

File No. 191300

Committee Item No. 8  
Board Item No. 11

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date January 8, 2020

Board of Supervisors Meeting

Date January 14, 2020

**Cmte Board**

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

**OTHER** (Use back side if additional space is needed)

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|-------------------------------------|-------------------------------------|------------------------------------|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Declaration of Restrictions</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Deed of Trust</u>               |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Secured Promissory Note</u>     |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____                              |
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Completed by: Linda Wong Date January 3, 2020  
Completed by: Linda Wong Date January 8, 2020

1 [Loan Agreement - Maceo May Apts, L.P. - 100% Affordable Housing at 401 Avenue of the  
2 Palms - Not to Exceed \$24,255,000]

3 **Resolution approving and authorizing the execution of a Loan Agreement with Maceo**  
4 **May Apts, L.P., a California limited partnership, in an amount not to exceed \$24,255,000**  
5 **for a minimum term of 57 years, to finance the construction of a 100% affordable, 105-**  
6 **unit multifamily rental housing development (plus one staff unit) for low and moderate**  
7 **income veteran households at 401 Avenue of the Palms; and adopting findings that the**  
8 **Loan Agreement is consistent with the General Plan, and the eight priority policies of**  
9 **Planning Code, Section 101.1.**

10  
11 WHEREAS, The City and County of San Francisco, acting through the Mayor's Office  
12 of Housing and Community Development ("MOHCD"), administers a variety of housing  
13 programs that provide financing for the development of new housing and the rehabilitation of  
14 single- and multi-family housing for low- and moderate-income households in San Francisco;  
15 and

16 WHEREAS, MOHCD enters into loan agreements with affordable housing developers  
17 and operators; administers loan agreements; reviews annual audits and monitoring reports;  
18 monitors compliance with affordable housing requirements in accordance with capital funding  
19 regulatory agreements; and if necessary, takes appropriate action to enforce compliance; and

20 WHEREAS, The Treasure Island Development Authority ("TIDA") acquired real  
21 property from the United States Navy at Treasure Island and Yerba Buena Island for the  
22 purpose of developing residential and commercial building, including the development of 435  
23 units of affordable housing by members of the Treasure Island Homeless Development  
24 Initiative (the "Project"); and  
25

1           WHEREAS, A Finding of Suitability was approved on February 15, 2006, and a Final  
2 Environmental Impact Report ("EIR") for the Treasure Island/Yerba Buena Island  
3 Redevelopment Project was certified on April 21, 2011, by the Board of Supervisors under  
4 Resolution 246-11, which Resolution is on file with the Clerk of the Board of Supervisors in  
5 File No. 110328, and incorporated herein by this reference; and

6           WHEREAS, Mitigation measures were identified in the Treasure Island and Yerba  
7 Buena Island Mitigation Monitoring and Reporting Program for the Project; and

8           WHEREAS, The Planning Commission determined that the Project, and the various  
9 actions being taken by the City and TIDA to approve and implement the Project, are  
10 consistent with the General Plan, and with the eight priority policies of Planning Code, Section  
11 101.1, and made findings in connection therewith (the "General Plan Consistency  
12 Determination"), a copy of which is on file with the Clerk of the Board of Supervisors in File  
13 No. 110228 and is incorporated into this Resolution by reference; and

14           WHEREAS, The Board of Supervisors adopted findings contained in the General Plan  
15 Consistency Determination as its own under Resolution No. 241-11, and said findings of  
16 consistency with the General Plan, are on file with the Clerk of the Board of Supervisors in  
17 File No. 110228, and incorporated into this Resolution by reference; and

18           WHEREAS, TIDA and Treasure Island Community Development, LLC, entered into  
19 that certain Disposition and Development Agreement dated June 28, 2011 (the "DDA"), and  
20 pursuant to the Housing Plan (Exhibit E) of the DDA, TIDA is committed to the development of  
21 affordable housing; and

22           WHEREAS, TIDA is the fee owner of Assessor's Parcel C3.2, San Francisco, also  
23 known by its street address as "401 Avenue of the Palms" (the "Property"), a land parcel with  
24 approximately 32,203 square feet area; and  
25

1           WHEREAS, Chinatown Community Development Corporation, a California nonprofit  
2 public benefit corporation ("CCDC) and Swords to Plowshares, a California nonprofit public  
3 benefit corporation ("STP") were selected by TIDA pursuant to the DDA to jointly develop a  
4 100% affordable, supportive housing project with approximately 105 rental units for low-  
5 income veteran households on the Property (the "Maceo Project"); and

6           WHEREAS, STP and CCDC established a separate entity named Maceo May Apts,  
7 L.P., a California limited partnership ("Sponsor") under which to lease the Maceo May  
8 Property from TIDA and develop the Maceo Project; and

9           WHEREAS, On March 14, 2018, TIDA and Maceo May Apts, L.P. entered into an  
10 Option to Lease Agreement for the purpose of development and construction of the Maceo  
11 Project; and

12           WHEREAS, On November 15, 2019, the Citywide Affordable Housing Loan  
13 Committee, consisting of MOHCD, Department of Homeless and Supportive Housing, and the  
14 Office of Community Investment and Infrastructure, recommended approval to the Mayor of a  
15 loan for the Maceo Project in an amount not to exceed \$24,255,000; and

16           WHEREAS, To leverage equity from an allocation of low-income housing tax credits,  
17 issuance of tax exempt bonds, and other funding sources in order for Sponsor to construct the  
18 Maceo Project, MOHCD desires to provide a loan in the amount not to exceed \$24,255,000 to  
19 the Sponsor pursuant to a Loan Agreement ("Agreement") in substantially the form on file with  
20 the Clerk of the Board of Supervisors in File No. 191300, and in such final form as approved  
21 by the Acting Director of MOHCD and the City Attorney; and

22           WHEREAS, The material terms of the Agreement include: (i) a minimum term of 57  
23 years; (ii) an interest rate of up to one percent (1%); (iii) annual repayment of the loan through  
24 residual receipts from the Maceo Project; (iv) the Maceo Property shall be restricted for the life  
25 of the Project as affordable housing to low- and moderate-income veteran households with

1 annual maximum rent and income established by MOHCD; (v) the loan shall be secured by a  
2 deed of trust recorded against the Sponsor's leasehold interest in the Maceo Property; now,  
3 therefore, be it

4 RESOLVED, That the Board of Supervisors hereby finds that the Maceo Project is  
5 consistent with the General Plan, and with the eight priority policies of Planning Code, Section  
6 101.1 for the same reasons as set forth in the General Plan Consistency Determination; and,  
7 be it

8 FURTHER RESOLVED, That the Board of Supervisors hereby approves the  
9 Agreement and authorizes the Mayor and the Acting Director of MOHCD or his designee to  
10 enter into any amendments or modifications to the Agreement (including, without limitation,  
11 preparation and attachment or, or changes to, any of all of the exhibits and ancillary  
12 agreements) and any other documents or instruments necessary in connection therewith that  
13 the Acting Director determines, in consultation with the City Attorney, are in the best interest  
14 of the City, do not materially increase the obligations or liabilities for the City or materially  
15 diminish the benefits of the City, are necessary or advisable to effectuate the purposes and  
16 intent of this Resolution and are in compliance with all applicable laws, including the City  
17 Charter; and, be it

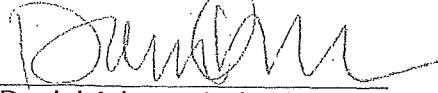
18 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes and  
19 delegates to the Mayor and Acting Director of MOHCD, and his designee, the authority to  
20 undertake any actions necessary to protect the City's financial security in the Maceo Property  
21 and enforce the affordable housing restrictions, which may include, curing the default under a  
22 senior loan; and, be it

23 FURTHER RESOLVED, That all actions authorized and directed by this Resolution and  
24 heretofore taken are hereby ratified, approved and confirmed by this Board of Supervisors;  
25 and, be it

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FURTHER RESOLVED, That within thirty (30) days of the Agreement being fully executed by all parties, MOHCD shall provide the final Agreement to the Clerk of the Board for inclusion into the official file.

RECOMMENDED:



Daniel Adams, Acting Director  
Mayor's Office of Housing and Community Development

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<p><b>Item 8</b> <b>Files 19-1300</b></p>	<p><b>Department:</b> Mayor's Office of Housing &amp; Community Development</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<ul style="list-style-type: none"> <li>• The proposed resolution would (1) approve a loan agreement between the Mayor's Office of Housing and Community Development (MOHCD) and Maceo May Apts, L.P., a California limited partnership consisting of Chinatown Community Development Center and Swords to Plowshares, in an amount not to exceed \$24,255,000, and (2) confirm that the loan agreement and ground lease are consistent with the City's General Plan.</li> </ul>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• The Disposition and Development Agreement between the Treasure Island Development Authority (TIDA) and Treasure Island Community Development, LLC, the master developer for the Treasure Island project that includes 1,684 affordable units. The Maceo May Apartments project would develop 104 affordable housing units, including 39 replacement units for veteran households on the Island and 65 new units for formerly homeless veterans.</li> <li>• TIDA selected Swords to Plowshares, a veterans' support organization, to develop the first affordable housing project, in large part because TIDA is applying for State Veterans Housing and Homelessness Prevention Program funds. Swords to Plowshares formed a limited partnership with Chinatown Community Development Center – Maceo May Apts. L.P. – to develop the 104 affordable housing units.</li> <li>• TIDA will ground lease the land to Maceo May Apts. L.P, for a term of up to 99 years. According to MOHCD staff, the ground lease does not require Board of Supervisors approval.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• Total project costs are \$74.2 million. Of this amount, \$24.3 million are City loans funded by excess Educational Revenue Augmentation Funds (ERAF), federal Housing and Urban Development (HUD) grant funds, Inclusionary Housing fees, and the City's Low and Moderate Income Housing fund. The balance of total project costs will be funded by approximately \$49.9 million in Federal, State, and private loans and grants to Maceo May Apts, L.P.</li> <li>• The City subsidy to the Maceo May Apartments project is \$231,000 per unit. According to MOHCD, the City subsidy per unit is determined by total available financing, unit count, target population, subsidies for other projects of comparable size, and other factors.</li> </ul>	
<p style="text-align: center;"><b>Recommendation</b></p>	
<ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	



**MANDATE STATEMENT**

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

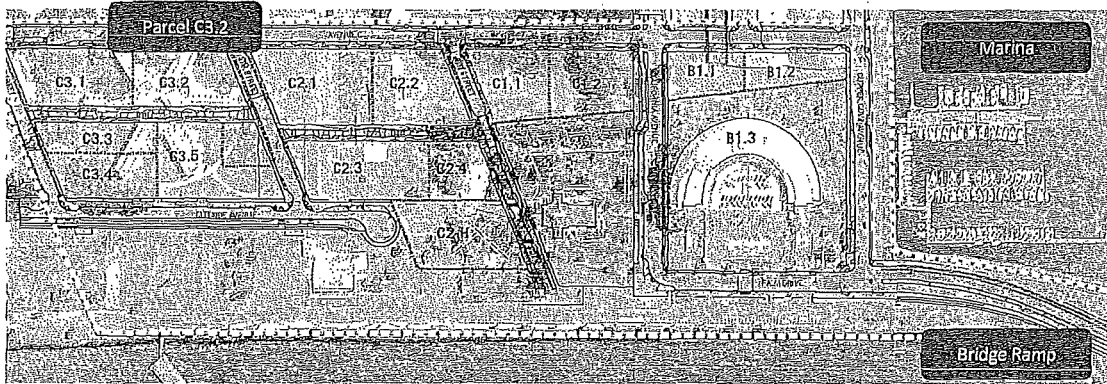
**BACKGROUND***Low-Income Housing on Treasure Island*

The City is funding the first phase of development of affordable housing on Treasure Island as part of the Treasure Island/Yerba Buena Island Redevelopment Plan. The Treasure Island/Yerba Buena Development Project is part of the Treasure Island Development Authority's (TIDA) ongoing project to transition Treasure Island and a portion of Yerba Buena Island from a former military base to a residential and commercial development. In June 2011, the Board of Supervisors approved the Disposition and Development Agreement (DDA) between TIDA and Treasure Island Community Development, LLC (TICD), the master developer for the Treasure Island development project (File 11-0291).

The DDA's Housing Plan requires approximately 8,000 new residential units, at least 25 percent of which will be made affordable to low and moderate-income households. According to the Housing Plan, 1,684 units are 100 percent affordable housing projects and the balance are below market rate inclusionary rental or ownership units; of the 1,684 affordable housing units, a minimum of 435 are reserved for homeless households, including 250 replacement units for current Treasure Island households who were formerly homeless and who will be displaced by the Treasure Island/Yerba Buena Development Project. The 250 replacement units must be developed before any new affordable units are developed.

The DDA allows the master developer to select development partners for the Treasure Island/Yerba Buena Island Development Project. In 2018, four nonprofits<sup>1</sup> were authorized to develop affordable housing projects, including selecting development partners. According to the March 2018 staff report to the TIDA Board of Directors, TIDA selected Swords to Plowshares, a veterans' support organization, to develop the first affordable housing project, in large part because TIDA is applying for State Veterans Housing and Homelessness Prevention Program funds. Swords to Plowshares formed a limited partnership with Chinatown Community Development Center – Maceo May Apts. L.P. – to develop parcel C3.2, shown in the Exhibit 1 below.

<sup>1</sup> The four non-profit supportive housing operators selected by the master developer were Swords to Plowshares, Community Housing Partnership, Catholic Charities, HealthRight360.

**Exhibit 1: Parcel C3.2 for Development of Maceo May Apartments**

Source: March 2018 Staff Report to TIDA Board of Directors

*The Maceo May Apartments Project*

The Maceo May Apartments will be a mixed use six-story building, with 104 units of income-restricted housing and one resident manager unit. The 105-unit building will consist of 24 studios, 47 one-bedroom units and 33 two-bedroom units. Of these units, 39 will serve as replacement housing for Swords to Plowshares' 39 existing veteran households on the island. In addition to the replacement housing, the Maceo May Apartments will add 65 new project-based Veterans Affairs Supportive Housing (VASH) units for formerly homeless veterans.<sup>2</sup>

All units (except the manager's unit) are income restricted to households that earn less than 80 percent MOHCD AMI. The property will be co-managed by Chinatown Community Development Center and Swords to Plowshares. Building amenities include a community room with attached kitchen, offices for staff providing property management and resident services, and 19 parking spaces. Construction is expected to occur from 2020 to 2022.

*Acquisition of Land and Ground Lease*

The Treasure Island Development Authority (TIDA) acquired the property from the United States Navy for the purpose of residential and commercial development. According to Ms. Cindy Heavens, Senior Project Manager at the Mayor's Office of Housing and Community Development, a ground lease between TIDA and the Maceo May Apts. L.P. will be submitted to the Executive Director of TIDA for approval.<sup>3</sup> According to Ms. Heavens, that ground lease terms will be consistent with the Option to Lease Agreement previously executed by TIDA's Executive Director, and with the Mayor's Office of Housing and Community Development (MOHCD) ground leases for affordable housing, including a term of up to 99 years, annual rent consisting of \$15,000 base rent and residual rent in the event that the project generates net

<sup>2</sup> The federal Department of Housing and Urban Development (HUD) allocates housing vouchers to local housing authorities, including tenant-based vouchers to subsidize households' rent in the private market, and project-based vouchers to subsidize specific housing units. The Veterans Affairs Supportive Housing (VASH) project-based vouchers subsidize supportive housing for veterans.

