICE						25,872	91,728	117,600	25,872	91,728	117,600	25,872	91,728	117,600	
CASH FLOW (NOI minus DEBT SERVICE)						7,022	365,450	372,473	7,230	356,442	363,671	7,444	346,419	353,863	
Commercial Only Cash Flow															
Allocation of Commercial Surplus to LOSP/non-LOSP (residual income)															
AVAILABLE CASH FLOW						7,022	365,450	372,473	7,230	356,442	363,671	7,4			

Total # Units: LOSP Non-LOSP
 Units Units
 40 144

22.00% 78.00%

INCOME

Other Required Reserve 2 Running Balance

	% annual inc LOSP	% annual increase	Comments (related to annual inc assumptions)	Year 1 2026			Year 2 2027			Year 3 2028		
				LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total

Transbay Block 2 East Family

Total # Units:	LOSP Units		Non-LOSP Units		Year 4 2029			Year 5 2030			Year 6 2031					
	184	40	144	22.00%	78.00%	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total		
INCOME	% annual inc	LOSP	% annual increase	Comments (related to annual inc assumptions)				LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total
Residential - Tenant Rents	1.0%	2.5%					111,273	3,154,079	3,265,352	712,385	3,232,931	3,345,316	113,509	3,313,754	3,427,263	
Residential - Tenant Assistance Payments (Non-LOSP)	n/a	n/a					-	-	-	-	-	-	-	-	-	
Residential - LOSP Tenant Assistance Payments	n/a	n/a					767,172	-	767,172	794,930	-	794,930	823,687	-	823,687	
Commercial Space	n/a	3.0%					-	-	-	-	-	-	-	-	-	
Residential Parking	2.5%	2.5%					-	-	-	-	-	-	-	-	-	
Miscellaneous Rent Income	2.5%	2.5%					444	1,572	2,016	455	1,612	2,066	466	1,622	2,118	
Supportive Services Income	2.5%	2.5%					-	-	-	-	-	-	-	-	-	
Interest Income - Project Operations	2.5%	2.5%					-	-	-	-	-	-	-	-	-	
Laundry and Vending	2.5%	2.5%					2,803	9,937	12,740	2,873	10,185	13,058	2,945	10,440	13,385	
Tenant Charges	2.5%	2.5%					-	-	-	-	-	-	-	-	-	
Miscellaneous Residential Income	2.5%	2.5%					-	-	-	-	-	-	-	-	-	
Other Commercial Income	n/a	2.5%					-	-	-	-	-	-	-	-	-	
Withdrawal from Capitalized Reserve (deposit to operating account)	n/a	n/a					-	-	-	-	-	-	-	-	-	
Gross Potential Income							881,691	3,165,588	4,047,279	910,643	3,244,728	4,155,371	940,607	3,325,846	4,266,453	
Vacancy Loss - Residential - Tenant Rents	n/a	n/a					(5,564)	(157,704)	(163,268)	(5,619)	(161,647)	(167,266)	(5,675)	(165,887)	(171,363)	
Vacancy Loss - Residential - Tenant Assistance Payments	n/a	n/a					-	-	-	-	-	-	-	-	-	
Vacancy Loss - Commercial	n/a	n/a					-	-	-	-	-	-	-	-	-	
EFFECTIVE GROSS INCOME							876,127	3,007,884	3,884,012	905,024	3,083,082	3,988,105	934,931	3,160,159	4,095,090	
OPERATING EXPENSES																
Management																
Management Fee	3.5%	3.5%					37,934	134,494	172,428	39,262	139,201	178,463	40,636	144,073	184,709	
Asset Management Fee	3.5%	3.5%					6,566	23,280	29,847	6,796	24,095	30,891	7,034	24,939	31,973	
Sub-total Management Expenses							44,500	157,774	202,274	46,058	163,296	209,354	47,670	169,012	216,681	
Salaries/Benefits																
Office Salaries	3.5%	3.5%					33,059	117,209	150,268	34,216	121,311	155,527	35,414	125,557	160,971	
Manager's Salary	3.5%	3.5%					29,810	105,691	135,501	30,854	109,390	140,243	31,933	113,218	145,152	
Health Insurance and Other Benefits	3.5%	3.5%					54,212	192,207	248,419	56,110	198,934	255,044	58,073	205,997	263,970	
Other Salaries/Benefits	3.5%	3.5%					171,230	57,077	228,307	177,223	59,074	236,298	183,426	61,142	244,568	
Administrative Rent-Free Unit	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Sub-total Salaries/Benefits							288,312	472,183	760,495	298,403	488,710	787,112	308,847	505,815	814,661	
Administration																
Advertising and Marketing	3.5%	3.5%					1,259	4,462	5,721	1,303	4,619	5,921	1,348	4,780	6,128	
Office Expenses	3.5%	3.5%					4,878	17,296	22,174	5,049	17,901	22,950	5,226	18,828	23,754	
Office Rent	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Legal Expense - Property	3.5%	3.5%					3,659	12,972	16,631	3,787	13,426	17,213	3,919	13,896	17,815	
Audit Expense	3.5%	3.5%					3,230	11,453	14,684	3,344	11,854	15,198	3,461	12,269	15,730	
Bookkeeping/Accounting Services	3.5%	3.5%					6,293	22,312	28,605	6,513	23,093	29,606	6,741	23,901	30,642	
Bad Debts	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Miscellaneous	3.5%	3.5%					6,377	22,609	28,986	6,600	23,401	30,001	6,831	24,220	31,051	
Sub-total Administration Expenses							25,696	91,105	116,801	26,596	94,294	120,889	27,526	97,994	125,120	
Utilities																
Electricity	3.5%	3.5%					48,784	172,960	221,744	50,491	179,014	229,505	52,258	185,279	237,537	
Water	3.5%	3.5%					36,588	129,720	166,308	37,868	134,280	172,128	39,194	138,959	178,153	
Gas	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Sewer	3.5%	3.5%					36,588	129,720	166,308	37,868	134,280	172,128	39,194	138,959	178,153	
Sub-total Utilities							121,959	432,400	554,359	126,228	447,534	573,762	130,645	463,198	593,843	
Taxes and Licenses																
Real Estate Taxes	3.5%	3.5%					2,098	7,437	9,535	2,171	7,698	9,869	2,247	7,967	10,214	
Payroll Taxes	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Miscellaneous Taxes, Licenses and Permits	3.5%	3.5%					3,769	13,363	17,132	3,901	13,831	17,732	4,037	14,315	18,352	
Sub-total Taxes and Licenses							5,867	20,800	26,667	6,072	21,528	27,601	6,285	22,282	28,566	
Insurance																
Property and Liability Insurance	3.5%	3.5%					140,253	497,260	637,513	145,162	514,664	659,826	150,242	532,677	682,920	
Fidelity Bond Insurance	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Worker's Compensation	3.5%	3.5%					9,139	32,401	41,540	9,459	33,535	42,993	9,790	34,709	44,498	
Director's & Officers' Liability Insurance	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Sub-total Insurance							149,392	529,661	679,053	154,620	548,199	702,819	160,032	567,386	727,418	
Maintenance & Repair																
Payroll	3.5%	3.5%					57,328	203,254	260,582	59,335	210,368	289,702	61,411	217,731	279,142	
Supplies	3.5%	3.5%					6,922	24,543	31,465	7,165	25,402	32,567	7,415	26,291	33,707	
Contracts	3.5%	3.5%					48,037	170,314	218,351	49,718	176,275	225,993	51,459	182,444	233,903	
Garbage and Trash Removal	3.5%	3.5%					36,710	130,152	166,862	37,994	134,708	172,702	39,324	139,422	178,747	
Security Payroll/Contract	3.5%	3.5%					29,935	9,978	39,914	30,983	10,328	41,311	32,068	10,689	42,757	
HVAC Repairs and Maintenance	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Vehicle and Maintenance Equipment Operation and Repairs	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Miscellaneous Operating and Maintenance Expenses	3.5%	3.5%					4,391	15,566	19,957	4,544	16,111	20,655	4,703	16,675	21,378	
Sub-total Maintenance & Repair Expenses							183,323	553,808	737,131	189,739	573,191	762,931	196,380	593,263	789,633	
Supportive Services	3.5%	3.5%					-	239,635	239,635	-	248,022	248,022	-	256,703	256,703	
Commercial Expenses																
TOTAL OPERATING EXPENSES							819,049	2,497,366	3,316,415	847,715	2,584,774	3,432,490	877,386	2,675,241	3,552,627	
RESERVES/GROUND LEASE BASE RENT/BOND FEES																
Ground Lease Base Rent							3,300	11,700	15,000	3,300	11,700	15,000	3,300	11,700	15,000	
Bond Monitoring Fee							-	-	-	-	-	-	-	-	-	
Replacement Reserve Deposit							20,240	71,760	92,000	20,240	71,760	92,000	20,240	71,760	92,000	
Operating Reserve Deposit							-	-	-	-	-	-	-	-	-	
Other Required Reserve 1 Deposit							-	-	-	-	-	-	-	-	-	
Other Required Reserve 2 Deposit							-	-	-	-	-	-	-	-	-	
Required Reserve Deposit/s, Commercial							-	-	-	-	-	-	-	-	-	
Sub-total Reserves/Ground Lease Base Rent/Bond Fees							23,540	83,460	107,000	23,540	83,460	107,000	23,540	83,460	107,000	
TOTAL OPERATING EXPENSES (w/ Reserves/GL Base Rent/Bond Fees)							842,589	2,580,826	3,423,415	871,255	2,668,234	3,539,490	900,926	2,758,701	3,659,627	
NET OPERATING INCOME (INCOME minus OP EXPENSES)							33,538	427,058	460,597	33,768	414,848	448,616	34,006	401,457	435,463	
DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized loans)																
Hard Debt - First Lender							-	-	-	-	-	-	-	-	-	
Hard Debt - Second Lender (HCD Program 0.42% pymt, or other 2nd Lender)							25,872	91,728	117,600	25,872	91,728	117,600	25,872	91,728	117,600	
Hard Debt - Third Lender (Other HCD Program, or other 3rd Lender)							-	-	-	-	-	-	-	-	-	
Hard Debt - Fourth Lender							-	-	-	-	-	-	-	-	-	
Commercial Hard Debt Service																

Total # Units: LOSP Non-LOSP
 Units Units
 40 144

22.00% 78.00%

INCOME

Other Required Reserve 2 Running Balance

	% annual inc LOSP	% annual increase	Comments (related to annual inc assumptions)	Year 4 2029			Year 5 2030			Year 6 2031		
				LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total

Transbay Block 2 East Family

Total # Units:	LOSP Units		Non-LOSP Units		Year 7 2032			Year 8 2033			Year 9 2034					
	184	40	144	22.00%	78.00%	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total		
INCOME	% annual inc	LOSP	% annual increase	Comments (related to annual inc assumptions)				LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total
Residential - Tenant Rents	1.0%	2.5%					114,644	3,396,598	3,511,242	715,797	3,481,513	3,597,304	116,949	3,568,551	3,685,500	
Residential - Tenant Assistance Payments (Non-LOSP)	n/a	n/a					-	-	-	-	-	-	-	-	-	
Residential - LOSP Tenant Assistance Payments	n/a	n/a					853,478	-	853,478	884,340	-	884,340	916,310	-	916,310	
Commercial Space	n/a	3.0%					-	-	-	-	-	-	-	-	-	
Residential Parking	2.5%	2.5%					-	-	-	-	-	-	-	-	-	
Miscellaneous Rent Income	2.5%	2.5%					478	1,693	2,171	490	1,736	2,225	802	1,779	2,281	
Supportive Services Income	2.5%	2.5%					-	-	-	-	-	-	-	-	-	
Interest Income - Project Operations	2.5%	2.5%					-	-	-	-	-	-	-	-	-	
Laundry and Vending	2.5%	2.5%					3,018	10,701	13,719	3,094	10,968	14,062	3,171	11,243	14,414	
Tenant Charges	2.5%	2.5%					-	-	-	-	-	-	-	-	-	
Miscellaneous Residential Income	2.5%	2.5%					-	-	-	-	-	-	-	-	-	
Other Commercial Income	n/a	2.5%					-	-	-	-	-	-	-	-	-	
Withdrawal from Capitalized Reserve (deposit to operating account)	n/a	n/a					-	-	-	-	-	-	-	-	-	
Gross Potential Income							971,618	3,406,993	4,380,611	1,003,714	3,494,217	4,497,931	1,036,931	3,581,573	4,618,504	
Vacancy Loss - Residential - Tenant Rents	n/a	n/a					(5,732)	(169,830)	(175,562)	(5,790)	(174,076)	(179,865)	(5,847)	(178,428)	(184,275)	
Vacancy Loss - Residential - Tenant Assistance Payments	n/a	n/a					-	-	-	-	-	-	-	-	-	
Vacancy Loss - Commercial	n/a	n/a					-	-	-	-	-	-	-	-	-	
EFFECTIVE GROSS INCOME							965,886	3,239,163	4,205,049	997,924	3,320,142	4,318,066	1,031,084	3,403,145	4,434,229	
OPERATING EXPENSES																
Management																
Management Fee	3.5%	3.5%					42,058	149,116	191,174	43,530	154,335	197,865	45,054	159,736	204,790	
Asset Management Fee	3.5%	3.5%					7,280	25,811	33,092	7,535	26,715	34,250	7,799	27,650	35,448	
Sub-total Management Expenses							49,338	174,927	224,265	51,065	181,049	232,115	52,853	187,386	240,239	
Salaries/Benefits																
Office Salaries	3.5%	3.5%					36,653	129,952	166,605	37,936	134,500	172,436	39,264	139,207	178,471	
Manager's Salary	3.5%	3.5%					33,051	117,181	150,232	34,208	121,282	155,490	35,405	125,527	160,932	
Health Insurance and Other Benefits	3.5%	3.5%					60,106	213,103	273,209	62,210	220,562	282,772	64,387	228,282	292,669	
Other Salaries/Benefits	3.5%	3.5%					189,846	63,282	253,128	196,491	65,497	261,988	203,368	67,789	271,157	
Administrative Rent-Free Unit	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Sub-total Salaries/Benefits							319,656	523,518	843,175	330,844	541,841	872,866	342,424	560,806	903,230	
Administration																
Advertising and Marketing	3.5%	3.5%					1,395	4,945	6,343	1,444	5,121	6,565	1,495	5,300	6,795	
Office Expenses	3.5%	3.5%					5,409	19,176	24,585	5,598	19,848	25,446	5,794	20,542	26,336	
Office Rent	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Legal Expense - Property	3.5%	3.5%					4,057	14,382	18,439	4,199	14,886	19,084	4,345	15,407	19,752	
Audit Expense	3.5%	3.5%					3,582	12,699	16,280	3,707	13,143	16,850	3,837	13,603	17,440	
Bookkeeping/Accounting Services	3.5%	3.5%					6,977	24,738	31,715	7,221	25,603	32,825	7,474	26,999	33,974	
Bad Debts	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Miscellaneous	3.5%	3.5%					7,070	25,067	32,138	7,318	25,945	33,262	7,574	26,863	34,427	
Sub-total Administration Expenses							28,490	101,010	129,500	29,487	104,545	134,032	30,519	108,204	138,723	
Utilities																
Electricity	3.5%	3.5%					54,087	191,764	245,851	55,980	198,476	254,456	57,940	205,422	263,362	
Water	3.5%	3.5%					40,565	143,823	184,388	41,985	148,857	190,842	43,455	154,067	197,521	
Gas	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Sewer	3.5%	3.5%					40,565	143,823	184,388	41,985	148,857	190,842	43,455	154,067	197,521	
Sub-total Utilities							135,218	479,410	614,628	139,951	496,189	636,140	144,849	513,556	658,405	
Taxes and Licenses																
Real Estate Taxes	3.5%	3.5%					2,326	8,246	10,572	2,407	8,534	10,942	2,491	8,833	11,325	
Payroll Taxes	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Miscellaneous Taxes, Licenses and Permits	3.5%	3.5%					4,179	14,816	18,994	4,325	15,334	19,659	4,476	15,871	20,347	
Sub-total Taxes and Licenses							6,505	23,062	29,566	6,732	23,869	30,601	6,968	24,704	31,672	
Insurance																
Property and Liability Insurance	3.5%	3.5%					155,501	551,321	706,822	160,943	570,617	731,561	166,576	590,589	757,165	
Fidelity Bond Insurance	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Worker's Compensation	3.5%	3.5%					10,132	35,923	46,056	10,487	37,181	47,668	10,854	38,482	49,336	
Director's & Officers' Liability Insurance	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Sub-total Insurance							165,633	587,244	752,877	171,430	607,798	779,228	177,430	629,071	806,501	
Maintenance & Repair																
Payroll	3.5%	3.5%					63,561	225,351	288,912	65,785	233,239	299,024	68,088	241,402	309,490	
Supplies	3.5%	3.5%					7,675	27,211	34,886	7,944	28,164	36,107	8,222	29,149	37,371	
Contracts	3.5%	3.5%					53,260	188,830	242,090	55,124	195,439	250,563	57,053	202,279	259,332	
Garbage and Trash Removal	3.5%	3.5%					40,701	144,302	185,003	42,125	149,353	191,478	43,600	154,580	198,180	
Security Payroll/Contract	3.5%	3.5%					33,190	11,063	44,253	34,352	11,451	45,802	35,554	11,851	47,405	
HVAC Repairs and Maintenance	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Vehicle and Maintenance Equipment Operation and Repairs	3.5%	3.5%					-	-	-	-	-	-	-	-	-	
Miscellaneous Operating and Maintenance Expenses	3.5%	3.5%					4,868	17,259	22,127	5,038	17,863	22,901	5,215	18,488	23,703	
Sub-total Maintenance & Repair Expenses							203,254	614,017	817,270	210,368	635,507	845,875	217,730	657,750	875,480	
Supportive Services	3.5%	3.5%					-	265,688	265,688	-	274,987	274,987	-	284,611	284,611	
Commercial Expenses																
TOTAL OPERATING EXPENSES							908,094	2,768,875	3,676,969	939,877	2,865,785	3,805,682	972,773	2,966,088	3,938,861	
RESERVES/GROUND LEASE BASE RENT/BOND FEES																
Ground Lease Base Rent							3,300	11,700	15,000	3,300	11,700	15,000	3,300	11,700	15,000	
Bond Monitoring Fee							-	-	-	-	-	-	-	-	-	
Replacement Reserve Deposit							20,240	71,760	92,000	20,240	71,760	92,000	20,240	71,760	92,000	
Operating Reserve Deposit							-	-	-	-	-	-	-	-	-	
Other Required Reserve 1 Deposit							-	-	-	-	-	-	-	-	-	
Other Required Reserve 2 Deposit							-	-	-	-	-	-	-	-	-	
Required Reserve Deposit/s, Commercial							-	-	-	-	-	-	-	-	-	
Sub-total Reserves/Ground Lease Base Rent/Bond Fees							23,540	83,460	107,000	23,540	83,460	107,000	23,540	83,460	107,000	
TOTAL OPERATING EXPENSES (w/ Reserves/GL Base Rent/Bond Fees)							931,634	2,852,335	3,783,969	963,417	2,949,245	3,912,682	996,313	3,049,548	4,045,861	
NET OPERATING INCOME (INCOME minus OP EXPENSES)							34,252	386,828	421,080	34,507	370,896	405,403	34,771	353,598	388,368	
DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized loans)																
Hard Debt - First Lender							-	-	-	-	-	-	-	-	-	
Hard Debt - Second Lender (HCD Program 0.42% pymt, or other 2nd Lender)							25,872	91,728	117,600	25,872	91,728	117,600	25,872	91,728	117,600	
Hard Debt - Third Lender (Other HCD Program, or other 3rd Lender)							-	-	-	-	-	-	-	-	-	
Hard Debt - Fourth Lender							-	-	-	-	-	-	-	-	-	
Commercial Hard Debt Service																

INCOME	Total # Units:	LOSP Units		Non-LOSP Units		Year 7 2032			Year 8 2033			Year 9 2034				
		184	40	144	% annual inc LOSP	% annual increase	Comments (related to annual inc assumptions)	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total
		22.00%	78.00%													
	Other Required Reserve 2 Running Balance															