<sup>3</sup> According to Ms. Cindy Heavens, who consulted with City legal counsel, the ground lease does not require Board of Supervisors approval.

revenues. According to MOHCD, the Maceo May Apartments project is not expected to generate sufficient net revenues to make residual rent payments under the proposed Ground Lease.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would (1) approve and authorize the execution of a Loan Agreement between MOHCD, acting on behalf of the City and County of San Francisco, and Maceo May Apts, L.P., a California limited partnership consisting of Chinatown Community Development Center and Swords to Plowshares, in an amount not to exceed \$24,255,000 for a minimum term of 57 years to finance the construction of the Maceo May Apartments, a 100% affordable, 105-unit multifamily rental housing development (plus 1 staff unit) for low and moderate income veteran households, and (2) confirm that the loan agreement and ground lease are consistent with the City's General Plan. The purpose of this loan is to finance the construction of 104 affordable housing units and one residential manager unit.

*Loan Agreements*

The original loan agreement provided by MOHCD in 2018 was for \$6,562,000 for predevelopment costs. MOHCD proposes to amend the original loan agreement to increase the loan amount by \$17,693,000 to complete development and construction, including permanent financing. Under the proposed amended loan agreement, the total loan amount to Maceo May Apts L.P. would increase to \$24,255,000, shown in Exhibit 2 below.

**Exhibit 2: MOHCD Loans to Maceo May Project**

**Sources**

Excess Educational Revenue Augmentation Fund (ERAF)	\$11,000,000
HUD HOME Grant	\$3,600,000
Low and Moderate Income Housing Fund	\$2,000,000
Affordable Housing Fund Inclusionary Housing Fees	<u>\$7,655,000</u>
Total Sources	<u>\$24,255,000</u>

**Uses**

Predevelopment loan	\$6,562,000
New loan (File 19-1300)	<u>\$17,693,000</u>
Total Uses	<u>\$24,255,000</u>

Source: Proposed Loan Agreement

\* According to the proposed loan agreement, a portion of the funding provided by the Affordable Housing Fund will function as a bridge loan funded by Affordable Housing Inclusionary fees, pending receipt of expected loan funds from the Federal Home Loan Bank Affordable Housing Loan Program.

Maceo May Apts L.P. must repay the loan by the 57<sup>th</sup> anniversary date of the deed of trust. Interest will accrue on the principal balance outstanding from time to time at the rate of 1% per annum, from the date of the close of escrow through the date of full payment of all amounts owed.

*Affordability Restrictions*

The proposed loan agreement includes a Declaration of Restrictions that controls the affordability of the units in the proposed development for the life of the project, which 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. All units (except the manager's unit) are income restricted to households that are less than 80% MOHCD AMI.

**FISCAL IMPACT**

**Affordable Housing Development at Parcel C3.2**

The total development cost for the 105 units of housing is \$74,175,996, as shown in Table 2 below. Of the approximate \$74.2 million, \$24.25 million (32.7%) are City funds, \$10 million (13.5%) are State funds, and \$39.2 (53.8%) million are private funds.

**Exhibit 3: Maceo May Apartments Total Development Sources and Uses of Funds**

Sources	City	State	Private	Total
MOHCD Loans	\$24,255,000			\$24,255,000
State Veterans Housing & Homelessness Prevention (VHHP)		10,000,000		10,000,000
General Partner Equity			548,393	548,393
Permanent Loan			9,501,482	9,501,482
Equity Contribution for Sale of 4%			29,093,852	29,093,852
Low Income Housing Tax Credits			777,269	777,269
Deferred Developer Fee				
	\$24,255,000	\$10,000,000	\$39,920,996	\$74,175,996
<b>Uses</b>				
Acquisition costs	\$15,000			\$15,000
Soft Costs (incl. 7.2% contingency)	11,527,764			11,527,764
Construction (incl. 5.4% contingency)	9,311,811	10,000,000	38,595,334	57,907,145
Reserves	1,226,087			1,226,087
Developer Fees	2,174,338		1,325,662	3,500,000
<b>Totals</b>	<b>\$24,255,000</b>	<b>\$10,000,000</b>	<b>\$39,920,996</b>	<b>\$74,175,996</b>

Source: MOHCD

Funding Sources

MOHCD previously entered into loan agreement with Maceo May Apts L.P. for \$6,562,000 to pay for initial planning and development costs; MOHCD's proposes to amended the original loan, increasing the loan amount by \$17,693,000 to complete development and construction activities, including permanent financing related to the Project, for a total City loan amount of

\$24,255,000.<sup>4</sup> Sources of funds for the proposed amended and restated loan of \$24,255,000 include:

- \$11,000,000 in Excess Education Revenue Augmentation Funds, appropriated under the Affordable Housing Production and Preservation Fund;
- \$3,600,00 in HUD HOME Grant Funds;<sup>5</sup>
- \$2,000,000 in Low and Moderate Income Housing Funds (LMIHF);<sup>6</sup>
- \$7,655,000 in Affordable Housing Fund Inclusionary fees, paid by developers of market rate housing.

State funding for the project includes \$10,000,000 in State Veterans Housing & Homelessness Prevention (VHHP) Program loans to Maceo May Apartments L.P.

Maceo May Apts L.P. funding for the project consists of \$39,920,996 including:

- \$29,642,245 in equity contributions, of which (a) \$548,393 is general partner equity, and (b) \$29,093,852 is limited partner equity provided by the federal low-income housing tax credit investor, serving as the limited partner in the limited partnership).<sup>7,8</sup>
- \$777,269 is deferred developer fees, which are fees that would otherwise be paid to the developer for managing planning and construction of the affordable housing project.<sup>9</sup>

#### *The City's Subsidy per Housing Unit*

The total per housing unit City subsidy is \$231,000, as shown in Table 3 below. This subsidy amount includes the 105 housing units. The total development cost for the 105 units is \$74,175,996, or \$706,538 per unit.

<sup>4</sup> As noted above, \$1,040,000 of the City loan of \$24,255,000 is a bridge loan pending receipt of \$1,040,000 in a Federal Home Loan Bank Affordable Housing Program Loan.

<sup>5</sup> The HOME Investment Partnerships Program (HOME) provides formula grants for cities and counties to fund the construction, acquisition or rehabilitation of affordable housing.

<sup>6</sup> LMIHF Fund monies are from repayment of loans previously made by former redevelopment agency housing assets transferred to the City and County of San Francisco.

<sup>7</sup> Under Internal Revenue Service (IRS) regulations and for the purpose of eligibility for low income housing tax credits, the non-profit (tax exempt) partner in the limited partnership serves as the general manager and retains a nominal percentage interest, and the investors (which are not tax exempt) serve as limited partners, obtaining the majority financial interest, including profits, losses, deductions, and credits. CCDC is affiliated with CCDC-Maceo May Apts LLC, which is the general partner in the limited partnership Maceo May Apts, L.P. CCDC has a 49.95% ownership interest and CCDC-Maceo May Apts. LLC has a .005% interest. Similarly, Swords to Plowshares is affiliated with Swords-Maceo May Apts LLC, which is the general partner in Maceo May Apts L.P. Swords to Plowshares has a 49.995% ownership interest, and Swords-Maceo May Apts LLC has a .005% ownership interest in the limited partnership.

<sup>8</sup> The IRS allocates a specific amount of federal low income housing tax credits to each state, which in California are allocated to local jurisdictions and affordable housing developers by the State Treasurer's California Tax Credit Allocation Committee.

<sup>9</sup> Deferred developer fees are included in the project budget both as a source and use of funds; the deferred developer fee is included in the eligible basis for calculating tax credits.

**Table 3: City Subsidy for Affordable Housing Units**

Number of units	105
Total residential area (sq. ft.)	68,488
Total City subsidy	\$24,255,000
City Subsidy per unit	\$231,000
City Subsidy per sq. ft.	\$354

Source: MOHCD

According to Ms. Amy Chan, Director of Policy and Legislative Affairs for MOHCD, the City subsidy per unit is determined on a project-by-project basis. When evaluating the level of subsidy, MOHCD compares the project to similar projects in size, unit count, target population, construction type and overall development costs. Financing factors also considered are: if the project budget includes acquisition costs, the amount of non-city sources leveraged, tax credit pricing and loan interest assumptions, target affordability levels, and if a rental or operating subsidy are part of the program, which helps maximize the amount of debt the project can leverage.

**Operating Revenues and Expenses**

According to the 20-year cash flow analysis for the Maceo May Apartments project, the project will have sufficient revenues to cover operating expenses, operating reserves, construction loan payments, management fees, and partial principal payments on the MOHCD and California Department of Housing and Community Development loans. Project revenues consist of tenant rents, income from project-based Veterans Affairs Supportive Housing vouchers allocated by the San Francisco Housing Authority and Continuum of Care funding, administered through the Department of Homelessness and Supportive Housing, for 102 units or 97 percent of the total units. One unit is supported by a Section 8 tenant-based voucher, and 1 unit is an unsubsidized household at 50% AMI. According to Ms. Heavens, there is no local operating subsidy. As noted above, the Maceo May Apartments project is not expected to generate sufficient net revenues to make residual rent payments under the proposed Ground Lease.

**RECOMMENDATION**

Approve the proposed resolution.

**DRAFT FOR COMMENT ONLY**

**LOAN AGREEMENT  
(CITY AND COUNTY OF SAN FRANCISCO  
HOME PROGRAM;  
AFFORDABLE HOUSING FUND INCLUSIONARY AFFORDABLE HOUSING  
PROGRAM; EXPEDITED CONVERSION PROGRAM; ERAF AFFORDABLE  
HOUSING PRODUCTION AND PRESERVATION FUND; LOW MODERATE  
INCOME HOUSING ASSET FUND)**

By and Between

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

and

**MACEO MAY APTS, L.P.,**  
A California limited partnership,

for

**MACEO MAY APARTMENTS**  
**Treasure Island Parcel**  
**C3.2 Temp address: 401 Avenue of the Palms, San Francisco**  
**(\$24,255,000)**  
**ERAF: \$ 11,000,000**  
**HOME: \$ 3,600,000**  
**LMIHA: \$2,000,000**  
**AHF INCLUSIONARY: \$ 7,655,000**

Dated as of \_\_\_\_\_

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## LOAN AGREEMENT

(City and County of San Francisco

HOME Program / Affordable Housing Fund: (Inclusionary Affordable Housing Program and Expedited Conversion Program)/ ERAF Affordable Housing Production and Preservation Fund/Low Moderate Income Housing Asset Fund)

**C3.2 Temp address: 401 Avenue of the Palms, San Francisco**

**THIS LOAN AGREEMENT** ("Agreement") is entered into as of \_\_\_\_\_, by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "City"), represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development ("MOHCD"), and **MACEO MAY APTS, L.P.**, a California limited partnership ("Borrower").

### RECITALS

A. The City is authorized under a HOME Investment Partnership Agreement with the United States Department of Housing and Urban Development ("HUD"), executed pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. §§ 12701 *et seq.* and 24 CFR §§ 92) to distribute HOME Investment Partnership Program ("HOME") funds under this Agreement (the "HOME-Funds") for the specific and special purpose of increasing the housing stock in the City for low- and very low-income persons.

B. Under the Inclusionary Affordable Housing Program set forth in Sections 415.1 *et seq.* of the San Francisco Planning Code, the Citywide Affordable Housing Fund receives in-lieu Affordable Housing Fees ("Fees") paid by housing developers to satisfy requirements of the Inclusionary Affordable Housing Program. The City may use the Fees received by the Citywide Affordable Housing Fund (the "Affordable Housing Fund") to finance housing affordable to qualifying households. MOHCD administers the Funds pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them.

C. Under the Expedited Conversion program set forth in Section 1396.4 of the San Francisco Subdivision Code, the Citywide Affordable Housing Fund receives fees relating to the conversion of dwelling units into condominiums ("Fees"). The City may use the Fees received by the Citywide Affordable Housing Fund (the "Affordable Housing Fund") to finance housing affordable to qualifying households. MOHCD administers the Funds pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them.

D. The San Francisco Board of Supervisors designated the Mayor's Office of Housing and Community Development the Successor Housing Agency of the San Francisco Redevelopment Agency, effective February 1, 2012, upon dissolution of state redevelopment agencies. Pursuant to California Assembly Bill 1484, the Successor Housing Agency was required to create a fund called the Low and Moderate Income Housing Asset Fund ("LMIH Fund") to collect proceeds from former redevelopment agency housing assets transferred to the

City and County of San Francisco. Monies in the LMIHA Fund are derived from loan repayments and other housing asset program income and must be used in accordance with California Redevelopment Law.

E. Under San Francisco Administrative Code Section 10.100-11, the San Francisco Board of Supervisors established the Affordable Housing Production and Preservation Fund to receive appropriated excess Education Revenue Augmentation Fund (ERAF) revenues received by the City ("ERAF Fund"). MOHCD administers the ERAF Fund for the purpose of funding land acquisition and production of new 100% affordable housing projects and acquisition and preservation of existing housing to make that housing permanently affordable. MOHCD is authorized to provide funds from the ERAF Fund under this Agreement to Borrower for the development of affordable housing. The funds provided from the HOME Funds, Affordable Housing Fund, LMIH Fund, and ERAF Fund under this Agreement shall be collectively referred to herein as the "Funds."

F. The Treasure Island Development Authority ("TIDA" or "Ground Lessor") is the public agency responsible for the oversight of the development of certain property on Treasure Island, San Francisco, and administers the property that is subject to the Tidelands Trust in accordance with the land use restrictions set forth in the Treasure Island Conversion Act of 1997 (amending Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968). In June 2011, TIDA entered into a Disposition and Development Agreement ("DDA") for the development of such property. The DDA and its attached Exhibits guide and regulate the implementation of the redevelopment of Treasure Island and includes the Land Use Plan, Housing Plan, Community Facilities Obligation, and other critical policy and implementation documents. Concurrently with the DDA, TIDA and the Treasure Island Homeless Development Initiative, Inc., a California nonprofit public benefit corporation ("TIHDI"), entered into the Amended and Restated Base Closure Homeless Assistance Agreement ("Homeless Assistance Agreement") regarding the relocation of formerly homeless veterans and existing residents of Treasure Island ("Pre-DDA Households") and replacement of housing units.

G. Borrower has a leasehold interest in the real property located at 401 Avenue of the Palms, San Francisco, California (the "Land") under a MACEO MAY GROUND LEASE dated \_\_\_\_\_ ("Ground Lease"), by and between Borrower and TIDA. Borrower desires to use the Funds to develop and construct a 105-unit multifamily rental housing development (including one manager unit) affordable to low-income veteran households (the "Improvements"), which will be known as MACEO MAY APARTMENTS (the "Project").

H. The City previously loaned Six Million Five Hundred Sixty Two Thousand and No/100 Dollars (\$6,562,000) (the "Original Loan") to Borrower to conduct predevelopment activities for the Project. The Original Loan is evidenced by the following documents: (1) a Loan Agreement dated as of June 19, 2018, as amended by that certain First Amendment to Loan Agreement dated March 22, 2019, a Second Amendment to Loan Agreement dated \_\_\_\_\_ (collectively, the "Original Agreement"), and (2) a Secured Promissory Note dated June 19, 2018 in the amount of \$2,000,000 payable to City, a First Amended and Restated Secured Promissory Note dated March 22, 2019, made by Borrower in the amount of \$4,200,000 to the order of the City (the "First Amended Note") and a Second Amended and Restated Secured Promissory Note

dated \_\_\_\_\_, made by Borrower in the amount of \$6,562,000 to the order of the City (the "Second Amended Note").

I. The City has reviewed Borrower's application for Funds and, in reliance on the accuracy of the statements in that application, has agreed to make a loan of Funds to Borrower (the "Loan") to complete the development and construction activities, including permanent financing, related to the Project, in the amount of **TWENTY FOUR MILLION TWO HUNDRED FIFTY FIVE THOUSAND and No/100 Dollars (\$24,255,000.00)** (the "Funding Amount") under this Agreement to fund certain costs related to the Project. The Funding Amount is comprised of (i) HOME Funds in the amount of Three Million Six Hundred Thousand and No/100 Dollars (\$3,600,000.00); (ii) ERAF Funds in the amount of Eleven Million and No/100 Dollars (\$11,000,000.00); (iii) LMIHA Fund in the amount of Two Million and No/100 Dollars (\$2,000,000.00); and (iv) AHF Funds in the amount of Seven Million Six Hundred Fifty Five Thousand and No/100 Dollars (\$7,655,000).

J. Borrower has secured the following additional financing for the Project (as defined below):

1. an issuance of multifamily housing revenue bonds to finance the construction Project in the amount of [Forty Two Million Eight Hundred Fifteen Thousand and No/100 Dollars (\$42,815,000.00)] with a commitment from Silicon Valley Bank to purchase the bonds, the proceeds of which shall be lent to the Project;

2. a construction loan from Silicon Valley Bank which shall be purchased by California Community Reinvestment Corporation for a permanent loan in the approximate amount of Nine Million Five Hundred One Thousand Four Hundred Eighty Two and No/100 Dollars [\$TBD];

3. a commitment from HUD for rental assistance payments under a Project Rental Assistance Contract/Housing Assistance Payment ("HAP") contract and budget authority in the amounts of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00) and \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00), respectively;

4. Veterans Homeless Housing Program (VHHP) through a State of California Housing and Community Development ("HCD") Firm Commitment letter dated \_\_\_\_\_ providing for VHHP funding in the amount of Ten Million and No/100 Dollars (\$10,000,000.00);

5. an equity contribution from the sale of 4% tax credits in the amount of approximately [TBD No/100 Dollars] [\$29,097,072.00].

6. an equity contribution from the Borrower's general partner in the amount of approximately Five Hundred Three Thousand Eight Hundred Twenty Three and No/100 Dollars (\$503,823.00).

K. As of the Agreement Date, the City will (i) cancel and return the Second Amended Note; and (ii) terminate the Original Loan Agreement.

## AGREEMENT

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

### ARTICLE 1 DEFINITIONS.

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

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

"Agreement" means this Loan Agreement.

"Agreement Date" means the date first written above.

"AHP" means the Affordable Housing Program, which provides funds from a Federal Home Loan Bank.

"AHP Bridge Loan" means the portion of the Funding Amount that is a loan up to \$1,040,000 from the City to the Borrower for financing the Project during the pendency of Borrower's AHP loan application and until Borrower is awarded an AHP Loan.

"Annual Monitoring Report" has the meaning set forth in **Section 10.3**.

"Annual Operating Budget" means an annual operating budget for the Project attached hereto as **Exhibit B-2**, which may not be adjusted without the City's prior written approval.

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

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

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

"Borrower" means MACEO MAY APTS, L.P., a California limited partnership whose general partners are CCDC-Maceo May Apts LLC, a California limited liability company and Swords-Maceo May Apts LLC, a California limited liability company, ("General Partner"), and authorized its successors and assigns.



"CFR" means the Code of Federal Regulations.

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

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

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

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

"CNA" means a 20-year capital needs assessment or analysis of replacement reserve requirements, as further described by CNA Policy.

"CNA Policy" means MOHCD's Policy For Capital Needs Assessments dated November 5, 2013, as it may be amended from time to time.

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

"Compliance Term" has the meaning set forth in **Section 3.2**.

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

"Contracting Manual" means the Contracting Manual (2006 Amendment) for Federally Funded Construction Projects Financed by the Mayor's Office of Housing, issued by MOHCD on November 18, 2002, as amended on May 22, 2007, as the same may be further amended from time to time.

"Conversion Date" means the date on which construction financing for the Project is converted into permanent financing, if applicable.

"Declaration of Restrictions" means a recorded declaration of restrictions in form and substance acceptable to the City that requires Borrower and the Project to comply with the use

restrictions in this Agreement for the Compliance Term, even if the Loan is repaid or otherwise satisfied, this Agreement terminates or the Deed of Trust is reconveyed.

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

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

"Developer" means Chinatown Community Development Center, a nonprofit California public benefit corporation and Swords to Plowshares, a nonprofit California public benefit corporation, and its authorized successors and assigns.

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

"Developer Fee Policy" means the MOHCD Policy on Development Fees for Tax Credit Projects dated July 29, 2016, as amended from time to time, attached hereto as **Exhibit J**.

"Development Expenses" means all costs incurred by Borrower and approved by the City 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.

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

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

"Early Retention Release Contractors" means contractors who will receive retention payments upon satisfaction of requirements set forth in **Section 4.7**.

"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" has the meaning set forth in **Section 4.2**.

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

"Excess Proceeds" means Development Proceeds remaining after payment of Development Expenses. For the purposes of determining Excess Proceeds, no allowed Project Expenses may be included in 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.

"Federal Funding" means funding provided by the federal government for capital improvements, operations or other direct financial assistance of the Project.

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

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

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

"General Partners" mean CCDC-Maceo May Apts LLC and Swords-Maceo May Apts LLC, California limited liability companies.

"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" has the meaning set forth in **Recital G**.

"Ground Lessor" has the meaning specified in **Recital F**.

"HAP" has the meaning set forth in **Recital J**.

"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.

"Hold Harmless Policy" means the Hold Harmless Policy for MOHCD's Income Limits & Maximum Rents dated May 3, 2019, as amended from time to time, attached hereto as **Exhibit K**.

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

"Homeless" means an individual or a family who lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence in one or more of the following categories: (a) Anyone staying in a mission or homeless or domestic violence shelter, i.e., a supervised public or private facility that provides temporary living accommodations; (b) Anyone displaced from housing due to a disaster situation; (c) Anyone staying outdoors; for example, street, sidewalk, doorway, park, freeway underpass; (d) Anyone staying in a car, van, bus, truck, RV, or similar vehicle; (e) Anyone staying in an enclosure or structure that is not authorized or fit for human habitation by building or housing codes, including abandoned buildings ("squats") or sub-standard apartments and dwellings; (f) Anyone staying with friends and/or extended family members (excluding parents and children) because they are otherwise unable to obtain housing; (g) Any family with children staying in a Single Room Occupancy (SRO) hotel room (whether or not they have tenancy rights); (h) Anyone staying in temporary housing for less than 6 months where the accommodations provided to the person are substandard or inadequate (for example, in a garage a very small room, or an overly crowded space); (i) Anyone staying in a Single Room Occupancy (SRO) hotel room without tenancy rights; (j) Anyone formerly homeless (formerly in one of the above categories (a) through (i)) who is now incarcerated, hospitalized, or living in a treatment program, half-way house, transitional housing; or (k) Anyone formerly homeless (formerly in one of the above categories (a) through (i)) who has obtained and resided in supportive housing or permanent housing for less than 30 days.

"Homeless Household" means a household that meets the referring agency's definition of Homeless Household for initial occupancy and upon available vacancies thereafter, as per the Local Operating Subsidy contract.

"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.

"Improvements" has the meaning set forth in **Recital G**.

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

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

"Indemnitee" means, individually or collectively, (i) City, including MOHCD and all commissions, departments, agencies and other subdivisions of City; (ii) City's elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.

"Land" means the real property owned by Ground Lessor on which the Site is located.

"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.

"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.

"Limited Partner" means RJ MT Maceo May Apts L.L.C., a Florida limited liability company.

"Loan" has the meaning set forth in **Recital I**.

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

"Marketing and Tenant Selection Plan" has the meaning set forth in **Section 6.1**.

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

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

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

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

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

"Official Records" means the official records of San Francisco County.

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

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

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

"Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership of the Borrower dated as of \_\_\_\_\_, 2020, as amended from time to time.

"Payment Date" means the first July 1<sup>st</sup> following the Completion Date and each succeeding July 1<sup>st</sup> until the Maturity Date.

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

"Preferences and Lottery Manual" means MOHCD's Housing Preferences and Lottery Procedures Manual dated March 31, 2017, as amended from time to time.

"Preferences Ordinance" means Chapter 47 of the San Francisco Administrative Code, as amended from time to time.

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

"Project Expenses" means the following costs, which may be paid from Project Income to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate and/or possessory interest taxes, assessments, and liability, fire, and other hazard insurance premiums; (b) salaries, wages, and 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 withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required for such employees; (c) MOHCD annual monitoring fee and payments of required interest, principal, or annual servicing fees, if any, on any construction or permanent financing secured by the Project; (d) all other expenses actually incurred by Borrower to cover routine operating and services provision costs of the Project, including maintenance and repair and the reasonable fee of any managing agent; (e) annual Base Rent payments; (f) any extraordinary expenses as approved in advance by the TIDA; and (g) deposits to reserves accounts required to be established under the Loan Documents.

"Project Fees" means (i) a combined annual asset management and partnership management fee in the amount of \$46,910, increasing by 3.5% annually, payable to the Borrower's general partner, and (ii) an annual investor services fee in the amount of \$5,000. In no event will such fees exceed the maximum amount permitted by HCD so long as it is a Lender, as permitted by HCD's regulations.

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

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

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

"Rent" means the aggregate annual sum charged to Tenants for rent and utilities in compliance with **Article 7**, with utility charges to Qualified Tenants limited to an allowance determined by the SFHA.

"Replacement Cost" means all hard construction 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**.

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

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

"SBE Manual" means that certain Small Business Enterprise Program manual dated July 1, 2015, as the same may be amended from time to time.

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

"Senior Lien" has the meaning set forth in **Section 22.1**.

"SFHA" means the San Francisco Housing Authority.

"Site" means the real property described in **Recital B** of this Agreement.

"Supportive Services" has the meaning set forth in **Section 8.4**.

"Table" means: (a) the Table of Sources and Uses, (b) the Annual Operating Budget, and (c) the 20-Year Cash Flow Proforma.

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

"TCAC" means the California Tax Credit Allocation Committee.

"Tenant" means any residential household in the Project, whether or not a Qualified Tenant.

"Tenant Screening Criteria Policy" has the meaning set forth in **Section 6.3**.

"Title Policy" means an ALTA extended coverage lender's policy of title insurance in form and substance satisfactory to the City, issued by an insurer selected by Borrower and satisfactory to the City, together with any endorsements and policies of coinsurance and/or



reinsurance required by the City, in a policy amount equal to the Funding Amount, insuring the Deed of Trust and indicating the Declaration of Restrictions as valid liens on the Site, each subject only to the Permitted Exceptions.

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

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

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

"Work Product" has the meaning set forth in **Section 22.21**.

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

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

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

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

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

1.3 Contracting Manual. Borrower shall use the Contracting Manual as a guide to Borrower's responsibilities under Laws and regulations regarding soliciting, awarding and administering contracts associated with projects assisted by Federal Funds and some City funds.

In the event of a conflict between the terms of the Contracting Manual and this Agreement, the terms of the Agreement shall prevail.

## ARTICLE 2 FUNDING.

2.1 Funding Amount. The City agrees to lend to Borrower a maximum principal amount equal to the Funding Amount in order to finance the new construction of 105 supportive units (plus manager's unit) to formerly homeless and low income veterans. Borrower acknowledges and agrees that a portion of the Funding Amount is the AHP Bridge Loan. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

2.2 Use of Funds. Borrower acknowledges that the City's agreement to make the Loan is based in part on Borrower's agreement to use the Funds solely for the purpose set forth in **Section 2.1** and agrees to use the Funds solely for that purpose in accordance with the approved Table of Sources and Uses. Notwithstanding anything to the contrary contained herein, City shall not approve expenditure of Funds for expenses incurred by Borrower prior to June 19, 2018.

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

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

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

2.6 AHP Loan. Borrower shall submit an application for an AHP loan for permanent financing of the Project to the Federal Home Loan Bank of San Francisco in 2020. If Borrower's application for the AHP loan is denied, Borrower must continue to submit an application for an AHP loan to a Federal Home Loan Bank until Borrower is no longer eligible for AHP funding. If awarded AHP funds, and subject to any requirements of the San Francisco Federal Home Loan Bank Affordable Housing Program, Borrower will use the AHP Loan to repay the AHP Bridge Loan, or any portion thereof, as set forth in Article 3. Borrower must submit to MOHCD a preliminary AHP application with a self-score prior to submission to the Federal Home Loan Bank.

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

3.1 Maturity Date. Borrower must repay all amounts owing under the City Documents on the date that is the later of (a) the fifty-seventh (57th) anniversary of the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County or (b) the fifty-fifth (55th) anniversary of the Conversion Date (the "Maturity Date").

3.2 Compliance Term; Declaration of Restrictions. Borrower must comply with all provisions of the City Documents relating to the use of the Site and the Project as set forth in the Declaration of Restrictions to be recorded in the Official Records, for the period commencing on the date the Deed of Trust is recorded in the Official Records and continue 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 before the end of the Compliance Term.

3.3 Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of [one percent (\_\_\_\_1%)] per annum, simple interest, from the date of the close of escrow through the date of full payment of all amounts owing under the City Documents. Interest will be calculated on the basis of actual days elapsed and a 360-day year, which will result in higher interest charges than if a 365-day year were used..

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

3.5 Repayment of Principal and Interest. Except as set forth in Section 3.7 below, the outstanding principal balance of the Loan, together with all accrued and unpaid interest, if any, will be due and payable on the Maturity Date according to the terms set forth in full in the Note. Notwithstanding the foregoing, if Borrower is awarded AHP funding, Borrower shall repay the AHP Bridge Loan to the City on the date that Borrower closes such loan for AHP funding and the AHP funds are disbursed to Borrower; provided, however, that if Borrower is not awarded AHP funding or receives AHP funding sufficient for only partial repayment of the AHP Bridge Loan, the unpaid principal balance of the AHP Bridge Loan and unpaid costs and fees incurred shall be due and payable at the Maturity Date according to the terms set forth in full in the Note.

3.6 Changes In Funding Streams. The City's agreement to make the Loan on the terms set forth in this Agreement and the Note is based in part on Borrower's projected sources and uses of all funds for the Project, as set forth in the Table of Sources and Uses. Borrower covenants to give written notice to the City within thirty (30) days of any significant changes in budgeted funding or income set forth in documents previously provided to the City. Examples of significant changes include loss or adjustments (other than regular annual adjustments) in

funding under Shelter + Care, Section 8 or similar programs. The City reserves the right (with the consent of the Borrower and any Senior Lender) to modify the terms of this Agreement based upon any new information so provided, in its reasonable discretion.

3.7 Notification and Repayment of Excess Proceeds. Borrower must notify the City in writing within thirty (30) days after the later of the date on which Borrower receives its Form 8609 from the California Tax Credit Allocation Committee or the date on which Borrower receives Excess Proceeds from its limited partner or other financing sources. Borrower must repay all Excess Proceeds to the City no later than sixty (60) days after receipt of such notification, unless the City has elected to waive such payment. The City must use such Excess Proceeds to reduce the balance of the Loan.

3.8 Recordation of the Deed of Trust and Declaration of Restrictions. Borrower shall cause each of the following requirements to be fully satisfied on or before the date it acquires Control of the Site:

(a) Borrower shall have delivered the Deed of Trust and the Declaration of Restrictions to City, duly executed and acknowledged by Borrower;

(b) Borrower shall have recorded the Deed of Trust and the Declaration of Restrictions in the Official Records, subject only to the Permitted Exceptions; and

(c) A title company shall have committed to issue the Title Policy to City, and Borrower shall have delivered all documents reasonably required by such title company to issue the Title Policy. Borrower shall pay all amounts charged by the title company for the issuance of the Title Policy; provided that such amounts may be included in a subsequent Expenditure Request.

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

ARTICLE 4 CLOSING; DISBURSEMENTS.

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

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

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

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

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

(c) Borrower must have delivered to the City satisfactory evidence that Borrower has obtained commitments for any additional financing that may be required for the Project, in amounts and from lenders or investors satisfactory to the City in its sole discretion.

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

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

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

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

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

(i) The City must have reviewed and approved the Ground Lease.

(j) Ground Lessor must have consented to Borrower's encumbrance of Borrower's interest in the Site by the Deed of Trust and the Declaration of Restrictions by instrument satisfactory in form and substance to the City.