Transbay Block 2 East Family

	Total # Units:	LOSP Units	Non-LOSP Units	Year 10 2035			Year 11 2036			Year 12 2037							
				% annual inc LOSP	% annual increase	Comments (related to annual inc assumptions)	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total		
INCOME	184	40	144	22.00%	78.00%												
Residential - Tenant Rents				1.0%	2.5%		118,118	3,657,765	3,775,883	119,299	3,749,209	3,868,508	120,492	3,842,939	3,963,431		
Residential - Tenant Assistance Payments (Non-LOSP)				n/a	n/a												
Residential - LOSP Tenant Assistance Payments				n/a	n/a		949,427		949,427	983,732		983,732	1,019,267		1,019,267		
Commercial Space				n/a	3.0%												
Residential Parking				2.5%	2.5%												
Miscellaneous Rent Income				2.5%	2.5%		514	1,824	2,338	527	1,869	2,396	540	1,916	2,456		
Supportive Services Income				2.5%	2.5%												
Interest Income - Project Operations				2.5%	2.5%												
Laundry and Vending				2.5%	2.5%		3,250	11,524	14,774	3,332	11,812	15,143	3,415	12,107	15,522		
Tenant Charges				2.5%	2.5%												
Miscellaneous Residential Income				2.5%	2.5%												
Other Commercial Income				n/a	2.5%												
Withdrawal from Capitalized Reserve (deposit to operating account)				n/a	n/a												
Gross Potential Income							1,071,310	3,671,112	4,742,422	1,106,890	3,762,890	4,869,780	1,143,714	3,856,962	5,000,676		
Vacancy Loss - Residential - Tenant Rents				n/a	n/a		(5,906)	(182,888)	(188,794)	(5,965)	(187,460)	(193,425)	(6,025)	(192,147)	(198,172)		
Vacancy Loss - Residential - Tenant Assistance Payments				n/a	n/a												
Vacancy Loss - Commercial				n/a	n/a												
EFFECTIVE GROSS INCOME							1,065,404	3,488,224	4,553,628	1,100,925	3,575,429	4,676,354	1,137,689	3,664,815	4,802,504		
OPERATING EXPENSES																	
Management																	
Management Fee				3.5%	3.5%	1st Year to be set according to HUD schedule	46,631	165,327	211,958	48,263	171,114	219,376	49,952	177,103	227,054		
Asset Management Fee				3.5%	3.5%	per MOHCD policy	8,072	28,618	36,689	8,354	29,619	37,973	8,647	30,656	39,302		
Sub-total Management Expenses							54,702	193,945	248,647	56,617	200,733	257,350	58,599	207,758	266,357		
Salaries/Benefits																	
Office Salaries				3.5%	3.5%		40,638	144,080	184,718	42,060	149,122	191,183	43,532	154,342	197,874		
Manager's Salary				3.5%	3.5%		36,644	129,921	166,565	37,927	134,468	172,395	39,254	139,174	178,429		
Health Insurance and Other Benefits				3.5%	3.5%		66,641	236,271	302,912	68,973	244,541	313,514	71,387	253,100	324,487		
Other Salaries/Benefits				3.5%	3.5%		210,486	70,162	280,648	217,853	72,618	290,470	225,478	75,159	300,637		
Administrative Rent-Free Unit				3.5%	3.5%												
Sub-total Salaries/Benefits							354,409	580,434	934,843	386,813	600,749	967,562	379,651	621,775	1,001,427		
Administration																	
Advertising and Marketing				3.5%	3.5%		1,547	5,485	7,033	1,601	5,677	7,279	1,657	5,876	7,533		
Office Expenses				3.5%	3.5%		5,997	21,261	27,258	6,207	22,005	28,212	6,424	22,776	29,199		
Office Rent				3.5%	3.5%												
Legal Expense - Property				3.5%	3.5%		4,498	15,946	20,443	4,655	16,504	21,159	4,818	17,082	21,900		
Audit Expense				3.5%	3.5%		3,971	14,079	18,050	4,110	14,572	18,682	4,254	15,082	19,336		
Bookkeeping/Accounting Services				3.5%	3.5%		7,736	27,427	35,163	8,007	28,387	36,393	8,287	29,380	37,667		
Bad Debts				3.5%	3.5%												
Miscellaneous				3.5%	3.5%		7,839	27,793	35,632	8,113	28,765	36,879	8,397	29,772	38,169		
Sub-total Administration Expenses							31,587	111,991	143,579	32,693	115,911	148,604	33,837	119,968	153,805		
Utilities																	
Electricity				3.5%	3.5%		59,967	212,612	272,579	62,066	220,053	282,120	64,239	227,755	291,994		
Water				3.5%	3.5%		44,976	159,459	204,435	46,350	165,040	211,590	48,179	170,816	218,995		
Gas				3.5%	3.5%												
Sewer				3.5%	3.5%		44,976	159,459	204,435	46,350	165,040	211,590	48,179	170,816	218,995		
Sub-total Utilities							149,919	531,530	681,449	155,166	550,134	705,299	160,597	569,388	729,985		
Taxes and Licenses																	
Real Estate Taxes				3.5%	3.5%		2,579	9,142	11,721	2,669	9,462	12,131	2,762	9,793	12,556		
Payroll Taxes				3.5%	3.5%												
Miscellaneous Taxes, Licenses and Permits				3.5%	3.5%		4,633	16,426	21,059	4,795	17,001	21,797	4,963	17,596	22,559		
Sub-total Taxes and Licenses							7,212	25,569	32,780	7,464	26,464	33,928	7,725	27,390	35,115		
Insurance																	
Property and Liability Insurance				3.5%	3.5%		172,407	611,259	783,666	178,441	632,654	811,094	184,686	654,796	839,483		
Fidelity Bond Insurance				3.5%	3.5%												
Worker's Compensation				3.5%	3.5%		11,234	39,829	51,063	11,627	41,223	52,850	12,034	42,666	54,700		
Director's & Officers' Liability Insurance				3.5%	3.5%												
Sub-total Insurance							183,640	651,088	834,729	190,068	673,877	863,944	196,720	697,462	894,182		
Maintenance & Repair																	
Payroll				3.5%	3.5%		70,471	249,851	320,322	72,937	258,596	331,533	75,490	267,647	343,137		
Supplies				3.5%	3.5%		8,509	30,170	38,679	8,807	31,226	40,033	9,115	32,318	41,434		
Contracts				3.5%	3.5%		59,050	209,399	268,409	61,117	216,687	277,803	63,256	224,271	287,526		
Garbage and Trash Removal				3.5%	3.5%		45,126	159,991	205,116	46,705	165,590	212,295	48,340	171,386	219,725		
Security Payroll/Contract				3.5%	3.5%		36,798	12,266	49,064	38,086	12,695	50,782	39,419	13,140	52,559		
HVAC Repairs and Maintenance				3.5%	3.5%												
Vehicle and Maintenance Equipment Operation and Repairs				3.5%	3.5%												
Miscellaneous Operating and Maintenance Expenses				3.5%	3.5%		5,397	19,135	24,532	5,586	19,805	25,391	5,781	20,498	26,279		
Sub-total Maintenance & Repair Expenses							225,351	680,771	906,122	233,238	704,598	937,837	241,402	729,259	970,661		
Supportive Services				3.5%	3.5%			294,573	294,573		304,883	304,883		315,553	315,553		
Commercial Expenses																	
TOTAL OPERATING EXPENSES							1,006,820	3,069,901	4,076,721	1,042,059	3,177,347	4,219,406	1,078,531	3,288,554	4,367,085		
Reserves/Ground Lease Base Rent/Bond Fees																	
Ground Lease Base Rent							3,300	11,700	15,000	3,300	11,700	15,000	3,300	11,700	15,000		
Bond Monitoring Fee																	
Replacement Reserve Deposit							20,240	71,760	92,000	20,240	71,760	92,000	20,240	71,760	92,000		
Operating Reserve Deposit																	
Other Required Reserve 1 Deposit																	
Other Required Reserve 2 Deposit																	
Required Reserve Deposit/s, Commercial																	
Sub-total Reserves/Ground Lease Base Rent/Bond Fees							23,540	83,460	107,000	23,540	83,460	107,000	23,540	83,460	107,000		
TOTAL OPERATING EXPENSES (w/ Reserves/GL Base Rent/Bond Fees)							1,030,360	3,153,361	4,183,721	1,065,599	3,260,807	4,326,406	1,102,071	3,372,014	4,474,085		
NET OPERATING INCOME (INCOME minus OP EXPENSES)							35,044	334,863	369,907	35,326	314,622	349,948	35,619	292,801	328,419		
DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized																	

Total # Units: LOSP Non-LOSP
 Units Units
 40 144

		Year 10 2035			Year 11 2036			Year 12 2037		
% annual inc LOSP	% annual increase	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total

INCOME

Other Required Reserve 2 Running Balance

INCOME	Total # Units:	LOSP Units		Non-LOSP Units		Year 13 2038			Year 14 2039			Year 15 2040				
		184	40	144	% annual inc LOSP	% annual increase	Comments (related to annual inc assumptions)	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total
				22.00%	78.00%											

Other Required Reserve 2 Running Balance

Transbay Block 2 East Family

Total # Units:	LOSP	Non-LOSP	Year 16			Year 17			Year 18					
	Units	Units	2021	2022	2023	2024	2025	2026	2027	2028	2029			
184	40	144	22.00%	78.00%										
	% annual inc LOSP	% annual increase	Comments (related to annual inc assumptions)			LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total
INCOME														
Residential - Tenant Rents	1.0%	2.5%				125,385	4,241,886	4,367,270	726,638	4,347,933	4,474,571	127,905	4,456,631	4,584,536
Residential - Tenant Assistance Payments (Non-LOSP)	n/a	n/a				-	-	-	-	-	-	-	-	-
Residential - LOSP Tenant Assistance Payments	n/a	n/a				1,173,492	-	1,173,492	1,215,856	-	1,215,856	1,259,734	-	1,259,734
Commercial Space	n/a	3.0%				-	-	-	-	-	-	-	-	-
Residential Parking	2.5%	2.5%				-	-	-	-	-	-	-	-	-
Miscellaneous Rent Income	2.5%	2.5%				596	2,115	2,711	611	2,168	2,779	627	2,222	2,848
Supportive Services Income	2.5%	2.5%				-	-	-	-	-	-	-	-	-
Interest Income - Project Operations	2.5%	2.5%				-	-	-	-	-	-	-	-	-
Laundry and Vending	2.5%	2.5%				3,769	13,364	17,133	3,864	13,698	17,562	3,960	14,041	18,001
Tenant Charges	2.5%	2.5%				-	-	-	-	-	-	-	-	-
Miscellaneous Residential Income	2.5%	2.5%				-	-	-	-	-	-	-	-	-
Other Commercial Income	n/a	2.5%				-	-	-	-	-	-	-	-	-
Withdrawal from Capitalized Reserve (deposit to operating account)	n/a	n/a				-	-	-	-	-	-	-	-	-
Gross Potential Income						1,303,242	4,257,365	5,560,607	1,340,970	4,363,799	5,710,768	1,392,226	4,472,894	5,865,119
Vacancy Loss - Residential - Tenant Rents	n/a	n/a				(6,269)	(212,094)	(218,364)	(6,332)	(217,397)	(223,729)	(6,395)	(222,832)	(229,227)
Vacancy Loss - Residential - Tenant Assistance Payments	n/a	n/a				-	-	-	-	-	-	-	-	-
Vacancy Loss - Commercial	n/a	n/a				-	-	-	-	-	-	-	-	-
EFFECTIVE GROSS INCOME						1,296,973	4,045,270	5,342,243	1,340,638	4,146,402	5,487,040	1,385,831	4,250,062	5,635,893
OPERATING EXPENSES														
Management														
Management Fee	3.5%	3.5%	1st Year to be set according to HUD schedule			57,321	203,229	260,550	59,327	210,342	269,670	61,404	217,704	279,108
Asset Management Fee	3.5%	3.5%	per MOHCD policy			9,922	35,178	45,100	10,269	36,410	46,679	10,629	37,684	48,313
Sub-total Management Expenses						67,243	238,407	305,651	69,597	246,752	316,349	72,033	255,388	327,421
Salaries/Benefits														
Office Salaries	3.5%	3.5%				49,954	177,111	227,065	51,703	183,310	235,012	53,512	189,725	243,238
Manager's Salary	3.5%	3.5%				45,045	159,706	204,751	46,622	165,296	211,917	48,254	171,081	219,334
Health Insurance and Other Benefits	3.5%	3.5%				81,918	290,438	372,356	84,786	300,603	385,389	87,753	311,124	398,877
Other Salaries/Benefits	3.5%	3.5%				258,741	86,247	344,988	267,797	89,266	357,062	277,170	92,390	369,560
Administrative Rent-Free Unit	3.5%	3.5%				-	-	-	-	-	-	-	-	-
Sub-total Salaries/Benefits						435,659	713,501	1,149,160	450,907	738,474	1,189,381	466,689	764,321	1,231,009
Administration														
Advertising and Marketing	3.5%	3.5%				1,902	6,743	8,645	1,958	6,979	8,947	2,037	7,223	9,261
Office Expenses	3.5%	3.5%				7,372	26,135	33,507	7,630	27,050	34,880	7,897	27,997	35,894
Office Rent	3.5%	3.5%				-	-	-	-	-	-	-	-	-
Legal Expense - Property	3.5%	3.5%				5,529	19,602	25,130	5,722	20,288	26,010	5,922	20,998	26,920
Audit Expense	3.5%	3.5%				4,881	17,307	22,188	5,052	17,913	22,965	5,229	18,540	23,769
Bookkeeping/Accounting Services	3.5%	3.5%				9,509	33,715	43,224	9,842	34,895	44,737	10,187	36,116	46,303
Bad Debts	3.5%	3.5%				-	-	-	-	-	-	-	-	-
Miscellaneous	3.5%	3.5%				9,636	34,164	43,800	9,973	35,360	45,333	10,322	36,598	46,920
Sub-total Administration Expenses						38,829	137,666	176,495	40,188	142,484	182,672	41,594	147,471	189,065
Utilities														
Electricity	3.5%	3.5%				73,715	261,354	335,070	76,295	270,502	346,797	78,966	279,969	358,935
Water	3.5%	3.5%				55,287	196,016	251,302	57,222	202,876	260,098	59,224	209,977	269,201
Gas	3.5%	3.5%				-	-	-	-	-	-	-	-	-
Sewer	3.5%	3.5%				55,287	196,016	251,302	57,222	202,876	260,098	59,224	209,977	269,201
Sub-total Utilities						184,288	653,386	837,674	190,738	676,255	866,993	197,414	699,923	897,338
Taxes and Licenses														
Real Estate Taxes	3.5%	3.5%				3,170	11,238	14,408	3,281	11,632	14,912	3,396	12,039	15,434
Payroll Taxes	3.5%	3.5%				-	-	-	-	-	-	-	-	-
Miscellaneous Taxes, Licenses and Permits	3.5%	3.5%				5,695	20,192	25,887	5,895	20,899	26,794	6,101	21,630	27,731
Sub-total Taxes and Licenses						8,865	31,430	40,295	9,175	32,531	41,706	9,496	33,669	43,166
Insurance														
Property and Liability Insurance	3.5%	3.5%				211,932	751,394	963,326	219,349	777,693	997,042	227,026	804,912	1,031,938
Fidelity Bond Insurance	3.5%	3.5%				-	-	-	-	-	-	-	-	-
Worker's Compensation	3.5%	3.5%				13,809	48,960	62,769	14,293	50,674	64,966	14,793	52,447	67,240
Director's & Officers' Liability Insurance	3.5%	3.5%				-	-	-	-	-	-	-	-	-
Sub-total Insurance						225,741	800,354	1,026,095	233,642	828,366	1,062,008	241,819	857,359	1,099,178
Maintenance & Repair														
Payroll	3.5%	3.5%				86,627	307,131	393,757	89,659	317,880	407,539	92,797	329,006	421,803
Supplies	3.5%	3.5%				10,460	37,086	47,546	10,826	38,394	49,211	11,205	39,728	50,933
Contracts	3.5%	3.5%				72,588	257,356	329,943	75,128	266,363	341,491	77,758	275,686	353,443
Garbage and Trash Removal	3.5%	3.5%				55,471	196,669	252,140	57,412	203,553	260,965	59,422	210,677	270,099
Security Payroll/Contract	3.5%	3.5%				46,234	15,078	60,313	46,818	15,606	62,423	46,456	16,152	64,608
HVAC Repairs and Maintenance	3.5%	3.5%				-	-	-	-	-	-	-	-	-
Vehicle and Maintenance Equipment Operation and Repairs	3.5%	3.5%				-	-	-	-	-	-	-	-	-
Miscellaneous Operating and Maintenance Expenses	3.5%	3.5%				6,634	23,522	30,156	6,867	24,345	31,212	7,107	25,197	32,304
Sub-total Maintenance & Repair Expenses						277,014	836,842	1,113,856	286,709	866,131	1,152,841	296,744	896,446	1,193,190
Supportive Services	3.5%	3.5%				-	362,105	362,105	-	374,779	374,779	-	387,896	387,896
Commercial Expenses														
TOTAL OPERATING EXPENSES						1,237,639	3,773,692	5,011,331	1,280,956	3,905,771	5,186,727	1,325,790	4,042,473	5,368,263
RESERVES/GROUND LEASE BASE RENT/BOND FEES														
Ground Lease Base Rent						3,300	11,700	15,000	3,300	11,700	15,000	3,300	11,700	15,000
Bond Monitoring Fee						-	-	-	-	-	-	-	-	-
Replacement Reserve Deposit						20,240	71,760	92,000	20,240	71,760	92,000	20,240	71,760	92,000
Operating Reserve Deposit						-	-	-	-	-	-	-	-	-
Other Required Reserve 1 Deposit						-	-	-	-	-	-	-	-	-
Other Required Reserve 2 Deposit						-	-	-	-	-	-	-	-	-
Required Reserve Deposit/s, Commercial						-	-	-	-	-	-	-	-	-
Sub-total Reserves/Ground Lease Base Rent/Bond Fees						23,540	83,460	107,000	23,540	83,460	107,000	23,540	83,460	107,000
TOTAL OPERATING EXPENSES (w/ Reserves/GL Base Rent/Bond Fees)						1,261,179	3,857,152	5,118,331	1,304,496	3,989,231	5,293,727	1,349,330	4,125,933	5,475,263
NET OPERATING INCOME (INCOME minus OP EXPENSES)						35,794	188,118	223,912	36,141	157,171	193,312	36,501	124,129	160,630
DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized loans)														
Hard Debt - First Lender						-	-	-	-	-	-	-	-	-
Hard Debt - Second Lender (HCD Program 0.42% pymt, or other 2nd Lender)						25,872	91,728	117,600	25,872	91,728	117,600	25,872	91,728	117,600
Hard Debt - Third Lender (Other HCD Program, or other 3rd Lender)						-	-	-	-	-	-	-	-	-
Hard Debt - Fourth Lender						-	-	-	-	-	-	-	-	-
Commercial Hard Debt Service						-	-	-	-	-	-	-	-	-
TOTAL HARD DEBT SERVICE						25,872	91,728	117,600	25,872	91,728	117,600	25,872	91,728	117,600
CASH FLOW (NOI minus DEBT SERVICE)						9,922	96,390	106,312	10,269	65,443	75,712	10,629		

INCOME	Total # Units:	LOSP Units		Non-LOSP Units		Year 16 2041			Year 17 2042			Year 18 2043			
		184	40	144											
			22.00%	78.00%	% annual inc LOSP	% annual increase	Comments (related to annual inc assumptions)	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total	LOSP	non-LOSP
	Other Required Reserve 2 Running Balance														