(k) MOHCD, VA and HSH approval of services plan and budget.

(l) MOHCD approval of acceptable insurance.

(m) MOHCD approval of community outreach plan.

(n) MOHCD approval of final construction costs after securing bids.

(o) Sponsor to establish evaluation metrics comparing modular construction with standard construction with respect to cost and timeline.

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

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

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

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

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

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

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

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

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

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

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

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

(e) The Loan must be in balance.

4.6 Loan In Balance. The City may require Borrower to pay certain costs incurred in connection with the Project from sources of funds other than the Loan at any time the City

determines that the Loan is out of balance. When the City is satisfied that the Loan is again in balance, the City will recommence making Disbursements for Expenditure Requests meeting the conditions set forth above.

4.7 Retention. In addition to the other conditions to Disbursements, Borrower acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line item basis, provided however, that costs incurred by the modular supplier, and any other subcontractors as approved by the City may not exceed 95% of the approved line item basis. The remaining ten percent (10%) of approved budgeted hard costs or tenant improvement costs associated with rehabilitation or construction will be held by the City and/or other Project lenders (the "Retention") and may be released only upon satisfaction of all requirements listed in the Construction Manager's Checklist for Release of Retention included in the Contracting Manual and as follows:

(a) Early Retention Release. After fifty percent (50%) of the rehabilitation or construction of the Project is complete as determined by the City, Borrower may submit a written request to the City to release up to fifty percent (50%) of the Retention, provided that the following prerequisites have been met: (i) all work required to be performed by all parties for whom the City 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; (ii) the applicable Early Retention Release Contractors have filed unconditional lien waivers satisfactory to the City; (iii) no liens or stop notices have been filed against the Project and no claims are pending; (iv) the City determines that the contingency is in balance and adequate to complete the Project; (v) the Project is on schedule, and (vi) Expenditure Requests will not exceed 95% of the approved budgeted costs on a line item basis.

(b) Retention Release After Project Completion. Borrower may request disbursement of the remaining percentage amount of the Retention only upon the satisfaction of each of the following conditions, unless otherwise approved in writing by the City: (i) completion of rehabilitation or construction of the Project in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; (ii) timely recordation of a notice of completion; and (iii) 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.

4.8 Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured, or during the pendency of an uncured Event of Default; or (b) for disapproved, unauthorized or improperly documented expenses. The City 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 Selection Requirements. In the selection of all contractors and professional consultants for the Project, Borrower must comply with the City's procurement requirements and procedures as described in the Contracting Manual and with the requirements of the Small Business Enterprise Program ("SBE Program") as set forth in the SBE Manual according to the procedures established by the City's Contract Monitoring Division.

5.2 Plans and Specifications. Before starting any demolition, rehabilitation or construction on the Site, Borrower must have delivered to the City, and the City must have reviewed and approved, plans and specifications and the construction contract for the Project entered into between Borrower and Borrower's general contractor and approved by the City (the "Construction Contract"). The plans approved by the City must also be approved by the City and County of San Francisco's Department of Building Inspection (the "Department of Building Inspection") (collectively, the "Approved Plans") prior to the start of any demolition, rehabilitation or construction on the Site. The Approved Plans must be explicitly identified in the Construction Contract. The specifications approved by the City, 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. The Contracting Manual provides further guidance to Borrower regarding the City's policies for the review and approval of plans, specifications and construction contracts. 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 the City upon request. City confirms modular construction for the Project.

5.3 Change Orders. Borrower may not approve or permit any change orders to the plans and specifications approved by the City without the City's prior written consent. Borrower must provide adequate and complete justification for analysis of any change order request to the City. The City will provide any questions, comments or requests for additional information to Borrower within five (5) business days of receipt of a change order request. City will review and approve or disapprove of a change order request within five (5) business days for the modular portion of construction, or ten (10) business days for any other change order request from the complete submission of such change order request by Borrower. In the event the City fails to approve or disapprove the change order request within such five (5) or ten (10) business day period, as applicable, the change order shall be deemed approved. Borrower acknowledges that the City's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional Funds for the Project, unless the City agrees in its sole discretion to amend the Table of Sources and Uses or provide additional Funds for that purpose.

5.4 Insurance, Bonds and Security. Before starting any demolition, rehabilitation or construction on the Site, Borrower must deliver to the City insurance endorsements and bonds as

described in **Exhibit L**. 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 the City's approval.

5.6 Commencement and Completion of Project. Unless otherwise extended in writing by the City, Borrower must: (a) commence demolition, rehabilitation or construction by a date no later than March 1, 2020; (b) complete demolition, rehabilitation or construction by a date no later than March 1, 2023, in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion (the "Completion Date"); and (c) achieve occupancy of Ninety Five percent (95%) of the Units by a date no later than June 1, 2023.

5.7 Construction Standards. All construction must be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City and in accordance with all applicable codes. All newly constructed Units must meet the requirements of the Model Energy Code most recently published by the Council of American Building Officials. All Units must meet the accessibility requirements under 24 CFR part 8, implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and the design and construction requirements under 24 CFR § 100.205, implementing the Fair Housing Act (42 U.S.C. §§ 3601-3619).

## ARTICLE 6 MARKETING.

6.1 Marketing and Tenant Selection Plan. No later than six (6) months before the Completion Date, Borrower must deliver to the City for the City's review and approval an affirmative plan for initial and ongoing marketing of the Units and a written Tenant selection procedure for initial and ongoing renting of the Units based on MOHCD's then-current form of marketing and tenant selection plan (the "Marketing and Tenant Selection Plan"), all in compliance with the restrictions set forth in **Exhibit A** and in form and substance acceptable to the City. Borrower must obtain the City's approval of reasonable alterations to the Marketing and Tenant Selection Plan. Borrower must market and rent the Units in the manner set forth in the Marketing and Tenant Selection Plan, as approved by the City.

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

(a) 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.

(b) A plan that satisfies the requirement to give preference in occupying units in accordance with the Preferences and Lottery Manual and the Preferences Ordinance, provided that the plan will include a general preference for veterans in all units. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated therewith, the provisions of such Section 42 (and applicable regulations) shall control.

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

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

(e) Notices to SFHA.

(f) Notices to MOHCD

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

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

### 6.3 Marketing and Tenant Selection Plan & Tenant Screening Criteria Requirements:

(a) Borrower's Marketing and Tenant Selection Plan shall comply with the requirements of the Tenant Selection Plan Policy as set forth in the attached Exhibit H. The Marketing and Tenant Selection Plan must be kept on file at the Project at all times.

(b) Borrower's tenant screening criteria must comply with the Tenant Screening Criteria Policy set forth in the attached Exhibit I.

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

6.5 Waiting List. Borrower's Marketing and Tenant Selection Plan must contain, at a minimum, policies and criteria that provide for the selection of tenants from a written waiting list that complies with the Marketing and Tenant Selection Plan (the "Waiting List"). The Marketing and 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 the City. 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: (a) for the Compliance Term and survive the prior repayment or other satisfaction of the Loan, termination of this Agreement or reconveyance of the Deed of Trust; (b) for any Unit that has been subject to a regulatory agreement with TCAC, for a period ending three (3) years after the date of any transfer of the Project by foreclosure or deed-in-lieu of foreclosure; and (c) with respect to any Unit occupied by a Qualified Tenant at expiration of either the Compliance Term or the 3-year period referred to in **Subsection (b)** above, until the Qualified Tenant voluntarily vacates his/her Unit or is evicted lawfully for just cause. The requirements to comply with the provisions of Internal Revenue Code Section 42, including Section 42(h)(6)(E)(ii), are hereby acknowledged.

### 7.2 Borrower's Covenant.

(a) Borrower covenants to rent all Units (except one Unit reserved for the manager of the Project) at all times to households certified as Qualified Tenants at initial occupancy, as set forth in **Exhibit A**. In addition, sixty five (65) Units must be rented to eligible tenants under the HAP contract or, if applicable, holders of Section 8 certificates or vouchers or similar rental subsidy benefits. Borrower covenants to rent all units at all times to households certified as Qualified Tenants at initial occupancy, as set forth in **Exhibit A**. Borrower further covenants that no HOME funds will be allocated to the construction or rehabilitation of the manager's Unit. If the Project contains 5 or more units, at least 20% must be reserved for very low-income Tenants, as defined under the HOME program regulations.

(b) A Tenant who is a Qualified Tenant at initial occupancy may not be required to vacate the Unit due to subsequent rises in household income, except as provided in **Section 7.3**. After the over-income Tenant vacates the Unit, the vacant Unit must be rented only to Qualified Tenants as provided in this **Article 7**.

### 7.3 Rent Restrictions.

(a) Rent charged to each Qualified Tenant may not exceed the amounts set forth in **Exhibit A**, *provided that* Rents may be adjusted annually, subject to the limitations below.

(b) Subject to the Hold Harmless Policy, rents for all Units may be increased once annually up to the maximum monthly rent by unit type as published by MOHCD.

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

(d) 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. There is no limit on the increase/decrease in Rent charged under this provision, as long as it does not exceed the maximum Rent permitted under **Section 7.3(a)**. There is no limit on the number of Rent adjustments that can be made in a year under this provision.

(e) For any Qualified Tenant that becomes ineligible to continue participating in a rent or operating subsidy program, there is no limit on the increase in Rent charged as long as it does not exceed the maximum Rent permitted under **Section 7.3(a)**.

(f) Unless prohibited under any applicable Laws, including without limitation Section 42 of the Internal Revenue Code of 1986, as amended, if the household income of a Qualified Tenant exceeds the maximum permissible income during occupancy of a Unit, then, upon no less than thirty (30) days' prior written notice to the Tenant or as otherwise required under the Tenant's lease or occupancy agreement, Borrower may adjust the charges for Rent for the previously Qualified Tenant to be equal to thirty percent (30%) of the Tenant's adjusted household income. Rents charged under this provision may exceed the Maximum Rent permitted under **Section 7.3(a)**.

#### 7.4 Certification.

(a) As a condition to initial occupancy, each person who desires to be a Qualified Tenant in the Project must be required to sign and deliver to Borrower a certification in the form shown in **Exhibit C** in which the prospective Qualified Tenant certifies that he/she or his/her household qualifies as a Qualified Tenant. In addition, each person must be required to provide any other information, documents or certifications deemed necessary by the City 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 his/her household income to Borrower one time in the year after the first year of tenancy in accordance with tax credit requirements. Each Qualified Tenant in the Project must also recertify his/her household income to Borrower one time in every 6<sup>th</sup> year of the project's affordability period using the full recertification method required by the HOME program. Interim recertifications are also required annually but may be done using the abbreviated annual income recertification method which

requires Tenants to submit income certification forms but does not require verification of income or assets.

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

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 form of lease must also comply with 24 CFR § 92.253.

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

7.7 Security Deposits. Security deposits may be required of Tenants only in accordance with applicable federal regulations, 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 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, and all applicable federal requirements.

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

## 8.2 Contracting With Management Agent.

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

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

8.3 Borrower Management. Borrower may manage the Project itself only with the City's prior written approval. The City 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, the City may require Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements the City deems necessary to ensure performance of the functions required in **Section 8.1(a)**.

8.4 Supportive Services. Borrower is responsible for ensuring that residents or clients residing in the Continuum of Care and VASH (or other supportive) Units have access to appropriate case management, psychological supportive services, and other support services, as well as to health care, where required. For any person who requires more intensive care than can be provided at the Project, Borrower shall use its best efforts to locate or cause to be located, a care provider who can approximately care for the individual and shall refer the individual to the care provider.

ARTICLE 9 GOVERNMENTAL APPROVALS AND REQUIREMENTS

9.1 Approvals. 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 17.2**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

9.2 Borrower Compliance. Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of Funds for the construction, rehabilitation and/or operation of the Project, including those set forth in **Exhibit E** and **Exhibit L**. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to **Section 17.2**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

9.3 Additional Federal Requirements. The following provision shall apply as long as HOME Funds are used to finance the Project.

(a) Compliance With Laws Borrower agrees to abide by all applicable Laws, including HUD regulations, pertaining to this Agreement and to any contracts pertaining to the Project. In the event HUD formally amends, waives or repeals any HUD administrative regulation previously applicable to Borrower's performance under this Agreement, MOHCD expressly reserves the right, upon giving notice to HUD and Borrower, to require Borrower's performance as though the regulation were not amended, waived or repealed, subject only to written and binding objection by HUD. Borrower further acknowledges that the City may impose more stringent requirements with regard to affordability restrictions than those required by HUD and agrees to comply with the City's requirements as set forth in this Agreement.

(b) Drug-Free Workplace Borrower acknowledges that under the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 *et seq.*), the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited on its premises. Borrower agrees that any violation of this prohibition by Borrower, its employees, agents or assigns will be deemed an Event of Default under this Agreement.

(c) Restrictions on Lobbying Activities

(i) This Agreement is subject to 31 U.S.C. Section 1352, which provides in part that, with specified exceptions, no appropriated funds may be expended by the recipient of a federal contract, grant, loan or cooperative agreement to pay 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 any of the following covered federal actions: 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.

(ii) If the Funding Amount exceeds \$100,000, Borrower must file with MOHCD at the beginning of the Compliance Term and promptly after the occurrence of any change in the facts certified or disclosed:

(A) a certification substantially the same as that attached hereto as **Exhibit F**, and otherwise, in form and content satisfactory to the City and to HUD; that Borrower, its employees, officers and agents have not made, and will not make, any payment prohibited by **Subsection (i)** above; and

(B) a disclosure form, Federal Standard Form-LLL, "Disclosure of Lobbying Activities," if Borrower, its employees, officers or agents have made or agreed to make any payment using funds from a source other than the Funds that would be prohibited under **Subsection (i)** above if payment were made with Funds. The City will file the disclosure form with HUD and retain the certification for the City's records as required by Law.

(d) Debarment or Suspension Borrower must certify in form and content substantially the same as that attached hereto as **Exhibit F** that neither it nor any of its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. In addition, Borrower 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 in addition to obtaining the certification of each contractor or subcontractor whose bid is accepted.

(e) Single Audit. If Borrower cumulatively expends \$750,000.00 or more in Federal Funds during Borrower's fiscal year, Borrower must conduct a single audit or program-specific audit by an independent auditor in accordance with OMB Uniform Guidance requirements in 2 CFR part 200 subpart F (§200.500 *et seq.*), as it may be amended from time to time ("Single Audit"). Borrower must submit a copy of the Single Audit report to MOHCD within nine (9) months after the end of Borrower's fiscal year or thirty (30) days after receiving the Single Audit report from the auditor.

(f) Other HUD Requirements The following federal requirements are applicable to all activities funded under this Agreement:

(i) the provisions of 24 CFR part 92, "HOME Investment Partnership Program," and incorporated sections of 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards."

ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

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

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all Funds, including all documents evidencing any Project Income and Project Expenses. 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 its executive director, director of housing development, director of property management and/or any equivalent position within thirty (30) days after the effective date of such replacement.

10.2 Monthly Reporting. Borrower must submit monthly reports (the "MOHCD Monthly Project Update") describing progress toward developing the Project with respect to obtaining necessary approvals from other City departments, procuring architects, consultants and contractors, changes in scope, cost or schedule and significant milestones achieved in the past month and expected to be achieved in the coming month. The MOHCD Monthly Project Update must be submitted by email in substantially the form to be found in the Contracting Manual until such time as the Project Completion Report is submitted to the City pursuant to **Section 10.5** below.

10.3 Annual Reporting.

(a) From and after the Completion Date, Borrower must file with the City 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), Residual Receipts 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 G** or as later modified during the Compliance Term.

(b) If the source of Funds is Federal Funding, Borrower must also provide an annual accounting of program income, as defined in applicable federal regulations.

10.4 Capital Needs Assessment. In accordance with the CNA Policy, Borrower must deliver to MOHCD an updated CNA every five (5) years after the Completion Date for approval.