Transbay Block 2 East Family

Total # Units:	LOSP Units		Non-LOSP Units		Year 19 2044			Year 20 2045			
	184	40	144	22.00%	78.00%	LOSP	non-LOSP	Total	LOSP	non-LOSP	Total
INCOME	% annual inc	% annual increase	Comments (related to annual inc assumptions)								
Residential - Tenant Rents	1.0%	2.5%		129,184	4,568,047	4,697,231	130,478	4,682,248	4,812,724		
Residential - Tenant Assistance Payments (Non-LOSP)	n/a	n/a									
Residential - LOSP Tenant Assistance Payments	n/a	n/a		1,305,179		1,305,179	1,352,246		1,352,246		
Commercial Space	n/a	3.0%	from 'Commercial Op. Budget Worksheet; Commercial to Residential allocation: 0%								
Residential Parking	2.5%	2.5%									
Miscellaneous Rent Income	2.5%	2.5%		642	2,277	2,920	658	2,334	2,993		
Supportive Services Income	2.5%	2.5%									
Interest Income - Project Operations	2.5%	2.5%									
Laundry and Vending	2.5%	2.5%		4,059	14,392	18,451	4,161	14,751	18,912		
Tenant Charges	2.5%	2.5%									
Miscellaneous Residential Income	2.5%	2.5%									
Other Commercial Income	n/a	2.5%	from 'Commercial Op. Budget Worksheet; Commercial to Residential allocation: 0%								
Withdrawal from Capitalized Reserve (deposit to operating account)	n/a	n/a	Link from Reserve Section below, as applicable								
Gross Potential Income				1,439,064	4,584,716	6,023,780	1,487,541	4,699,334	6,186,875		
Vacancy Loss - Residential - Tenant Rents	n/a	n/a	Enter formulas manually per relevant MOH policy; annual incrementing usually not appropriate	(6,459)	(228,402)	(234,862)	(6,524)	(234,112)	(240,636)		
Vacancy Loss - Residential - Tenant Assistance Payments	n/a	n/a									
Vacancy Loss - Commercial	n/a	n/a									
EFFECTIVE GROSS INCOME				1,432,605	4,356,314	5,788,919	1,481,017	4,465,221	5,946,239		
OPERATING EXPENSES											
Management											
Management Fee	3.5%	3.5%	1st Year to be set according to HUD schedule	63,553	225,324	288,877	65,777	233,210	298,987		
Asset Management Fee	3.5%	3.5%	per MOHCD policy	11,001	39,003	50,004	11,386	40,368	51,754		
Sub-total Management Expenses				74,554	264,327	338,881	77,163	273,578	350,741		
Salaries/Benefits											
Office Salaries	3.5%	3.5%		55,385	196,366	251,751	57,324	203,239	260,562		
Manager's Salary	3.5%	3.5%		49,942	177,069	227,011	51,690	183,266	234,957		
Health Insurance and Other Benefits	3.5%	3.5%		80,824	322,014	412,838	94,003	333,284	427,287		
Other Salaries/Benefits	3.5%	3.5%		286,871	95,624	382,494	296,911	98,970	395,881		
Administrative Rent-Free Unit	3.5%	3.5%									
Sub-total Salaries/Benefits				483,023	791,072	1,274,095	499,929	818,759	1,318,688		
Administration											
Advertising and Marketing	3.5%	3.5%		2,109	7,478	9,585	2,182	7,738	9,920		
Office Expenses	3.5%	3.5%		8,173	28,977	37,150	8,459	29,991	38,450		
Office Rent	3.5%	3.5%									
Legal Expense - Property	3.5%	3.5%		6,130	21,733	27,862	6,344	22,493	28,838		
Audit Expense	3.5%	3.5%		5,412	19,188	24,601	5,602	19,860	25,462		
Bookkeeping/Accounting Services	3.5%	3.5%		10,543	37,380	47,923	10,912	38,688	49,601		
Bad Debts	3.5%	3.5%									
Miscellaneous	3.5%	3.5%		10,684	37,879	48,562	11,058	39,204	50,262		
Sub-total Administration Expenses				43,050	152,633	195,683	44,557	157,975	202,532		
Utilities											
Electricity	3.5%	3.5%		81,730	289,768	371,498	84,590	299,910	384,500		
Water	3.5%	3.5%		61,297	217,326	278,623	63,443	224,933	288,375		
Gas	3.5%	3.5%									
Sewer	3.5%	3.5%		61,297	217,326	278,623	63,443	224,933	288,375		
Sub-total Utilities				204,324	724,421	928,745	211,475	749,776	961,251		
Taxes and Licenses											
Real Estate Taxes	3.5%	3.5%		3,514	12,460	15,974	3,637	12,896	16,534		
Payroll Taxes	3.5%	3.5%									
Miscellaneous Taxes, Licenses and Permits	3.5%	3.5%		6,314	22,387	28,702	6,535	23,171	29,706		
Sub-total Taxes and Licenses				9,829	34,848	44,676	10,173	36,067	46,240		
Insurance											
Property and Liability Insurance	3.5%	3.5%		234,972	833,084	1,068,056	243,196	862,242	1,105,438		
Fidelity Bond Insurance	3.5%	3.5%									
Worker's Compensation	3.5%	3.5%		15,311	54,283	69,593	15,846	56,183	72,029		
Director's & Officers' Liability Insurance	3.5%	3.5%									
Sub-total Insurance				250,283	887,367	1,137,650	259,043	918,424	1,177,467		
Maintenance & Repair											
Payroll	3.5%	3.5%		96,044	340,521	436,566	99,406	352,439	451,845		
Supplies	3.5%	3.5%		11,597	41,118	52,716	12,003	42,557	54,561		
Contracts	3.5%	3.5%		80,479	285,335	365,814	83,296	295,322	378,617		
Garbage and Trash Removal	3.5%	3.5%		61,501	218,051	279,552	63,654	225,682	289,336		
Security Payroll/Contract	3.5%	3.5%		50,152	16,717	66,870	51,908	17,303	69,210		
HVAC Repairs and Maintenance	3.5%	3.5%									
Vehicle and Maintenance Equipment Operation and Repairs	3.5%	3.5%									
Miscellaneous Operating and Maintenance Expenses	3.5%	3.5%		7,356	26,079	33,435	7,613	26,992	34,605		
Sub-total Maintenance & Repair Expenses				307,130	927,821	1,234,952	317,880	960,295	1,278,175		
Supportive Services	3.5%	3.5%			401,472	401,472		415,524	415,524		
Commercial Expenses			from 'Commercial Op. Budget Worksheet; Commercial to Residential allocation: 0%								
TOTAL OPERATING EXPENSES				1,372,192	4,183,960	5,556,152	1,420,219	4,330,398	5,750,617		
RESERVES/GROUND LEASE BASE RENT/BOND FEES											
Ground Lease Base Rent				3,300	11,700	15,000	3,300	11,700	15,000		
Bond Monitoring Fee											
Replacement Reserve Deposit				20,240	71,760	92,000	20,240	71,760	92,000		
Operating Reserve Deposit											
Other Required Reserve 1 Deposit											
Other Required Reserve 2 Deposit											
Required Reserve Deposit/s, Commercial			from 'Commercial Op. Budget Worksheet; Commercial to Residential allocation: 0%								
Sub-total Reserves/Ground Lease Base Rent/Bond Fees				23,540	83,460	107,000	23,540	83,460	107,000		
TOTAL OPERATING EXPENSES (w/ Reserves/GL Base Rent/Bond Fees)				1,395,732	4,267,420	5,663,152	1,443,759	4,413,858	5,857,617		
NET OPERATING INCOME (INCOME minus OP EXPENSES)				36,873	88,894	125,767	37,258	51,363	88,621		
DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized loans)											
Hard Debt - First Lender			Enter comments re: annual increase, etc.								
Hard Debt - Second Lender (HCD Program 0.42% pymt, or other 2nd Lender)			Enter comments re: annual increase, etc.	25,872	91,728	117,600	25,872	91,728	117,600		
Hard Debt - Third Lender (Other HCD Program, or other 3rd Lender)			Enter comments re: annual increase, etc.								
Hard Debt - Fourth Lender			Enter comments re: annual increase, etc.								
Commercial Hard Debt Service			from 'Commercial Op. Budget Worksheet; Commercial to Residential allocation: 0%								
TOTAL HARD DEBT SERVICE				25,872	91,728	117,600	25,872	91,728	117,600		
CASH FLOW (NOI minus DEBT SERVICE)				11,001	(2,834)	8,167	11,386	(40,365)	(28,979)		
Commercial Only Cash Flow											
Allocation of Commercial Surplus to LOSP/non-LOSP (residual income)											
AVAILABLE CASH FLOW				11,001	(2,834)	8,167	11,386	(40,365)	(28,979)		
USES OF CASH FLOW BELOW (This row also shows DSCR.)											
USES THAT PRECEED MOHCD DEBT SERVICE IN WATERFALL											
"Below-the-line" Asset Mgt fee (uncommon in new projects, see policy)	3.5%	3.5%	per MOHCD policy								
Partnership Management Fee (see policy for limits)	3.5%	3.5%	per MOHCD policy	11,001	39,003	50,004	11,386	40,368	51,754		
Investor Service Fee (aka "LP Asset Mgt Fee") (see policy for limits)			per MOHCD policy no annual increase								
Other Payments											
Non-amortizing Loan Pmnt - Lender 1			Enter comments re: annual increase, etc.								
Non-amortizing Loan Pmnt - Lender 2			Enter comments re: annual increase, etc.								
Deferred Developer Fee (Enter amt. <= Max Fee from row 131)											
TOTAL PAYMENTS PRECEDING MOHCD				11,001	39,003	50,004	11,386	40,368	51,754		
RESIDUAL RECEIPTS (CASH FLOW minus PAYMENTS PRECEDING MOHCD)				(0)	(41,837)	(41,837)	(0)	(80,733)	(80,733)		
Does Project have a MOHCD Residual Receipt Obligation?	Yes		Year 15 is year indicated below:								
Will Project Defer Developer Fee?	Yes		2040								
1st Residual Receipts Split - Lender/Deferred Developer Fee	50% / 50%		2nd Residual Receipts Split Begins:								
2nd Residual Receipts Split - Lender/Owner	67% / 33%		2030								
Max Deferred Developer Fee Amt (Use for data entry above. Do not link.):											
MOHCD RESIDUAL RECEIPTS DEBT SERVICE											
MOHCD Residual Receipts Amount Due			Dist. Soft Debt Loans								
Proposed MOHCD Residual Receipts Amount to Loan Repayment	68.93%		Allocation per pro rata share of all soft debt loans, and MOHCD residual receipts policy								
Proposed MOHCD Residual Receipts Amount to Residual Ground Lease											
NON-MOHCD RESIDUAL RECEIPTS DEBT SERVICE											
HCD Residual Receipts Amount Due	31.07%		loans, and HCD residual receipt policy.								
Lender 4 Residual Receipts Due	0.00%										
Lender 5 Residual Receipts Due	0.00%										
Total Non-MOHCD Residual Receipts Debt Service											
REMAINDER (Should be zero unless there are distributions											

Total # Units: LOSP Non-LOSP
 Units Units
 40 144

INCOME

Other Required Reserve 2 Running Balance

	% annual inc LOSP	% annual increase	Comments (related to annual inc assumptions)	Year 19 2044			Year 20 2045		
				LOSP	non-LOSP	Total	LOSP	non-LOSP	Total

Attachment M: Commercial Development Budget

Application Date: 7/1/23 # Commercial Spaces: 3
 Project Name: Transbay Block 2 East Family
 Project Address: 200 Folsom St
 Project Sponsor: Mercy Housing California

Don't forget to fill in D138:D140!

COMMERCIAL SPACE	Space 1					Space 2	Space 3	Space 4	Space 5	%age Total Building Costs in Commercial Budget
	Retail Space 1	Retail Space 2	Childcare Shell	Childcare Full Build					Total Commercial SF	
Gross SF	1190	768	6447						8,405	

SOURCES	Total Sources					Comments
Name of Sources:	1,352,868	939,922	6,383,891	3,000,000	-	11,676,682
USE:	OCII	OCII	OCII	Wu Yee		

ACQUISITION						
Acquisition cost or value						0
Legal / Closing costs / Broker's Fee						0
Holding Costs						0
Transfer Tax						0
TOTAL ACQUISITION	0	0	0	0	0	0

CONSTRUCTION (HARD COSTS)						
Unit Construction/Rehab						0
Commercial Warm Shell Construction	699,855	451,671	4,696,218	3,000,000		8,847,744
Commercial Cold Shell Construction		0	0			0
Demolition						0
Environmental Remediation	6,106	3,941	33,082			43,130
Onsight Improvements/Landscaping	2,264	1,461	12,268			15,993
Offsite Improvements		0	0			0
Infrastructure Improvements	22,614	14,595	122,517			159,727
Parking		0	0			0
GC Bond Premium/GC Insurance/GC Taxes	46,150	29,784	250,027			325,962
GC Overhead & Profit	19,974	12,891	108,212			141,077
CG General Conditions	42,833	27,643	232,054			302,531
<i>Sub-total Construction Costs</i>	<i>839,798</i>	<i>541,987</i>	<i>5,454,378</i>	<i>3,000,000</i>	<i>0</i>	<i>9,836,163</i>
Design Contingency (remove at DD)	0	0	0			0
Bid Contingency (remove at bid)	0	0	0			0
Plan Check Contingency (remove/reduce during Plan Review)	18,796	10,840	90,995			118,630
Hard Cost Construction Contingency	30,369	19,599	164,526			214,493
<i>Sub-total Construction Contingencies</i>	<i>47,164</i>	<i>30,439</i>	<i>255,520</i>	<i>0</i>	<i>0</i>	<i>333,124</i>
TOTAL CONSTRUCTION COSTS	886,962	572,426	5,709,898	3,000,000	0	10,169,287

Construction line item costs as a % of hard costs
 3.3%
 1.4%
 3.1%
 0.0%
 0.0%
 1.2%
 2.2%

SOFT COSTS						
Architecture & Design						
Architect design fees	14,823	9,566	80,304			104,692
Architecture design fees for Schematic Drawings for tenant-paid tenant improvements						0
Design Subconsultants to the Architect (incl. Fees)						0
Architect Construction Admin						0
Reimbursables						0
Additional Services						0
<i>Sub-total Architect Contract</i>	<i>14,823</i>	<i>9,566</i>	<i>80,304</i>	<i>0</i>	<i>0</i>	<i>104,692</i>
Other Third Party design consultants (not included under Architect contract)	3,261	2,105	17,667			23,032
Total Architecture & Design	18,084	11,671	97,970	0	0	127,725

See MOHCD A&E Fee Guidelines: <http://sfmohcd.org/documents-reports-and-forms>

Engineering & Environmental Studies						
Survey	65	42	353			461
Geotechnical studies	939	606	5,085			6,629
Phase I & II Reports	296	191	1,606			2,094
CEQA / Environmental Review consultants	427	275	2,312			3,014
NEPA / 106 Review						0
CNA/PNA (rehab only)						0
Other environmental consultants						0
Total Engineering & Environmental Studies	1,727	1,115	9,356	0	0	12,198

Name consultants & contract amounts

Financing Costs						
Construction Financing Costs						
Construction Loan Origination Fee						0
Construction Loan Interest						0
Title & Recording	711	459	3,855			5,025
CDLAC & CDIAC fees						0
Bond Issuer Fees						0
Other Bond Cost of Issuance						0
Other Lender Costs (specify)						0
<i>Sub-total Const. Financing Costs</i>	<i>711</i>	<i>459</i>	<i>3,855</i>	<i>0</i>	<i>0</i>	<i>5,025</i>
Permanent Financing Costs						
Permanent Loan Origination Fee						0
Credit Enhance. & Appl. Fee						0
Title & Recording						0
Commercial Loan Origination Fee						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	711	459	3,855	0	0	5,025

Legal Costs						
Borrower Legal fees	889	574	4,818			6,282
Land Use / CEQA Attorney fees						0
Tax Credit Counsel						0
Bond Counsel						0
Construction Lender Counsel						0
Permanent Lender Counsel						0
Other Legal (specify)						0
Total Legal Costs	889	574	4,818	0	0	6,282

Other Development Costs						
Appraisal	89	57	482			628
Market Study	3,000	3,000	803			6,803
Insurance	11,858	7,853	64,243			83,754
Property Taxes						0
Accounting / Audit	237	153	1,285			1,675
Organizational Costs						0
Entitlement / Permit Fees	57,139	54,607	88,674			200,420
Marketing / Lease-up	1,557	1,005	8,437			11,000
Furnishings						0
PGE / Utility Fees	2,668	1,722	14,455			18,845
TCAC App / Alloc / Monitor Fees						0
Financial Consultant fees	504	325	2,730			3,560
Construction Management fees / Owner's Rep	1,266	817	6,861			8,945
Security during Construction						0
Relocation						0
Administrative Expenses	3,610					3,610
Other (specify)						0
Other (specify)						0
Total Other Development Costs	81,929	69,340	187,970	0	0	339,240

Total Soft Cost Contingency as % of Total Soft Costs
 5%
 0.2%

Soft Cost Contingency						
Contingency (Arch, Eng, Fin, Legal & Other Dev)	304	304	304			913
TOTAL SOFT COSTS	103,645	83,463	304,274	0	0	491,382

RESERVES						
Operating Reserves						0
Replacement Reserves	6,092	3,931	33,002			43,025
Tenant Improvements Reserves	178,500	115,200				293,700
Commercial Lease-Up Reserves	36,003	23,235	195,050			254,288
Other (specify)						0
TOTAL RESERVES	220,594	142,367	228,052	0	0	591,013

DEVELOPER COSTS						
Commercial Developer Fee - Cash-out Paid at Milestones	141,667	141,667	141,667			425,000
Other (specify)						0
Other (specify)						0
TOTAL DEVELOPER COSTS	141,667	141,667	141,667	0	0	425,000

TOTAL DEVELOPMENT COST	1,352,868	939,922	6,383,891	3,000,000	0	11,676,682
Development Cost/SF by Source	1,137	1,224	990			
Development Cost/Unit as % of TDC by Source						
Acquisition Cost/SF by Source	0	0	0			0
Construction Cost (inc Const Contingency)/SF By Source	745	745	886			
Construction Cost (inc Const Contingency)/SF	745.35	745.35	885.67			50.67

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.

Attachment N: Commercial Operating Proforma

Transbay Block 2 East Family LOSP Project

Drop down menu to the right controls how much Net Commercial Revenue is contributed to the Residential Operating Budget. (100% is default, select another choice only if allowed by MOHCD policy.)

Total # Units:		Business Year																				
184		Year 1 2026	Year 2 2027	Year 3 2028	Year 4 2029	Year 5 2030	Year 6 2031	Year 7 2032	Year 8 2033	Year 9 2034	Year 10 2035	Year 11 2036	Year 12 2037	Year 13 2038	Year 14 2039	Year 15 2040	Year 16 2041	Year 17 2042	Year 18 2043	Year 19 2044	Year 20 2045	
COMMERCIAL INCOME	% annual increase	Comments																				
Commercial Space 1	3.0%	1,190 sf, \$2.75/sf/month +NNN (\$1.27 paf/month)	57,390	59,112	60,885	62,712	64,593	66,531	68,527	70,582	72,700	74,881	77,127	79,441	81,824	84,279	86,808	89,412	92,094	94,857	97,703	100,634
Commercial Space 2	3.0%	708 sf, \$2.75/sf/month +NNN (\$1.27 paf/month)	37,038	38,149	39,294	40,472	41,687	42,937	44,225	45,552	46,919	48,328	49,776	51,269	52,807	54,392	56,023	57,704	59,435	61,218	63,055	64,946
Commercial Space 3	3.0%	4642 sf, Wu, Yea ECE, NNN (\$1.42 paf/month)	79,040	81,411	83,854	86,369	88,960	91,629	94,378	97,209	100,128	103,129	106,223	109,410	112,692	116,073	119,555	123,142	126,836	130,641	134,560	138,597
Commercial Space 4	3.0%																					
Commercial Space 5	2.5%																					
Other Commercial Income	2.5%	Commercial Lease-up Reserve	128,923	51,439	3,011																	
Gross Potential Income			302,391	330,111	337,043	345,553	354,740	364,517	374,894	385,871	397,448	409,625	422,402	435,779	449,756	464,333	479,510	495,287	511,664	528,641	546,218	564,395
		Rent/SP/Month:	\$1.72	\$1.77	\$1.82	\$1.88	\$1.94	\$1.99	\$2.05	\$2.11	\$2.18	\$2.24	\$2.31	\$2.38	\$2.45	\$2.53	\$2.60	\$2.68	\$2.76	\$2.84	\$2.93	\$3.02
Vacancy Loss - Commercial	n/a	1st year assumes 100% for retail spaces & ECE. Year 2 assumes 100% on just retail spaces. Year 3 assumes 50% on just retail spaces. Years 4-20 assumes 25% on retail spaces. The vacancy rate doesn't mean we think 25% of the space will be vacant necessarily but it accounts for rent reductions	(173,468)	(97,261)	(50,089)	(25,796)	(26,570)	(27,367)	(28,186)	(29,034)	(29,905)	(30,802)	(31,726)	(32,678)	(33,658)	(34,666)	(35,708)	(36,779)	(37,882)	(39,019)	(40,189)	(41,395)
EFFECTIVE GROSS INCOME			128,923	132,850	136,954	163,757	168,670	173,730	178,942	184,310	189,839	195,535	201,401	207,443	213,666	220,076	226,678	233,479	240,483	247,697	255,128	262,782
COMMERCIAL OPERATING EXPENSES																						
Management																						
Commercial Management Fee	2.0%	Asset Management Fee	2,000	2,040	2,081	2,122	2,165	2,208	2,252	2,297	2,343	2,390	2,438	2,487	2,536	2,587	2,639	2,692	2,746	2,800	2,856	2,914
Sub-total Management Expenses			2,000	2,040	2,081	2,122	2,165	2,208	2,252	2,297	2,343	2,390	2,438	2,487	2,536	2,587	2,639	2,692	2,746	2,800	2,856	2,914
Utilities																						
Electricity	3.5%	We don't include utilities																				
Water	3.5%																					
Gas	3.5%																					
Sewer	3.5%																					
Sub-total Utilities																						
Taxes and Licenses																						
Real Estate Taxes	2.0%	Income Based Tax Approach (we're not promised this NOI/Cap rate x Tax Rate)	21,849	22,286	22,732	23,186	23,650	24,123	24,606	25,098	25,600	26,112	26,634	27,166	27,710	28,264	28,829	29,406	29,994	30,594	31,206	31,830
Payroll Taxes	2.0%	Special taxes	566	577	589	601	613	625	637	650	663	676	690	704	718	732	747	762	777	793	808	825
Miscellaneous Taxes, Licenses and Permits	0.0%	Air Rights Parcel Taxes and Audit	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500
Sub-total Taxes and Licenses			30,915	31,363	31,821	32,287	32,763	33,248	33,743	34,248	34,763	35,288	35,824	36,370	36,928	37,496	38,076	38,668	39,271	39,886	40,514	41,154
Insurance																						
Property and Liability Insurance	7.0%	Property Insurance	18,685	19,993	21,392	22,890	24,492	26,207	28,041	30,004	32,104	34,352	36,756	39,329	42,082	45,028	48,180	51,553	55,161	59,022	63,154	67,575
Fidelity Bond Insurance	3.5%																					
Worker's Compensation	3.5%																					
Director's & Officers' Liability Insurance	3.5%																					
Sub-total Insurance			18,685	19,993	21,392	22,890	24,492	26,207	28,041	30,004	32,104	34,352	36,756	39,329	42,082	45,028	48,180	51,553	55,161	59,022	63,154	67,575
Maintenance & Repair																						
Payroll	3.5%																					
Supplies	3.5%																					
Contracts	3.5%																					
Garbage and Trash Removal	3.5%																					
Security Payroll/Contract	3.5%																					
HVAC Repairs and Maintenance	3.5%																					
Vehicle and Maintenance Equipment Operation and Repairs	3.5%																					
Miscellaneous Operating and Maintenance Expenses	3.5%	Common Area Maintenance (CAM)	51,612	53,418	55,288	57,223	59,226	61,299	63,444	65,665	67,963	70,342	72,804	75,352	77,989	80,719	83,544	86,468	89,494	92,627	95,869	99,224
Sub-total Maintenance & Repair Expenses			51,612	53,418	55,288	57,223	59,226	61,299	63,444	65,665	67,963	70,342	72,804	75,352	77,989	80,719	83,544	86,468	89,494	92,627	95,869	99,224
Reserves/Ground Lease Base Rent/Bond Fees																						
Replacement Reserve Deposit		Capital Replacement Reserve	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Operating Reserve Deposit		Retail Leasing Reserve (every 10 years/6% commission)	4,265	4,393	4,525	4,660	4,800	4,944	5,093	5,245	5,403	5,565	5,732	5,904	6,081	6,263	6,451	6,645	6,844	7,049	7,261	7,479
Other Required Reserve 1 Deposit		Incident Reserve (10,000 per year for insurance deductible) and T1 Reserves (\$10 paf every 5 years for retail, \$2 paf every 10 years for ECE)	10,000	10,000	10,000	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844	14,844
Other Required Reserve 2 Deposit		Property Management Fees (5% of revenue)	6,446	6,643	6,848	7,063	7,288	7,524	7,771	8,029	8,298	8,578	8,869	9,171	9,484	9,808	10,143	10,489	10,846	11,214	11,593	11,983
Sub-total Reserves/Ground Lease Base Rent/Bond Fees			25,711	26,035	26,372	32,692	33,078	33,475	33,884	34,305	34,739	35,186	35,646	36,120	36,608	37,111	37,629	38,163	38,712	39,278	39,861	40,462
TOTAL COMMERCIAL OPERATING EXPENSES			128,923	132,850	136,954	147,215	151,724	156,436	161,364	166,519	171,912	177,557	183,468	189,658	196,144	202,941	210,068	217,543	225,384	233,614	242,255	251,329
NET OPERATING INCOME (INCOME minus OP EXPENSES)			(0)	0	(0)	16,542	16,946	17,293	17,577	17,791	17,927	17,977	17,933	17,785	17,522	17,135	16,610	15,936	15,098	14,083	12,874	11,453
DEBT SERVICE/MUST PAY PAYMENTS ("hard debt"/amortized loans)																						
Hard Debt - First Lender																						
Hard Debt - Second Lender																						
Hard Debt - Third Lender																						
Hard Debt - Fourth Lender																						
TOTAL HARD DEBT SERVICE																						
CASH FLOW (NOI minus DEBT SERVICE)			(0)	0	(0)	16,542	16,946	17,293	17,577	17,791	17,927	17,977	17,933	17,785	17,522	17,135	16,610	15,936	15,098	14,083	12,874	11,453
REPLACEMENT RESERVE - RUNNING BALANCE																						
Replacement Reserve Starting Balance				5,000	10,000	15,000	20,000	25,000	30,000	35,000	40,000	45,000	50,000	55,000	60,000	65,000	70,000	75,000	80,000	85,000	90,000	95,000
Replacement Reserve Deposits			5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Replacement Reserve Withdrawals (Ideally tied to CNA)																						
Replacement Reserve Interest																						
RR Running Balance			5,000	10,000																		