10.5 Project Completion Report. Within the specific time periods set forth below after the completion of rehabilitation or construction, the lease-up and/or permanent financing of the Project, as applicable, Borrower must provide to the City the reports listed below certified by Borrower to be complete and accurate. Subsequent to the required submission of the reports listed below, Borrower must provide to the City information or documents reasonably requested by the City to assist in the City's review and analysis of the submitted reports:

(a) within ninety (90) days after the Completion Date, a draft cost certification or other similar project audit for HOME Program 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 use of Small Disadvantaged Business Enterprises as defined in the SBE Manual, including the type of work and the dollar value of such work;

(c) within ninety (90) 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, to the extent available, location of previous residence, and also indicating the Units by income category; and

(d) within ninety (90) days after the Completion Date, a report demonstrating compliance with all requirements regarding relocation, including the names of all individuals or businesses occupying the Site on the date of the submission of the application for Funds, those moving in after that date, and those occupying the Site upon completion of the Project.

(e) within one hundred-eighty (180) days after the Completion Date, and if the Project has used Federal Funds, a report demonstrating compliance with all requirements regarding HUD Section 3, including documentation of total labor hours worked on the Project, total Section 3 hours worked, total wages paid, total Section 3 wages paid, and the names of all individuals employed to comply with the Section 3 and Section 3 goals, including the total hours worked for each individual and total wages paid to each individual.

10.6 Response to Inquiries. At the request of the City, its agents, employees or attorneys, Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations and condition of the 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 the City, made through its agents, employees, officers or attorneys, Borrower must provide the City with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:

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

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

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

10.8 Access to the Project and Other Project Books and Records. In addition to Borrower's obligations under Sections 2.4, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6 and 10.7 and any other obligations to provide reports or maintain records in any City Document, Borrower agrees that duly authorized representatives of the City will have: (a) access to the Project throughout the Compliance Term to monitor the progress of work on the Project and compliance by Borrower with the terms of this Agreement and subject to the rights of Tenants; and (b) access to and the right to inspect, copy, audit and examine all books, records and other documents Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under Section 10.9.

10.9 Records Retention. Borrower must retain all records required for the periods required under applicable Laws, including 24 CFR Section 92.508.

## 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 the City's approval. Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses and Project Fees. Withdrawals from the Project Operating Account (including accrued interest) for other purposes may be made only with the City's express prior written approval.

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

## ARTICLE 12 REQUIRED RESERVES.

### 12.1 Replacement Reserve Account.

(a) Commencing no later than sixty (60) days after the Completion Date, or any other date the City designates in writing, Borrower must establish or cause to be established a segregated interest-bearing replacement reserve depository account (the "Replacement Reserve Account"). On or before the 15<sup>th</sup> day of each month following establishment of the Replacement Reserve Account, Borrower must make monthly deposits from Project Income into the Replacement Reserve Account in the amount necessary to meet the requirements of this Section. The City may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems necessary.

(b) Monthly deposits must equal the lesser of: (i) 1/12<sup>th</sup> of 0.6% of Replacement Cost; or (ii) 1/12<sup>th</sup> of the following amount: \$500 per unit.

After the Project's first five (5) years of operation, Borrower may request adjustments every five (5) years based on its most recently approved CNA.

Borrower may request adjustments every five (5) years based on its most recently approved CNA. If the Project is unable to make a required replacement reserve deposit due to unavailable cash flow, the Borrower must submit a plan for review and approval to MOHCD that addresses the cash flow shortfall.

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

### 12.2 Operating Reserve Account.

(a) Commencing no later than sixty (60) days after the Completion Date, or any other date the City designates in writing, 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 approved budget for Project Expenses for the first full year of operation of the Project. The City may review the adequacy of deposits to the Operating Reserve Account periodically and require adjustments as it deems necessary.

(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 twenty-five percent (25%) of the prior year's actual Project Expenses.

(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 the City's prior written approval.

#### ARTICLE 13 DISTRIBUTIONS.

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

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

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

- (a) when a written notice of default has been issued by any entity with an equitable or beneficial interest in the Project and the default is not cured within the applicable cure periods; or
- (b) when the City determines that Borrower or Borrower's management agent has failed to comply with this Agreement; or
- (c) if required debt service on all loans secured by the 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 Residual Receipts, Borrower failed to make a payment when due on a Payment Date and the sum remains unpaid; or

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

13.4 Borrower's Use of Residual Receipts for Development. To the extent that making a Distribution is not inconsistent with any other financing agreement for the Project, and subject to the limitations in this Article, with the City's prior written approval Borrower may retain a portion of Residual Receipts in lieu of using them to repay the Loan in an amount consistent with the Residual Receipts Policy attached hereto as **Exhibit P**. Borrower acknowledges that the City may withhold its consent to a Distribution in any year in which Residual Receipts are insufficient to meet Borrower's payment obligations under the Note. Subject to the terms of this Agreement and the conditions to distribution of Residual Receipts set forth in Exhibit P, Borrower may retain 50% of Residual Receipts until the earlier of (i) the fifteenth (15<sup>th</sup>) anniversary of the first Payment Date; or (ii) the payment in full of the deferred development fee in the approved amount of \$ \_\_\_\_\_ payable by the Borrower to Developer pursuant to the Development Agreement by and between the Borrower and Developer dated as of \_\_\_\_ 2020. Borrower acknowledged that the City may withhold its consent to a Distribution in any year in which Residual Receipts are insufficient to meet Borrower's payment obligations under the Note.

#### ARTICLE 14 SYNDICATION PROCEEDS.

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

#### ARTICLE 15 DEVELOPER FEES.

15.1 Amount. Subject to the Developer Fee Policy, Developer is entitled to receive fees from the Loan in an amount not to exceed \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_ .00) for developing the Project ("Developer Fees"), subject to the terms and conditions set forth in full in the Developer Fee Agreement between the City and Developer.

#### 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) leases, subleases or occupancy agreements to occupants of Units in the Project; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion (c) transfers from Borrower to a limited partnership or limited liability company formed for the tax credit syndication of the

Project, where Borrower or an affiliated nonprofit public benefit corporation is the sole general partner or manager of that entity or is the manager of a limited liability company that is the sole general partner or manager of that entity; (d) transfers of the general partnership or manager's interest in Borrower to a nonprofit public benefit corporation approved in advance by the City; (e) transfers of any limited partnership or membership interest in Borrower to an investor pursuant to the tax credit syndication of the Project and/or as otherwise permitted by the agreement of limited partnership of Borrower; (f) the grant or exercise of an option agreement between Borrower and Borrower's general partner or manager or any of its affiliates in connection with the tax credit syndication of the Project where such agreement has been previously approved in writing by the City; or (g) to remove or replace the General Partner in accordance with the terms of the Partnership Agreement, a transfer of any general partnership interest to a new general partner approved in advance by the City. Any other transfer, assignment, encumbrance or lease without the City's prior written consent will be voidable and, at the City's election, constitute an Event of Default under this Agreement. The City's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Agreement.

#### ARTICLE 17 INSURANCE AND BONDS; INDEMNITY.

17.1 Borrower's Insurance. Subject to approval by the City's Risk Manager of the insurers and policy forms; Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in **Exhibit L** from the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County until the expiration of the Compliance Term at no expense to the City.

17.2 Borrower's Indemnity Obligations. Borrower must indemnify, protect, defend and hold harmless each of the Indemnitees from and against any and all Losses arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the City Documents (including those covenants set forth in **Article 18** below); (b) any failure of any representation by Borrower to be correct in all respects when made; (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise; (d) any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the City Documents, the Loan, the Site or the Project or any transaction contemplated by, or the relationship between Borrower and the City or any action or inaction by the City under, the City Documents; (f) the occurrence, until the expiration of the Compliance Term, of any Environmental Activity or any failure of Borrower or any other person to comply with all applicable Environmental Laws relating to the Project or the Site; (g) the occurrence, after the Compliance Term, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring before the expiration of the Compliance Term; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under **Sections 9.1, 9.2 and 18.2**; or (i) any claim, demand



or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnitee will be entitled to indemnification under this Section for matters caused solely by its own gross negligence or willful misconduct.

17.3 Duty to Defend. Borrower acknowledges and agrees that its obligation to defend the Indemnitees under **Section 17.2**: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of **Section 17.2**, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Borrower by the Indemnitee and continues at all times thereafter. 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 Indemnitee must give Borrower prompt notice of any Loss and Borrower has the right to defend, settle and compromise any such Loss; provided, however, that the Indemnitee has the right to retain its own counsel at the expense of Borrower if representation of such Indemnitee by the counsel retained by Borrower would be inappropriate due to conflicts of interest between such Indemnitee and Borrower. An Indemnitee's failure to notify Borrower promptly of any Loss does not relieve Borrower of any liability to such Indemnity under **Section 17.2**, unless such failure materially impairs Borrower's ability to defend such Loss. Borrower must seek the Indemnified Party's prior written consent to settle or compromise any Loss if Borrower contends that such Indemnitee shares in liability with respect thereto.

17.4 No Limitation. Borrower's obligations under **Section 17.2** are not limited by the insurance requirements under this Agreement.

17.5 Survival. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement.

#### ARTICLE 18 HAZARDOUS SUBSTANCES.

18.1 Borrower's Representations. Borrower represents and warrants to the City that, to the best of Borrower's actual knowledge, without independent investigation or inquiry as of the Agreement Date, the following statements are true and correct except as disclosed in the State Department of Toxic Substance and Control's Finding of Suitability approved by the State on February 15, 2006, and a Phase I report dated \_\_\_\_\_ and completed by \_\_\_\_\_ or otherwise in writing: (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.

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

18.3 Survival. Borrower and City agree that this Article 18 is intended as City's written request for information (and Borrower's response) concerning the environmental condition of the Site as security as required by California Code of Civil Procedure § 726.5; and each provision in this Article (together with any indemnity applicable to a breach of any such provision) with respect to the environmental condition of the Site as security is intended by City and Borrower to be an "environmental provision" for purposes of California Code of Civil Procedure § 736, and as such it is expressly understood that Borrower's duty to indemnify City hereunder shall survive: (a) any judicial or non-judicial foreclosure under the Deed of Trust, or transfer of the Property in lieu thereof, (b) the release and reconveyance or cancellation of the Deed of Trust; and (c) the satisfaction of all of Borrower's obligation under the City Documents.

#### ARTICLE 19 DEFAULT.

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

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

(b) Any lien is recorded against all or any part of the Site or the Project without the City's prior written consent, whether prior or subordinate to the lien of the Deed of Trust or Declaration of Restrictions, and the lien is not removed from title or otherwise remedied to the City's satisfaction within thirty (30) days after Borrower's receipt of written notice from

the City to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

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

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

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

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

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

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

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

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

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

(l) Any material adverse change occurs in the financial condition or operations of Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project; provided that, if the Borrower provides an alternate funding source to cover a loss of funding or rental subsidy that is satisfactory to the City, a material adverse impact shall not be deemed to have occurred; or

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

(n) Before a certificate of occupancy or equivalent certification is issued for the Project, Borrower ceases rehabilitation or construction of the Project for a period of twenty five (25) consecutive calendar days, and the cessation is not excused under **Section 19.3**; or

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

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

Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by Borrower's limited partner shall be accepted or rejected on the same basis as if made or tendered by Borrower.

19.2 Remedies. During the pendency of an uncured Event of Default, the City may exercise any right or remedy available under this Agreement or any other City Document or at

law or in equity. All of the City's rights and remedies following an Event of Default are cumulative, including:

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

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

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

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

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

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

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

19.3 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of the City or Borrower rendered impossible to perform while the event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes for either; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotion; fire or other casualty and other causes beyond the control of the party obligated to perform, including but not limited to any delays caused due to delays in the master developer's infrastructure construction schedule related to the Project. The occurrence of a force majeure event will excuse Borrower's performance only in the event that Borrower has provided notice to the City within thirty (30) days after the

occurrence or commencement of the event or events, and Borrower's performance will be excused for a period ending thirty (30) days after the termination of the event giving rise to the delay.

## ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

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

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

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

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

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

(e) 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. Further, Borrower certifies that neither it nor any of its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. In addition, Borrower 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 in addition to obtaining the certification of each contractor or subcontractor whose bid is accepted.

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

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

(h) The Borrower is duly organized and in good standing under applicable laws of the State of California and is qualified to do business in the City and County of San Francisco.

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 a nationally recognized courier that obtains receipts, facsimile (if followed within one (1) business day by first class mail) or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five (5) days after mailing, *provided that* any notice that is received after 5 p.m. on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:

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

To Borrower: Maceo May Apts, L.P.  
c/o CCDC  
1525 Grant Avenue  
San Francisco, CA 94133  
Attn: Executive Director

And: Maceo May Apts, L.P.  
c/o Swords to Plowshares  
1060 Howard Street  
San Francisco, CA 94103  
Attn: Executive Director

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

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

21.3 Notice to Limited Partner. The City agrees to deliver a copy of any notice of default to Borrower's limited partner at the address set forth below at the same time and in the same manner as notice is delivered to Borrower. The City's failure to deliver notice under this Section will not affect or impair the City's right to enforce its rights at law or in equity arising by reason of an Event of Default.

To: RJ MT MACEO MAY APTS, L.L.C.  
c/o Raymond James Tax Credit Funds, Inc.  
800 Carillon Parkway  
St. Petersburg, FL 331716  
Attn: Steven J. Knopf, President

## ARTICLE 22 GENERAL PROVISIONS.

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

22.2 No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of the City, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the City and Borrower or Borrower's agents, employees or contractors.

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

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

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



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

22.7 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.

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

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

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

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

22.12 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.

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

22.14 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.

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

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

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

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

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

22.20 Borrower's Board of Directors. Borrower, or Borrower's manager or general partner, as applicable, 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 the bylaws and other governing documents of Borrower, Borrower's manager or Borrower's general partner, as applicable; and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Such 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.

22.23 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 First Source Hiring Requirements and Numerical Goals
- E Governmental Requirements
- F Lobbying/Debarment Certification Form
- G Form of Annual Monitoring Report
- H Tenant Selection Plan Policy
- I MOHCD Tenant Screening Criteria Policy
- J Developer Fee Policy
- K Hold Harmless Policy
- L Insurance Requirements
- M Reserved
- N Reserved
- O Reserved
- P MOHCD Residual Receipts Policy

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

**THE CITY:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
London N. Breed  
Mayor

By: \_\_\_\_\_  
Dan Adams  
Acting Director, Mayor's Office of  
Housing and Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**BORROWER:**

Maceo May Apts, L.P.,  
a California limited partnership

By: CCDC-Maceo May Apts LLC,  
a California limited liability company,  
its co-general partner

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

By: \_\_\_\_\_  
Norman Fong,  
Executive Director

By: Swords-Maceo May Apts LLC,  
a California limited liability company,  
its co-general partner

By: Swords to Plowshares: Veterans  
Rights Organization,  
a California nonprofit public benefit  
corporation,  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker,  
Executive Director

**EXHIBIT A**

**Schedules of Income and Rent Restrictions**

1. Income Restrictions. Maximum rent is 30% of maximum income level. As used in this Agreement, the term "Qualified Tenant" includes each category of Tenant included below:

<b>Unit Size</b>	<b>Number of Units</b>	<b>Maximum Income Level</b>
Studio	24	80%
1BR	47	80%
2BR	33	80%
2BR	1	Manager's Unit
Total Units	105	

Sixty five (65) units must be rented at all times to tenants receiving vouchers or other subsidy through the HAP contract. If the HAP is terminated, discontinued or reduced at no fault of Borrower with respect to the Project, then the rent restrictions above may be altered but only to the extent necessary for the Project to remain financially feasible, as determined in City's reasonable discretion; provided that one hundred percent (100%) of the units formerly under the HAP must at all times be occupied by Qualified Households whose Adjusted Income does not exceed eighty percent (80%) of Median Income and the monthly rent paid by the Qualified Households may not exceed (a) thirty percent (30%) of eighty percent (80%) of Median Income. In such event, the City will use good faith efforts to meet with Borrower within fifteen (15) days after Borrower's request to meet. The relief provided by the paragraph will not be construed as authorizing Borrower to exceed any income or rent restriction imposed on the Project by CDLAC, CTAC, or under any other agreement. Borrower covenants and warrants that it will obtain all necessary approvals or relief from any other applicable income or rent limitations before implementing the relief provided in this paragraph.