Attachment O: Horizontal Project Budget

Application Date: 7/1/23 # Units: 184
 Project Name: Transbay Block 2 East Family - Early Work # Bedrooms:
 Project Address: 200 Folsom St # Beds:
 Project Sponsor: Mercy Housing California
 Don't forget to fill in D135:D138!

SOURCES	Total Sources						Comments
Name of Sources:	2,333,653	-	-	-	-	-	2,333,653
MOHCD/OCIL							

USES

ACQUISITION

Acquisition cost or value							0
Legal / Closing costs / Broker's Fee							0
Holding Costs							0
Transfer Tax							0
TOTAL ACQUISITION	0	0	0	0	0	0	0

CONSTRUCTION (HARD COSTS)

Unit Construction/Rehab							0	Include FF&E
Commercial Shell Construction							0	
Demolition	268,000						268,000	Abatement and demolition of existing structure.
Environmental Remediation	465,313						465,313	Hazardous soils and earthwork.
Onsite Improvements/Landscaping							0	
Offsite Improvements							0	
Infrastructure Improvements	866,100						866,100	Freeway pile removal, existing utilities removal.
Parking							0	
GC Bond Premium/GC Insurance/GC Taxes	67,430						67,430	Insurance, Bond Premium, B&O & Other Taxes, GC Contingency
GC Overhead & Profit	38,527						38,527	
CG General Conditions	258,531						258,531	
Sub-total Construction Costs	1,963,901	0	0	0	0	0	1,963,901	
Design Contingency (remove at DD)							0	5% up to \$30MM HC, 4% \$30-\$45MM, 3% \$45MM+
Bid Contingency (remove at bid)	98,195						98,195	5% up to \$30MM HC, 4% \$30-\$45MM, 3% \$45MM+
Plan Check Contingency (remove/reduce during Plan Review)							0	4% up to \$30MM HC, 3% \$30-\$45MM, 2% \$45MM+
Hard Cost Construction Contingency	111,126						111,126	5% new construction / 15% rehab
Sub-total Construction Contingencies	209,321	0	0	0	0	0	209,321	
TOTAL CONSTRUCTION COSTS	2,173,222	0	0	0	0	0	2,173,222	

Construction line item costs as a % of hard costs

3.4%

2.0%

13.2%

0.0%

5.0%

0.0%

5.7%

SOFT COSTS

Architecture & Design

Architect design fees							0	See MOHCD A&E Fee Guidelines: http://sfmohcd.org/documents-reports-and-forms
Design Subconsultants to the Architect (incl. Fees)							0	
Architect Construction Admin							0	
Reimbursables							0	
Additional Services							0	
Sub-total Architect Contract	0	0	0	0	0	0	0	
Other Third Party design consultants (not included under Architect contract)							0	Consultants not covered under architect contract; name consultant type and contract amount
Total Architecture & Design	0	0	0	0	0	0	0	

Engineering & Environmental Studies

Survey							0	
Geotechnical studies							0	
Phase I & II Reports							0	
CEQA / Environmental Review consultants							0	
NEPA / 106 Review							0	
CNA/PNA (rehab only)							0	
Other environmental consultants	45,846						45,846	Archaeology
Total Engineering & Environmental Studies	45,846	0	0	0	0	0	45,846	

Financing Costs

Construction Financing Costs

Construction Loan Origination Fee							0	
Construction Loan Interest							0	
Title & Recording							0	
CDLAC & CDLAC fees							0	
Bond Issuer Fees							0	
Other Bond Cost of Issuance							0	
Other Lender Costs (specify)							0	
Sub-total Const. Financing Costs	0	0	0	0	0	0	0	
Permanent Financing Costs							0	
Permanent Loan Origination Fee							0	
Credit Enhance. & Appl. Fee							0	
Title & Recording							0	
Sub-total Perm. Financing Costs	0	0	0	0	0	0	0	
Total Financing Costs	0	0	0	0	0	0	0	

Legal Costs

Borrower Legal fees							0	
Land Use / CEQA Attorney fees							0	
Tax Credit Counsel							0	
Bond Counsel							0	
Construction Lender Counsel							0	
Permanent Lender Counsel							0	
Other Legal (specify)							0	
Total Legal Costs	0	0	0	0	0	0	0	

Other Development Costs

Appraisal							0	
Market Study							0	
Insurance							0	
Property Taxes							0	
Accounting / Audit							0	
Organizational Costs							0	
Entitlement / Permit Fees							0	
Marketing / Rent-up							0	
Furnishings							0	\$2,000/unit; See MOHCD U/W Guidelines: http://sfmohcd.org/documents-reports-and-forms
PGE / Utility Fees							0	
TCAC App / Alloc / Monitor Fees							0	
Financial Consultant fees							0	
Construction Management fees / Owner's Rep							0	
Security during Construction	100,000						100,000	Digital and physical monitoring and fencing.
Relocation							0	
Other (specify)							0	
Other (specify)							0	
Other (specify)							0	
Total Other Development Costs	100,000	0	0	0	0	0	100,000	

Total Soft Cost Contingency as % of Total Soft Costs

10.0%

Soft Cost Contingency

Contingency (Arch, Eng, Fin, Legal & Other Dev)	14,585	0	0	0	0	0	14,585	Should be either 10% or 5% of total soft costs.
TOTAL SOFT COSTS	160,431	0	0	0	0	0	160,431	

RESERVES

Operating Reserves							0	
Replacement Reserves							0	
Tenant Improvements Reserves							0	
Other (specify)							0	
Other (specify)							0	
Other (specify)							0	
TOTAL RESERVES	0	0	0	0	0	0	0	

DEVELOPER COSTS

Developer Fee - Cash-out Paid at Milestones							0	
Developer Fee - Cash-out At Risk							0	
Commercial Developer Fee							0	
Developer Fee - GP Equity (also show as source)							0	
Developer Fee - Deferred (also show as source)							0	
Development Consultant Fees							0	Need MOHCD approval for this cost, N/A for most projects
Project Management Fee - Early Work							0	
TOTAL DEVELOPER COSTS	0	0	0	0	0	0	0	

TOTAL DEVELOPMENT COST

2,333,653	0	0	0	0	0	0	2,333,653	
Development Cost/Unit by Source	12,683	0	0	0	0	0	12,683	
Development Cost/Unit as % of TDC by Source	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	

Acquisition Cost/Unit by Source

0	0	0	0	0	0	0	0	
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Construction Cost (inc Const Contingency)/Unit By Source

11,811	0	0	0	0	0	0	11,811	
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Construction Cost (inc Const Contingency)/SF

10.83	0.00	0.00	0.00	0.00	0.00	0.00	10.83	
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*Possible non-eligible GO Bond/COP Amount:
 City Subsidy/Unit: 12,683

Tax Credit Equity Pricing: Fill in with value or 'N/A' if not applicable.
 Construction Bond Amount: Fill in with value or 'N/A' if not applicable.
 Construction Loan Term (in months): Fill in with value or 'N/A' if not applicable.
 Construction Loan Interest Rate (as %): Fill in with value or 'N/A' if not applicable.

Attachment 7: Transbay Block 2 East SBE Consultant Summary

Transbay Block 2 East

Professional Consultant List

						<i>For Informational Purposes Only</i>			
Consultant	Discipline	Fee	SBE*	SF-SBE	MBE	M/WBE	WBE	Ethnicity**	
Kennerly Architecture & Planning	Prime Architect	\$ 1,580,697	1,580,697	1,580,697			1,580,697		
YA Studio	Associate Architect	\$ 854,303	\$854,303	\$ 854,303	\$854,303			African American	
Luk & Associates	Civil	\$ 143,000	143,000			\$ 143,000		Asian	
Regent Construction Management	Construction Manager	\$ 231,600	231,600	231,600	231,600			Latinx	
Fire Consultants	Code Consultant	\$ 75,400	\$ 75,400						
Plural	Landscape	182,589	182,589	182,589			182,589		
DCI/OLMM	Structural (Prime + Associate)	\$ 267,000	\$ 56,070	\$ 56,070	\$ 56,070			SE Asian	
Meyers + SJ	Mechanical/Plumbing/Fire (Prime + Associate)	\$ 327,000	\$ 327,000	\$ 327,000	\$ 327,000			Asian	
Highline Consulting	Exterior Building Maintenance	\$ 54,000	\$ 54,000						
Tucci	Lighting	76,830	76,830	76,830			76,830		
CSDA Design Group	Accoustic	\$ 33,100	\$ 33,100						
AR Green Consulting	Green Consultant / Energy Modeling	31,350	31,350	31,350		31,350		Latinx	
California Housing Partnership	Financial	78,000							
Chronicle Heritage	Archaeology	33,279							
Martin Ron Associates Inc.	Surveyor	24,770	24,770	24,770					
AEW Engineering	Environmental	\$ 27,425	27,425	27,425	27,425			Asian	
Langan (association with Divis)	Geotech	185,700	185,700	185,700					
Newport Realty Advisors, LLC	Market Study	25,000	25,000	25,000	25,000			Latinx	
American Trash Management	Trash	\$ 13,600							
Urban Design Consulting Engineers	Jt. Trench Consultant	99,350	99,350	99,350	99,350			Asian	
Dale Durrett Consulting	Permit Expeditor	64,464							
4EA	Envelope	\$ 91,600							
Person & Hahn	Elevator	\$ 23,450							
Tree Management Experts	Arborist	\$ 5,040	\$ 5,040	\$ 5,040					
Community Development Resource Group	Financial	\$ 49,213	\$ 49,213	\$ 49,213					
R. Blum & Associates	Appraisal	\$ 15,000	\$ 15,000	\$ 15,000					
Kanyon Konsulting	Native American Monitoring	\$ 5,000							
Radius Services	Radius	\$ 2,250							
Murphy Burr Curry	Seismic	\$ 5,000	\$ 5,000	\$ 5,000					
American Trash Management	Trash	\$ 13,600							
Applied GeoDynamics, Inc.	Geotech	\$ 32,500	\$ 32,500						
Essel Environmental	Environmental	\$ 8,105							
Total		\$ 4,659,215	\$ 4,114,937	\$ 3,776,937	\$ 1,620,748	\$ 174,350	\$ 1,840,116		
% of Total Fees			88.3%	81.1%	34.8%	3.7%	39.5%		

* Full SBE credit is granted to joint ventures and associations where the SBE partner performs at least 35% of the joint venture or association agreement.