**HOME RENT SCHEDULE**

Number of Units	Home Rent Category	Maximum Rent
83	High HOME Rents	Maximum Rent is the Lesser of: 1) Fair market rent for existing housing for comparable units in the area, as established by HUD; or 2) 30% of 65% of Median Income, as established by HUD and published annually.
21	Low HOME Rents (must be at least 20% of all units on projects with 5 or more HOME-assisted units)	Maximum Rent is the Lesser of: 1) the Low HOME rent, as established by HUD and published annually; or,  2) Borrower's choice of either: 30% of 50% of Median Income; or 30% of actual adjusted income

**EXHIBIT B-1**  
**Table of Sources and Uses of Funds**

EXHIBIT B-2  
Annual Operating Budget

Exhibit B-2



EXHIBIT B-3  
20-Year Cash Flow Proforma

Exhibit B-3

EXHIBIT C  
Tenant Income Certification Form

[To be attached.]

## EXHIBIT D

### First Source Hiring Requirements and Numerical Goals

Borrower's use of Funds triggers the following hiring requirements imposed by the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83) as incorporated into MOHCD's Section 3 Plan.

1. Section 3 Requirements.

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u ("Section 3"), based on Borrower's receipt of City funds under MOHCD's Section 3 Plan. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing, to the greatest extent feasible.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and to post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions and the anticipated date work will begin.

(d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled: (i) after the contractor is selected but before the contract is executed; and (ii) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.

2. Recommended Minimum Numerical Goals. Contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth below for training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns, which represent minimum numerical goals.

(a) Training and Employment of Section 3 Residents (24 CFR § 135.30(b)). Contractors and subcontractors may demonstrate compliance by committing to employ Section 3 residents as thirty percent (30%) of the aggregate number of new hires (full-time employees for permanent, temporary or seasonal employment) and an overall goal of thirty percent (30%) of total work hours for the entire project.

(b) Contracts with Section 3 Business Concerns (24 CFR § 135.30). Contractors and subcontractors may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(i) At least ten percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(ii) At least three percent (3%) of the total dollar amount of all other Section 3 covered contracts.

EXHIBIT E  
Governmental Requirements

1. Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 6.1. Every contract for the rehabilitation or construction of housing assisted with Funds must contain a provision requiring: (1) payment of not less than the wages prevailing in the locality, as preterminted by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing, and (2) contracts involving their employment will be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332) (collectively, "Prevailing Wage Requirements"). The Prevailing Wage Requirements of this Section apply to all laborers and mechanics employed in the development of the Project, including portions other than the assisted Units. Borrower agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements. If applicable, Borrower must include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Chapter 6.

2. Environmental Review. The Project must meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321), related authorities listed at 24 CFR Section 51.100 and parts 50 and 58 and the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations.

3. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Borrower or the City who exercises or has exercised any function or responsibilities with respect to activities assisted by Funds, in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, Borrower 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 24 CFR § 84.42, Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, and Sections 1090 through 1097 and 87100 *et seq.* of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify the City immediately if Borrower at any time obtains knowledge of facts constituting a violation.

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

4. Disability Access. Borrower 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 the City a written reasonable accommodations policy that indicates how Borrower will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. Borrower 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 in addition to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601 *et seq.*) and implementing regulations at 49 CFR part 24, the requirements of 24 CFR § 92.353 (Displacement, relocation, and acquisition) and similar Laws.

7. Low-Income Hiring Requirements. The use of Funds triggers compliance with certain hiring requirements imposed by the City's First Source Hiring Ordinance (S.F. Admin. Code Chapter 83), as incorporated into MOHCD's Section 3 Plan. To ensure compliance with those requirements, Borrower must include the provisions attached as **Exhibit D** in its contract with the general contractor for the Project. Borrower will be responsible to the City for ensuring compliance with the requirements listed on **Exhibit D**.

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

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

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

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

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

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

during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Borrower and/or deducted from any payments due Borrower.

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

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

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

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

(a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;

(b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;



(c) conspires to defraud the City by getting a false claim allowed or paid by the City;

(d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or

(e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

13. Sunshine Ordinance.

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

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

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

Borrower must notify the City so that the City may determine the applicability of Chapter 79, and, if necessary, post the requisite sign.

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

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

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

(a) Borrower shall remove all graffiti from any real property owned or leased by Borrower in the City and County of San Francisco within forty eight (48) hours of the earlier of Borrower's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Borrower to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of

fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

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

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

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

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

(b) The requirements of Chapter 12T shall only apply to a Borrower's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and 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.

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

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

date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

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

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

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

19. Food Service Waste Reduction Requirements. Borrower agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Borrower agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Borrower agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Borrower's failure to comply with this provision.

20. Bottled Drinking Water. Unless exempt, Borrower agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative

finer, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Agreement as though fully set forth.

21. Public Power. From and after the effective date of the Ground Lease, Borrower must procure water and sewer service from the City and electricity, telephone, natural gas, and any other utility service from the City or utility companies providing such services, and must pay all connection and use charges imposed in connection with such services. From and after the effective date of the Ground Lease, as between the City and Borrower, Borrower 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. All electricity necessary for operations on the Site must be purchased from the San Francisco Public Utilities Commission ("PUC"), at PUC's standard rates charged to third parties, unless PUC determines, in its sole judgment, that it is not feasible to provide such service to the Premises. PUC is the provider of electric services to City property, and the Interconnection Services Department of SFPUC's Power Enterprise coordinates with Pacific Gas and Electric Company and others to implement this service. To arrange for electric service to the Site, Borrower must contact the Interconnection Services Department in the Power Enterprise of the SFPUC.

**EXHIBIT F**  
**Lobbying/Debarment Certification Form**

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

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

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

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

MACEO MAY APTS, L.P.

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Exhibit F

EXHIBIT G  
Form of Annual Monitoring Report

[To be attached]

Exhibit G

## EXHIBIT H

### 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),<sup>1</sup> and the applicable provision of the Violence Against Women Act, Pub. Law 109-62 (January 5, 2006), as amended.

#### Application Process

- **Application Materials.** MOHCD shall provide an application to be used prior to the housing lottery. The housing provider agrees to use this application to determine lottery eligibility. 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.

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<sup>1</sup>See 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)



- **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.
- **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.

## EXHIBIT I

### 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 record<sup>2</sup> 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;<sup>3</sup>
  - 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;

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<sup>2</sup> 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.

<sup>3</sup> 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 penalties and disabilities resulting from the offense.”

- (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.

EXHIBIT J

Developer Fee Policy

[To be attached]

EXHIBIT K

Hold Harmless Policy

[To be attached]

**EXHIBIT L**  
**Insurance Requirements**

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

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

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

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

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

(d) professional liability insurance of no less than Two Million Dollars (\$2,000,000) per claim and Four Million Dollars (\$4,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Borrower's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Borrower shall assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Borrower's officers and employees against dishonesty with respect to the Funds of no less than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss, including the City as additional obligee or loss payee;

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

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

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

(a) Prior to construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all improvements prior to commencement of construction and City property in the care, custody and control of the Borrower or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-project basis; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

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

(c) Upon completion of construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor. For rehabilitation/construction projects that are unoccupied by residential or commercial tenants, Tenant must obtain Property Insurance by the date that the project receives a Certificate of Substantial Completion.

(ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site that is used by Borrower for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such

Exhibit L



machinery and equipment with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as loss payee.

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

3. General Requirements.

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

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective. The endorsement must provide the City with the same rights as the named insured in the event of cancellation or intended non-renewal.

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

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

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

(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Borrower demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Borrower.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

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

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

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

Exhibit M  
RESERVED

Exhibit M

**EXHIBIT N  
RESERVED**

Exhibit N

**EXHIBIT O  
RESERVED**

Exhibit N

**EXHIBIT P**  
**Residual Receipts Policy**

[To be attached]

Exhibit N

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Free Recording Requested Pursuant to  
Government Code Section 27383 and 27388.1

Recording requested by and  
when recorded mail to:  
City and County of San Francisco  
Mayor's Office of Housing  
and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attn: AGNES DIFIESTA  
APN#:  
Address: 401 Avenue of the Palms

-----Space Above This Line for Recorder's Use-----

### DECLARATION OF RESTRICTIONS

401 Avenue of the Palms

**THIS DECLARATION OF RESTRICTIONS** ("Declaration") is made as of \_\_\_\_\_, \_\_\_\_\_, by **MACEO MAY APTS, L.P.**, a California limited partnership, ("Borrower"), in favor of the **CITY AND COUNTY OF SAN FRANCISCO**, represented by the Mayor, acting through the Mayor's Office of Housing and Community Development (the "City").

### RECITALS

A. The City is making a loan (the "Loan") to Borrower of HOME Program / Affordable Housing Fund: (Inclusionary Affordable Housing Program and Expedited Conversion Program)/ ERAF Affordable Housing Production and Preservation Fund/Low and Moderate Income Housing Asset Fund to finance costs associated with the development of the leasehold interest in the real property described in **Exhibit A** attached hereto and incorporated herein by reference (the land and the leasehold interest, the "Property") as a 105-unit multifamily rental housing development (including one manager unit) affordable to low-income veteran households (the "Project"). The Loan is evidenced by, among other documents, a Loan Agreement between the City and Borrower dated as of the date of this Declaration, as it may be amended from time to time (the "Agreement"). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

B. Pursuant to the Agreement, Borrower has agreed to comply with certain affordability and other use and occupancy restrictions (collectively, the "Regulatory Obligations"), commencing on the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County, and continuing through the Life of the Project (the "Compliance Term"), even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed.

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**AGREEMENT**

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

1. Borrower must comply with the Regulatory Obligations through the expiration of the Compliance Term, regardless of any reconveyance of the Deed of Trust. Specifically, Borrower agrees as follows, subject to additional terms as set forth in the Agreement:

(a) Units in the Project will at all times be rented only to tenants who qualify as Qualified Tenants at initial occupancy, specifically:

Unit Size	Number of Units	Maximum Income Level
Studio	24	80%
1BR	47	80%
2BR	33	80%
2BR	1	Manager's Unit
Total Units	105	

(i) Sixty five (65) units must be rented at all times to tenants receiving vouchers or other subsidy through the HAP contract. If the HAP is terminated, discontinued or reduced at no fault of Borrower with respect to the Project, then the rent restrictions above may be altered but only to the extent necessary for the Project to remain financially feasible, as determined in City's reasonable discretion; provided that one hundred percent (100%) of the units formerly under the HAP must at all times be occupied by Qualified Households whose Adjusted Income does not exceed eighty percent (80%) of Median Income and the monthly rent paid by the Qualified Households may not exceed (a) thirty percent (30%) of eighty percent (80%) of Median Income. In such event, the City will use good faith efforts to meet with Borrower within fifteen (15) days after Borrower's request to meet. The relief provided by the paragraph will not be construed as authorizing Borrower to exceed any income or rent restriction imposed on the Project by CDLAC, CTAC, or under any other agreement. Borrower covenants and warrants that it will obtain all necessary approvals or relief from any other applicable income or rent limitations before implementing the relief provided in this paragraph.

(b) The total amount for rent and utilities (with the maximum allowance for utilities determined by the San Francisco Housing Authority) charged to a Qualified Tenant may not exceed:

(i) thirty percent (30%) of the applicable maximum income level, adjusted for household size; or



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(ii) the tenant paid portion of the contract rent as determined by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

Rent Schedule for HOME Projects:

Number of Units	Home Rent Category	Maximum Rent
	High HOME Rents	Maximum Rent is the Lesser of: 1) Fair market rent for existing housing for comparable units in the area, as established by HUD; or 2) 30% of 65% of Median Income, as established by HUD and published annually.
	Low HOME Rents (must be at least 20% of all units on projects with 5 or more HOME-assisted units)	Maximum Rent is the Lesser of: 1) the Low HOME rent, as established by HUD and published annually; or, 2) Borrower's choice of either: 30% of 50% of Median Income; or 30% of actual adjusted income

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

3. This Declaration and the Regulatory Obligations constitute covenants running with the land, including the leasehold interest and bind successors and assigns of Borrower and any non-borrower owner and lessee of the Property. In the event that Borrower fails to comply with the Regulatory Obligations to the City's satisfaction, in its sole discretion, within thirty (30) days of Borrower's receipt of notice from the City to so comply, or if such cure cannot reasonably be completed within such thirty (30) day period, fails to commence such cure or having commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time period thereafter, provided that such time period does not exceed any longer period of time as deemed necessary by the City in its sole discretion, the City at its option may exercise any rights available at equity or in law, including, without limitation, institute an action for specific performance. Borrower shall pay the City's costs in connection with the City's enforcement of the terms of this Declaration, including, without limitation, the City's attorneys' fees and costs.

Borrower has executed this Declaration as of the date first written above.

SIGNATURES ON FOLLOWING PAGE

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**"BORROWER"**

Maceo May Apts, L.P.,  
a California limited partnership

By: CCDC-Maceo May Apts LLC,  
a California limited liability company,  
its co-general partner

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

By: \_\_\_\_\_  
Norman Fong,  
Executive Director

By: Swords-Maceo May Apts LLC,  
a California limited liability company,  
its co-general partner

By: Swords to Plowshares: Veterans Rights Organization,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker,  
Executive Director

[ALL SIGNATURES MUST BE NOTARIZED.]

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EXHIBIT A

(Legal Description of the Property)

A LEASEHOLD INTEREST IN THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Street Address:

401 Avenue of the Palms



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Free Recording Requested Pursuant to  
Government Code Section 27383

When recorded, mail to:  
Mayor's Office of Housing and Community Development  
of the City and County of San Francisco  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, California 94103  
Attn: AGNES DEFIESTA

-----Space Above This Line for Recorder's Use-----  
Block \_\_\_\_\_, Lot \_\_\_\_\_

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**  
(Property Address: 401 Avenue of the Palms)

**THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING** ("Deed of Trust") is made as of \_\_\_\_\_, \_\_\_\_\_, by  
**MACEO MAY APTS, L.P.**, a California limited partnership, ("Trustor"), whose address is  
\_\_\_\_\_, San Francisco, California 9\_\_\_\_\_, to, a  
\_\_\_\_\_, ("Trustee"), whose address is \_\_\_\_\_, San  
Francisco, California, for the benefit of the **CITY AND COUNTY OF SAN FRANCISCO**,  
a municipal corporation, represented by the Mayor, acting through the Mayor's Office of  
Housing and Community Development ("Beneficiary"). This Deed of Trust is executed  
pursuant to a Loan Agreement by and between Trustor and Beneficiary dated as of  
\_\_\_\_\_, 2020, as it may be amended from time to time (the "Agreement"), the  
provisions of which are incorporated herein by reference. Definitions and rules of  
interpretation set forth in the Agreement apply to this Deed of Trust.

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) 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 a 105-unit multifamily rental  
housing development (including one manager unit) affordable to low-income veteran  
households (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

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(c) all existing and future leases, subleases, tenancies, subtenancies, licenses, occupancy agreements and concessions, and any guarantees thereof ("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 Treasure Island Development Authority, as lessor, and Trustor, as lessee, including any options of any nature whatsoever, and any future interest of Trustor in fee title to the Land; and

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

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

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

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

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

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(j) all rents, revenues, issues, royalties, proceeds, profits, income, reimbursements, royalties, receipts and similar items, including prepaid rent and security deposits, in whatever form (including, but not limited to, cash, checks, money orders, credit card receipts or other instruments for the payment of money) paid or payable in connection with the Property ("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 3 below**; and

(k) all intangible personal property and rights relating to the Property or its operation or used in connection with it, including, without limitation, permits, licenses, plans, specifications, construction contracts, subcontracts, bids, soils reports, engineering reports, land planning maps, drawings, construction contracts, notes, drafts, documents, engineering and architectural drawings, deposits for utility services, installations, refunds due Trustor, trade names, trademarks, and service marks; and

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

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 \_\_\_\_\_, 20\_\_\_\_, 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 **TWENTY FOUR MILLION TWO HUNDRED FIFTY FIVE THOUSAND** and No/100 Dollars (\$24,255,000.00), 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. Assignment of Rents.

(a) Assignment as Additional Security. Trustor hereby irrevocably grants, transfers, and assigns to Beneficiary all of its right, title, and interest in and to the Rents as additional security for the Secured Obligations. Subject to the provisions of subsection 3(d)

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below, Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default exists and is continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

(b) Collection and Application of Rents. Subject to the License granted to Trustor under subsection 3(a) above, Beneficiary has the right, power, and authority to collect any and all Rents. Subject to the License granted to Trustor under subsection 3(a) above, Trustor hereby appoints Beneficiary its attorney-in-fact to perform any and all of the following acts, if and at the times when Beneficiary in its sole discretion may so choose:

1. Demand, receive, and enforce payment of any and all Rents; or
2. Give receipts, releases, and satisfactions for any and all Rents; or
3. Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents.

Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property. In Beneficiary's sole discretion, it may choose to collect Rents either with or without taking possession of the Property. Beneficiary shall apply all Rents collected by it in the manner provided under this Deed of Trust. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder.

(c) Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Real Property and Improvements, Beneficiary is not and shall not be deemed to be:

1. A "mortgagee in possession" for any purpose; or
2. Responsible for performing any of the obligations of the lessor under any lease; or
3. Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property; or
4. Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

(d) Election by Beneficiary. Upon the occurrence and during the continuance of an Event of Default, Beneficiary, at its option, may exercise its rights under this Section or otherwise provided under applicable law (including, but not limited to, under Section 2938 of the California Civil Code).



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4. 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; to pay when due all claims for labor performed and materials furnished therefor, subject to Trustor's right to contest any claim in good faith; to comply with all laws affecting the Project, subject to Trustor's right to contest any claim in good faith; not to commit or permit waste with respect to the Land or the Improvements; not to commit, suffer or permit any act upon the Land or the Improvements in violation of law, including Environmental Laws; and to do all other acts made reasonably necessary by the character or use of the Land and the Improvements;

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

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

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

(f) should Trustor fail to make any payment or to do any act as herein provided, then, subject to the notice and cure provisions included in this Deed of Trust and the Agreement 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.

5. Security Agreement and Fixture Filing.

(a) Grant of Security Interest. Without limiting any of the other provisions of this Deed of Trust, to secure the payment, performance and observance of the Secured Obligations, Trustor, as debtor (referred to in this Section 5 as "Debtor"), expressly grants to Beneficiary, as secured party (referred to in this Section 5 as "Secured Party"), a continuing security interest in all the Property (including now and hereafter existing) to the full extent that any portion of the Property may be subject to the Uniform Commercial Code. For purposes of this Section 5, "Collateral" means the personal property (tangible or intangible) and fixtures included in the Property.

(b) Debtor's Covenants, Representations, and Warranties.

(i) Debtor covenants and agrees with Secured Party that:

(1) In addition to any other remedies granted in this Deed of Trust to Secured Party or Trustee (including specifically, but not limited to, the right to proceed against the Property in accordance with the rights and remedies in respect of the Property that is real property under the Uniform Commercial Code), Secured Party may, if an Event of Defaults occurs and is continuing, proceed under the Uniform Commercial Code as to all or any part of the Collateral, and shall have and may exercise with respect to the Collateral all the rights, remedies, and powers of a secured party under the Uniform Commercial Code.

(2) Without limiting the foregoing, Secured Party shall have the right upon any public sale or sales, and, to the extent permitted by law, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor. Debtor further agrees to allow Secured Party to use or occupy the Property, without charge, for the purpose of effecting any of Secured Party's remedies in respect of the Collateral.

(3) To the extent permitted by applicable law, Debtor waives all claims, damages, and demands against Secured Party arising out of the repossession, retention, or sale of the Collateral, except for claims, damages, and demands due to the active gross negligence or willful misconduct of Secured Party in dealing with such Collateral. Trustor agrees that Secured Party need not give more than five (5) days' notice of the time and place of any public sale or of the time at which a private sale will take place and that such notice is reasonable notification of such matters. Secured Party may disclaim any warranties that might arise in connection with the sale, lease, license, or other disposition of the Collateral and have no obligation to provide any warranties at such time. Secured Party may adjourn any public or private sale from time to time by announcement at the time and

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place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(4) To the extent permitted by law, Debtor hereby specifically waives all rights of redemption, stay, or appraisal which it has or may have under any law now existing or hereafter enacted.

(ii) Debtor hereby authorizes Secured Party to file financing and continuation statements with respect to the Collateral as Secured Party may reasonably require.

(iii) Debtor hereby represents and warrants that no financing statement is on file in any public office except as authorized by Secured Party. Debtor will at its own cost and expense, upon demand, furnish to Secured Party such further information and will execute and deliver to Secured Party financing statements and other documents in form reasonably satisfactory to Secured Party and will do all such acts that Secured Party may at any time or from time to time reasonably require to establish and maintain a perfected security interest in the Collateral as security for the Secured Obligations, subject only to liens or encumbrances approved by or benefiting Secured Party. Debtor will pay the actual expense of filing or recording such financing statements or other documents, and this instrument, as and where reasonably required by Secured Party.

(iv) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all rents, royalties, issues and profits, and all inventory accounts, accounts receivable and other revenues of the Property.

(c) Fixture Filing. Certain of the Collateral is or will become "fixtures" (as that term is defined in the Uniform Commercial Code). This Deed of Trust, upon being filed for record in the real estate records of San Francisco County, shall operate also as a financing statement and fixture filing upon such of the Collateral that is or may become fixtures under the Uniform Commercial Code. Debtor's name and type and jurisdiction of entity are set forth in the introductory paragraph hereof. Debtor's address is set forth above. Debtor's EIN Number is 85-5192084. Secured Party's name and mailing address are set above.

#### 6. Insurance and Condemnation Proceeds.

(a) 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.

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

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

(d) 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 City Document unless the default has been cured by the application or release of funds.

7. Further Agreements. Trustor further acknowledges and agrees as follows:

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

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

(c) Upon: (i) written request of Beneficiary stating that all obligations secured hereby have been paid or performed; (ii) Beneficiary's surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose; and (iii) payment of its fees, if any, Trustee shall reconvey the Property then held hereunder without covenant or warranty.

(d) 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.

(e) 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

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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.

(f) 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.

(g) 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.

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

(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

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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 fact 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.

9. 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.

*Remainder of Page Intentionally Left Blank; Signatures Appear On Following Page*

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"TRUSTOR:"

Maceo May Apts, L.P.,  
a California limited partnership

By: CCDC-Maceo May Apts LLC,  
a California limited liability company,  
its co-general partner

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

By: \_\_\_\_\_  
Norman Fong,  
Executive Director

By: Swords-Maceo May Apts LLC,  
a California limited liability company,  
its co-general partner

By: Swords to Plowshares: Veterans Rights Organization,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker,  
Executive Director

ALL SIGNATURES MUST BE NOTARIZED

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EXHIBIT A  
Legal Description of the Land

A LEASEHOLD INTEREST IN THE FOLLOWING LAND SITUATED IN THE CITY OF  
SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA,  
DESCRIBED AS FOLLOWS:

Street Address:  
401 Avenue of the Palms

EXHIBIT A

Rev. November 2017M:\MOH\Policy\BOS\BOS Legislation - Pre-Introduction\Maceo May Loan\Draft\MaceoDOTBOS.docx



**SECURED PROMISSORY NOTE**

(Affordable Housing Bond Program /

HOME Program / Affordable Housing Fund: (Inclusionary Affordable Housing Program and Expedited Conversion Program)/ ERAF Affordable Housing Production and Preservation Fund/Low and Moderate Income Housing Asset Fund

Principal Amount: \$ 24,255,000

San Francisco, CA

Date:

FOR VALUE RECEIVED, the undersigned, **MACEO MAY APTS, L.P.**, a California limited partnership ("Maker"), hereby promises to pay to the order of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, or holder (as the case may be, "Holder"), the principal sum of **TWENTY FOUR MILLION TWO HUNDRED FIFTY FIVE THOUSAND** and No/100 Dollars (\$24,255,000.00) (the "Funding Amount"), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement described in **Section 1** below as provided in this Note.

1. Agreement.

A. Pursuant to a Loan Agreement dated June 19, 2018, by and between Holder and Maker, Holder previously made a loan of \$6,562,000 to Maker to conduct predevelopment activities in support of the construction of a multifamily rental housing development comprised of a 105-unit multifamily rental housing development (including one manager unit) affordable to low-income veteran households (the "Original Loan"). The Original Loan is evidenced by the following documents between City and Borrower: (1) a Loan Agreement dated as of June 19, 2018, as amended by that certain First Amendment to Loan Agreement dated March 22, 2019, and Second Amendment to Loan Agreement dated \_\_\_\_\_ (collectively, the "Original Agreement"), and (2) a Secured Promissory Note dated June 19, 2018 in the amount of \$2,000,000 payable to City, a First Amended and Restated Secured Promissory Note dated March 22, 2019, made by Borrower in the amount of \$4,200,000 to the order of the City (the "First Amended Note") and a Second Amended and Restated Secured Promissory Note dated \_\_\_\_\_, made by Borrower in the amount of \$6,562,000 to the order of the City (the "Second Amended Note"). Maker hereby acknowledges and agrees that \$\_\_\_\_\_ of the Original Loan has been previously disbursed under the First Amended Note and Second Amended Note, and that such funds were used for predevelopment expenses of the Project.

B. Holder is making an additional loan of Seventeen Million Six Hundred Ninety Three Thousand and No/Dollars (\$17,693,000.00) (the "Additional Loan") to Maker for the completion of development and construction activities, including permanent financing, such that the Original Loan is increased to Twenty Four Million Two Hundred Fifty Five Thousand and No/100 Dollars (\$24,255,000.00) (the "Loan"). This Secured Promissory Note (this "Note") reflects the Original Loan and the Additional Loan and replaces the Second Amended Note in its entirety. This Note is given under the terms of the Loan Agreement by and between Maker and Holder (the "Agreement") dated concurrently herewith, which Agreement is incorporated herein by reference. Maker's obligations under this Note and the Agreement are secured by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date of this Note, made by Maker for the benefit of Holder. 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. Upon execution of this Note, the Second Amended Note will each be canceled and returned to the Maker.

2. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of [one percent (1%)] per annum, simple interest, from the date of the close of escrow through the date of full payment of all amounts owing under the City Documents. Interest will be calculated on the basis of actual days elapsed and a 360-day year, which will result in higher interest charges than if a 365-day year were used..

3. Default Interest Rate. Upon the occurrence of an Event of Default under any City 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 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 City 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 City Document.

4. Repayment of Funding Amount.

4.1 Subject to Section 13.4 of the Agreement, Maker must make annual payments of principal and interest (each, a "Payment") in an amount equal to the Residual Receipts, if any, attributable to the prior calendar year, beginning on the first [July 1st] after the end of the calendar year of the Completion Date, and continuing each [July 1st] thereafter up to and including the Maturity Date, as defined below (each, a "Payment Date"). All Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The unpaid principal balance of the Loan, together with all accrued and unpaid interest and unpaid costs and fees incurred, will be due and payable on the date that is the later (a) the fifty seventh (57th) anniversary of the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County or (b) the fifty fifth (55th) anniversary of the Conversion Date (the "Maturity Date"). Any Payment Date, including any Excess Proceeds Payment Date and the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

4.2 Subject to Section 13.4 of the Agreement, Maker must make payments of principal and interest (each, an "Excess Proceeds Payment") in an amount equal to the Excess Proceeds, if any, on the date that is thirty (30) days after the later of the date on which Maker receives its Form 8609 from the California Tax Credit Allocation Committee or the date on which Maker receives Excess Proceeds from its limited partner or other financing sources (the "Excess Proceeds Payment Date"), in accordance with HCD if applicable. All Excess Proceeds Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan.

4.3 If Maker is awarded AHP funding, Maker will repay the AHP Bridge Loan to the Holder on the date that Maker closes such loan for AHP funding and the AHP funds are disbursed to Maker; provided, however, that if Maker is not awarded AHP funding or receives AHP funding sufficient for only partial repayment of the AHP Bridge Loan, the unpaid principal balance of the AHP Bridge Loan and unpaid costs and fees incurred will be due and payable at the Maturity Date according to the terms set forth in this Note.

5. Security. Maker's obligations under this Note are secured 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, 5<sup>th</sup> Floor, San Francisco, CA 94103, or to any other place Holder from time to time designates.

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

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

6.5 Except as otherwise set forth herein or in the Agreement, no prepayment of this Note shall be permitted without Holder's prior written consent.

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 Project.

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 City 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.

7.3 Notwithstanding Section 7.2 and 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, 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 City Documents are not valid and enforceable under California law. This provision does not limit in any way Holder's right to recover sums arising under any obligation of Maker to indemnify Holder of 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.

Notwithstanding anything to the contrary contained herein, Holder hereby agrees that any cure of any default made or tendered by Maker's limited partner shall be accepted or rejected on the same basis as if made or tendered by Maker.

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.

"MAKER"

Maceo May Apts, L.P.,  
a California limited partnership

By: CCDC-Maceo May Apts LLC,  
a California limited liability company,  
its co-general partner

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

By: \_\_\_\_\_  
Norman Fong,  
Executive Director

By: Swords-Maceo May Apts LLC,

a California limited liability company,  
its co-general partner

By: Swords to Plowshares: Veterans Rights Organization,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Michael Blecker,  
Executive Director

## OPTION TO LEASE AGREEMENT

This Option to Lease Agreement (this "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the AUTHORITY TREASURY ISLAND DEVELOPMENT AUTHORITY, a public body, corporate and politic of the State of California (the "Authority") Authority and \_\_\_\_\_, a California \_\_\_\_\_, and its permitted successors and assigns hereunder (the "Optionee"), with reference to the following facts:

### RECITALS

A. The Authority is the fee owner of that certain real property and the improvements thereon, located at \_\_\_\_\_, San Francisco and more particularly described in Exhibit A attached hereto (the "Property").

B. Optionee desires to develop the Property with approximately 106 units (including one manager's unit) for low income households (the "Project"). In order to develop the Project, Optionee desires to enter into a ground lease with the Authority in which the Authority will lease to Optionee the Property subject to certain conditions as provided herein.

C. Optionee intends to develop the Project with Low Income Housing Tax Credits and other sources.

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

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

### AGREEMENT

Section 1. Grant of Option. The Authority grants to Optionee the option to lease the Property and construct improvements to be located thereon for the consideration and under the terms and conditions set forth in this Agreement (the "Option").

Section 2. Term of Option: Exercise.

a. Term and Extension of Term. The term of the Option (the "Term") shall be for a period commencing on the date of this Agreement and ending June 30, 2021, (the "Initial Term") unless extended. So long as the Optionee is not then in default, Optionee may request an extension of the Term for an additional six (6) months (the "Extended Term") by giving written notice to the Authority between the date that is thirty (30) days prior to the expiration of the Initial Term and at any time before the expiration of the Initial Term. The Extended Term shall commence on 12:01 A.M. on the day immediately following the expiration of the Initial Term and shall end on December 31, 2021. All references in this Agreement to the Term shall mean the Initial Term, and if extended as set forth above, the Extended Term. During the Term, Optionee and Authority staff agree to negotiate in good faith to complete all of the terms and conditions of the ground lease of the Property from the Authority to Optionee consistent with this Agreement (upon completion of such negotiations, the "Ground Lease").