** Ethnicity and/or gender data were gathered from third-party sources and presented for informational purposes only. Such data have not been verified.

Prime Sub/Subcontractant	2nd or 3rd Tier Subcontractants	Scope of Work	Status	Subcontract Amount	Finalized Subcontracts	SBE Portion	SF SBE	MBE	WBE	M/WBE
	2nd					Amount	Amount	Amount	Amount	Amount
		Construction Aids	Bid	\$ 1,400,000						
		Temp Cranes	Bid	\$ 1,810,093						
		Temp Scaff & Platforms	Bid	\$ 146,545						
		Construction Surveying	Bid	\$ 163,201						
		Final Cleaning	Budget	\$ 184,000						
A&B Construction	Garrison Demolition JV	Selective Site Demo	Bid	\$ 253,000	\$ 253,000	\$ 253,000				
		Concrete - Superstructure	Bid	\$ 18,019,472						
		Precast Architectural Concrete	Bid	\$ 6,178,254						
		Metal Fabrications	Bid	\$ 2,389,447						
Pacific Stairs	BEU JV	Metal Stairs	Bid	\$ 992,766	\$ 992,766	\$ 992,766	\$ 992,766			\$ 992,766
Pacific Stairs	BEU JV	Lobby Stairs	Bid	\$ 22,450	\$ 22,450	\$ 22,450	\$ 22,450			\$ 22,450
		Rough Carpentry	Budget	\$ 152,444						
		Finish Carpentry	Budget	\$ 656,875						
		Architectural Woodwork	Budget	\$ 164,025						
		Wood Paneling	Budget	\$ 180,020						
		Dampproofing and Waterproofing	Bid	\$ 1,201,728						
		Fluid-Applied Waterproofing	Bid	\$ 87,912						
		Traffic Coatings	Bid	\$ 46,678						
		Thermal Insulation	Budget	\$ 9,296						
		Metal Wall	Budget	\$ 89,892						
		Membrane Roofing	Budget	\$ 213,269						
		Built-Up Bituminous Roofing	Budget	\$ 199,180						
		Thermoplastic Membrane Roofing	Budget	\$ 5,375						
		Flashing and Sheet Metal	Budget	\$ 479,784						
		Joint Firestopping	Budget	\$ 290,760						
		Joint Sealants	Budget	\$ 120,485						
		Hollow Mtl Drs & Frames	Bid	\$ 963,600						
		Unit Entry Doors	Bid	\$ 526,400						
		Flush Wood Doors	Bid	\$ 1,885,730						
		Coiling Doors & Gillies	Budget	\$ 32,000						
		Aluminum-Framed Entrances and Storefronts	Bid	\$ 774,625						
		Curtain Wall and Glazed Assemblies	Bid	\$ 10,445,184						
		Metal Windows	Plug	\$ 412,500						
		Aluminum Windows	Bid	\$ 2,626,327						
		Testing and Mockups	Bid	\$ 464,384						
		Interior Glazing	Budget	\$ 372,400						
		Louvers	Bid	\$ 442,311						
		Plaster and Gypsum Board	Bid	\$ 12,926,008						
		Cement Plastering	Budget	\$ 104,580						
		Tiling	Budget	\$ 178,739						
		Acoustical Ceilings	Budget	\$ 325,118						
		Resilient Flooring	Bid	\$ 1,146,488						
		Painting	Budget	\$ 1,883,013						
		Signage	Budget	\$ 133,855						
		Wall and Door Protection	Budget	\$ 157,245						
		Toilet Accessories	Budget	\$ 222,065						
		Fire Protection Specialties	Budget	\$ 27,778						
		Postal Specialties	Budget	\$ 33,706						
		Wardrobe and Closet Specialties	Budget	\$ 8,629						
		Pest Control Devices	Budget	\$ 53,963						
		Commercial Equipment	Budget	\$ 10,000						
SIFCO	BEI	Maintenance Equipment	Bid	\$ 394,486	\$ 394,486	\$ 27,614	\$ 27,614			\$ 27,614
		Residential Appliances	Bid	\$ 526,226						
		Amenity Appliances	Bid	\$ 7,300						
		Dog Wash	Budget	\$ 10,000						
		Window Treatments	Budget	\$ 173,959						
		Casework	Bid	\$ 170,338						
		Residential Casework	Bid	\$ 162,710						
		Solid Surface Countertops	Bid	\$ 729,705						
		Entrance Floor Mats and Frames	Budget	\$ 8,750						
		Furniture	Budget	\$ 5,000						
		Bicycle Racks	Budget	\$ 122,952						
Mitsubishi		Drawers	Bid	\$ 2,051,770	\$ 2,051,770	\$ -				
Specialties Etc.		Facility Chutes	Bid	\$ 369,177	\$ 369,177	\$ 369,177	\$ 369,177			\$ 369,177
Superior		Fire Suppression	Bid	\$ 2,277,875	\$ 2,277,875	\$ -				
JMW	JV/TBD	Plumbing	Bid	\$ 9,093,191	\$ 9,093,191	\$ 9,093,191	\$ 9,093,191			
		HVAC	Bid	\$ 8,068,283						
Brayer	TBD	Electrical	Bid	\$ 16,352,023	\$ 16,352,023	\$ 1,200,000	\$ 1,200,000			
InterMountain Electric Co.		Photovoltaic Collectors	Bid	\$ 127,534	\$ 127,534					
		Earthwork	Bid	\$ 1,179,767						
Drill Tech	Howley Corp, Pflüger Drilling	Deep Soil Mixing 405/R	Bid	\$ 1,829,300	\$ 1,829,300	\$ 237,809	\$ 237,809			
		Shoring	Bid	\$ 551,110						
		Asphalt Paving	Budget	\$ 61,310						
		Concrete Paving	Budget	\$ 411,739						
		Decorative Concrete Paving	Budget	\$ 142,800						
		Unit Paving	Budget	\$ 153,670						
		Pavement Markings	Budget	\$ 5,000						
		Site Improvements	Budget	\$ 196,525						
		Fences & Gates	Budget	\$ 10,500						
		Landscape Furnishings	Budget	\$ 195,429						
		Landscaping	Budget	\$ 198,570						
		Street Scapes	Budget	\$ 183,160						
		turf & grasses	Budget	\$ 8,025						
Kingdom Pipelines		Site Utilities	Bid	\$ 678,629	\$ 678,629	\$ 678,629	\$ 678,629			
Phoenix Electric		Joint Trench	Bid	\$ 481,600						
Swinerton/Rubecon JV		General Conditions and Insurance	Bid	\$ 19,295,590	\$ 19,295,590	\$ 19,295,590	\$ 19,295,590			
		Allowance 1	Budget	\$ 762,899						
		Total		\$ 140,112,698	\$ 54,219,391	\$ 32,170,226	\$ 31,917,226	\$ -	\$ 1,412,007	\$ -
		Percentages				59.3%	58.9%	0.0%	2.6%	0.0%

ATTACHMENT 8: Consultant Biographies – Transbay Block 2 East

Kennerly Architecture & Planning (Prime Architect)

Founded in 2004, Kennerly Architecture & Planning, Inc. has made urban buildings and place-making a cornerstone of its practice. Working primarily in San Francisco, the work reconciles the sensitivities of neighborhood context with the high level of design and amenity which stakeholders demand. Starting with multi-unit infill buildings and residences, the projects have grown to include complex mixed-use and high-rise projects on challenging infill and brown-field sites throughout the Bay Area. Working at a range of scales from homes to high rises, interior design to urban planning, the firm has developed a reputation for the thoughtful integration of program, constraints, and high-design aspiration. Kennerly Architecture & Planning is a Woman-Owned San Francisco Local Business Enterprise and Micro Local Business Enterprise.

Plural (Landscape Architect)

Plural co-founders Carrie, Scott, and Haley built a friendship founded on mutual respect and an appreciation of each other's design approaches, values, and commitment to building great places. After collaborating for many years we came together in 2019 to form Plural, a Women-Owned San Francisco Local Business Enterprise & Micro Local Business Enterprise. Respect and delight guide our practice. We respect the diverse cultures, communities, and environments in which we work and the ideas and the contributions of our many collaborators. We bring delight to our process, to our designs, and to the people who experience them. Plural's body of work comprises over twenty years of experience on a variety of landscape types. We believe great places require many different people working together to envision, to build, and to steward them. And great places welcome everyone.

AR Green Consulting (Sustainability)

AR Green Consulting is a certified small, woman-owned, local business in San Francisco founded by Adhamina Rodriguez in 2015. AR Green specializes in green building consulting, certification, and training, and is a recognized Innovator Green Business by SF Environment. Having worked on hundreds of projects, AR Green brings solid experience to the team, and a holistic approach to green buildings that anticipates gaps in scope, highlights the synergies among the different systems, and maximizes the points in the desired green building certification rating system.

OLMM (Structural Engineer)

OLMM Consulting Engineers, a local minority owned business is a reputable and award-winning structural engineering firm with offices in San Francisco and Oakland. We provide complete structural design, seismic analysis, and retrofit design services to both public and private sector clients. Firm is highly disciplined and has always prided itself in meeting schedules and bringing in projects within established budgets. Our solutions to structural challenges are not only imaginative and innovative but also practical and cost-effective. Our contributions have helped achieve LEED and Green Point certification for major projects.

Regent Construction Management LLC (Construction Manager/Owner's Representative)

This company is a minority owned business that has been in business for 27 years. I have built, managed, estimated, or consulted on a wide variety of projects throughout the Bay Area, Sacramento, Napa Valley, and parts of the Central Valley. In 2007, I established Regent Construction Management, LLC. Prior to establishing Regent, I worked for Cahill Contractors, Inc., one of San Francisco's leading and most reputable General Contractors. While at Cahill I held positions ranging from hands on Field Engineer, to Pre-Con Estimator/Project Manager and for the last 6 years I served as Sr. Project Manager, overseeing multiple teams, and earning a reputation for hands on involvement and attention to detail. Regent Construction Management incorporates into the project team and provides services necessary to keep Pre-Construction, Construction and Turn Over successfully moving forward, on schedule and budget.

Newport Realty Advisors (Market Study)

Newport Realty Advisors LLC is a Real Estate Consulting Firm providing Economic and Market Advisory Services to Financial Institutions, Public Agencies, Private Real Estate Investment Firms, Syndicators, Equity Partners, Debt Lenders, Not-For-Profit Development Firms and Market Rate Developers throughout California.