The final terms of the Ground Lease must be agreed to by Optionee and the Authority's Executive Director or her/his designee, in writing, before Optionee's exercise of the Option. The Term shall end on the date set forth above or, if earlier, on the effective date of the Ground Lease.

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

c. Expiration. The Option shall expire at midnight on the last day of the Term. If the expiration of the Term falls on a Saturday, Sunday or legal holiday in the State of California, then the Option may be exercised on the next following business day. Upon termination of the Option and a written request by the Authority, Optionee shall sign and deliver a quitclaim deed or such other document as may be reasonably required by the Authority to evidence the termination of the Option.

Section 3. Option Consideration. The Option is granted in consideration of Optionee's obligation to negotiate in good faith for the Ground Lease and for advancement of the Project. The Option consideration is related to the Option only and in no way relates to Ground Lease payments that will be owed to the Authority.

Section 4. Ground Lease of the Property. Authority staff shall prepare the initial form of ground lease substantially in the form used by the City and County of San Francisco's (the "City") Mayor's Office of Housing and Community Development ("MOHCD") for projects in which MOHCD is the fee owner of property that will be developed for affordable housing. The Ground Lease shall be in accordance with the following:

- i. Term of Ground Lease. The Ground Lease shall become effective immediately following the full execution by the parties and shall end ninety nine (99) years from the date of construction completion of the Project.
- ii. Taxes and Assessments. The tenant shall be responsible for the payment of any and all property taxes and assessments levied against the leasehold estate and the Property during the term of the Ground Lease subject to any abatement available therefrom.
- iii. Project Use; Existing Tenants. The Property shall be used during the term of the Ground Lease only for affordable housing, with maximum rent and income levels set at no greater than eighty percent (80%) Area Median Income ("AMI") as determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted for household size and high housing cost area, and approved ancillary uses, including community serving uses. If required by the Project's tax credit

investor based on the Project's residual value analysis test, and if approved by the MOHCD Director in his or her reasonable discretion, the Ground Lease may permit increases in the maximum rent and income levels after the 55th year of the Ground Lease term, but such increases shall be limited only to the extent necessary to satisfy the Project's residual value analysis test. Notwithstanding the foregoing, any households occupying units on Treasure Island at the time of execution of that certain Disposition and Development Agreement between the Authority and Treasure Island Community Development, LLC dated June 28, 2011 who continue to occupy units at the time Optionee takes possession of the Property ("Existing Tenants") shall not be subject to such affordability restrictions to the extent such Existing Tenants do not qualify at the time Optionee takes possession of the Property.

- iv. Rent. The tenant shall pay the landlord annual rent in the amount of Fifteen thousand Dollars (\$15,000.00) ("Base Rent"). If the Project's residual value analysis test supports including additional rent, the Ground Lease may include additional rent to the extent feasible, in an amount (when combined with the Base Rent) not to exceed a total of 10% of the land value of the Property (as determined by a MAI appraiser selected by, and at the sole cost of, the tenant, and set forth in the Ground Lease), to be paid solely as residual rent, payable only to the extent proceeds are available from the Project after deductions for Project operating expenses, mandatory debt service payments, property management fees, reserve deposits required by Project lenders, deferred developer fees, and asset and partnership management fees in amounts permitted in accordance with the then-current MOHCD policy.
- v. Construction and Operation of the Project. The tenant shall be responsible, at its sole cost, for construction, operation, and maintenance of the Project during the Ground Lease term.
- vi. Title to Property. The Ground Lease shall provide that the Authority will own fee title to the land, and the Optionee will own fee title to all improvements constructed or otherwise located on the land, during the Ground Lease term.
- vii. Disposition of Improvements at End of Lease. At the end of the Ground Lease term, fee title to all the improvements shall vest in the Authority without further action of any party, without any obligation by the Authority to pay any compensation therefor to the tenant and without the necessity of a deed from the tenant to the Authority.



- viii. Mortgage Protections. The Ground Lease shall include standard mortgagee protection provisions.
- ix. Defaults; Right to Cure. The Authority will provide any notice of any defaults under the Ground Lease to the tenant's limited partners and lenders, and allow any such parties the right to cure a default by the tenant under the Ground Lease. Pursuant to the terms of the Ground Lease, Authority shall not be entitled to terminate the Ground Lease following any uncured default by the tenant during the fifteen (15) year tax credit compliance period for the Project, except if such default is failure to pay rent.
- x. Encumbrances. The Ground Lease will permit the tenant to encumber its leasehold interest in the Property to secure any loans deemed necessary by the tenant, as approved by MOHCD. Any funds from a loan secured by the Property must be used for the development, maintenance, rehabilitation or operation of the Property.

Notwithstanding anything to the contrary contained herein, the Authority and Optionee hereby acknowledge and agree that the parties intend to enter into a Ground Lease that will facilitate development of a Project that can maintain long term affordability in a financially feasible manner. Accordingly, Authority and Optionee agree to negotiate in good faith Ground Lease terms that will account for the prevailing underwriting requirements, applicable state and federal law, and site conditions at the time.

Section 5. Closing.

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

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

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

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

Authority: Treasure Island Development Authority  
c/o Office of Economic and Workforce Development  
City Hall, Rm. 448  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Attn: Treasure Island Project Director

and

Office of the City Attorney  
City Hall, Rm. 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Attn: Real Estate/Finance

Optionee: \_\_\_\_\_  
\_\_\_\_\_  
San Francisco, CA \_\_\_\_\_  
Attn: \_\_\_\_\_

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

Section 7. Assignment of Option. Without the prior written consent of the Authority, Optionee may assign its rights and obligations under this Agreement to any limited liability company in which \_\_\_\_\_, or their respective corporate affiliates, are managing members, or a limited partnership in which \_\_\_\_\_, or their respective corporate affiliates, are general partners. Optionee shall provide written notice and a copy of an assignment agreement executed by Optionee and its permitted assignee within five (5) business days after such assignment of this Agreement. All other transfers by Optionee shall require the prior written consent of the Authority.

Section 8. Binding Effect. This Agreement and its terms and conditions shall bind upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. By approving this Agreement, the City's Board of Supervisors approves the Ground Lease with the substantive terms described in Section 4 without the need for additional action by the Board of Supervisors; provided, if there are any material changes that are to the detriment of the Authority, as determined by the Authority Executive Director, then such material changes will be subject to Board of Supervisors approval before the Ground Lease becomes effective.

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

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

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

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

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

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

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

Section 16. Sunshine Ordinance. Optionee understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to Authority hereunder public records subject to public disclosure. Optionee hereby acknowledges that Authority may disclose any records, information and materials submitted to Authority in connection with this Agreement.

Section 17. Prohibition Against Making Contributions to City. Through its execution of this Agreement, Optionee 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 City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual 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. Optionee 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.

Section 18. Conflicts of Interest. Through its execution of this Agreement, Optionee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Optionee becomes aware of any such fact during the term of this Agreement, Optionee shall immediately notify the City.

Section 19. Effective Date. Notwithstanding anything to the contrary contained herein, this Agreement shall not be effective until the date on which the City's Board of Supervisors and Mayor enact a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, OPTIONEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF AUTHORITY HAS AUTHORITY TO COMMIT AUTHORITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF AUTHORITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION.

[Signatures appear on following page]

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

**AUTHORITY:**

TREASURE ISLAND DEVELOPMENT  
AUTHORITY, a public body, corporate and  
politic

By: \_\_\_\_\_

APPROVED AS TO FORM:  
DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**OPTIONEE:**

\_\_\_\_\_, a California  
\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

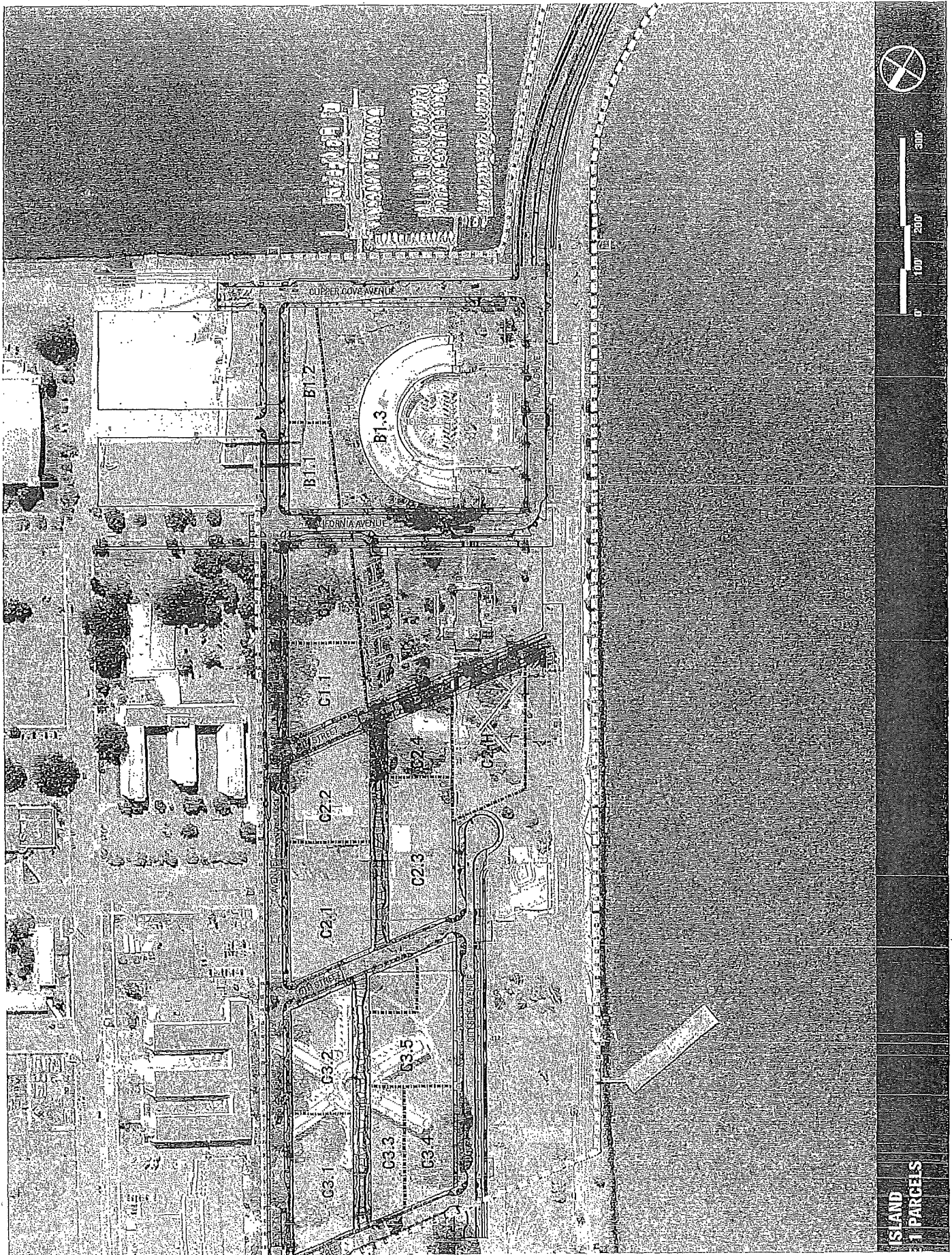
Its: \_\_\_\_\_

**EXHIBIT A**

Property Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY AND COUNTY  
OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**[LEGAL DESCRIPTION TO COME FROM PRELIMINARY REPORT]**



ISLAND  
1 PARCELS

EXHIBIT E

DISPOSITION AND DEVELOPMENT AGREEMENT

(TREASURE ISLAND/YERBA BUENA ISLAND)

HOUSING PLAN

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**ATTACHMENTS**

Attachment A – Housing Data Table

Attachment B – Housing Map

Attachment C – Transition Housing Rules and Regulations (to be attached )

Attachment D – City and County San Francisco Affordable Housing Monitoring  
Procedures Manual

## SUMMARY

The development plan for Naval Station Treasure Island ("NSTI") under the DDA calls for the development of up to 8,000 residential units. This housing plan (the "Housing Plan") provides that not less than 25% of the residential units that may be developed at the Project Site (2,000 units if the full 8,000 units are developed) will be below market rate units affordable to low and moderate income households or Transitioning Households, and provides that this percentage may increase to 30% if additional public funds for affordable housing becomes available. Of the 2,000 below market rate units, the parties anticipate that up 1,684 units will be developed by Qualified Housing Developers, including approximately 435 to be developed by TIHDI member organizations. And approximately 21.7% of the acreage of the developable residential pads will be available and used for the development of these 1,684 affordable housing units.

The remainder of the below market rate units will be inclusionary units built by Vertical Developers in concert with the private market-rate development projects. Five percent (5%) of the total Developer Residential Units shall be Inclusionary Units. Developer may sell land to Vertical Developers, including Developer and its Affiliates as permitted in the DDA, to develop up to Six Thousand (6,000) Market Rate Residential Units. If the maximum total number of Market Rate Units is built, then the total number of Inclusionary Units would be Three Hundred Sixteen (316), for a total number of Developer Residential Units of Six Thousand Three Hundred Sixteen (6,316) units. The Inclusionary Units will be constructed and sold or rented in accordance with this Housing Plan.

Developer will submit to the Authority Major Phase Applications and Sub-Phase Applications pursuant to the DDA and the DRDAP. Each Major Phase will include one or more Sub-Phases. Following each Sub-Phase Approval, the Authority will convey the Market Rate Lots within that Sub-Phase to Developer and Developer will prepare Developable Lots in Sub-Phases in accordance with the Phasing Plan and the Schedule of Performance. Developer will then convey the Market Rate Lots to Vertical Developers for residential development in accordance with an approved Vertical DDA and the Development Requirements. The Authority Housing Lots will be used for the development of Authority Housing Units in accordance with this Housing Plan. While the Developer will retain flexibility and discretion to respond to market conditions regarding the types, sizes and locations of Developer Residential Units consistent with the Development Requirements, the Project will phased so as to include a mix of Market Rate Lots and Authority Housing Lots as needed to meet the proportionality requirements of this Housing Plan.

Developer and the Authority have designated the general location of the Authority Housing Lots, which are distributed throughout the Project Site. The Authority and TIHDI will be responsible for causing the development of Affordable Housing Units and Transition Units on the Authority Housing Lots. The Affordable Housing Units are expected to include a range of unit types and tenures, including family housing units and senior units. The Authority shall retain the discretion to determine the type of Affordable Housing Units to be constructed so long as the Units are consistent with the Development Requirements. The Authority shall enter into a separate agreement with TIHDI for the development of the TIHDI Units on specified Authority Housing Lots.

In addition to the Affordable Housing Units, the Authority will also be responsible for causing the development of the Transition Units. The Transition Units are to provide housing for existing residents who qualify for benefits under the Transition Housing Rules and Regulations and who, when noticed that they must make a long term move, elect to rent a new unit on Treasure Island in accordance with the Transition Housing Rules and Regulations. The Transition Units will be deed restricted to require that upon vacancy of the Transitioning Household, subsequent households occupying the Transition Unit must meet Affordable income requirements and each such Transition Unit will become an Affordable Housing Unit. If a Transitioning Household does meet Affordable income requirements, then the applicable Transitions Unit will be a deed restricted Affordable Housing Unit from its inception. The Transition Housing Rules and Regulations provide certain benefit options to Transitioning Households, including moving assistance, down payment assistance, an in lieu payment and the opportunity to move to Transition Units at specified rents. The estimated costs of implementing the Transition Housing Rules and Regulations have been factored into the Developer Housing Subsidy to be paid by Developer to the Authority.

The DDA calls for the use of a variety of private and public funding sources to create the Authority Housing Units envisioned by this Housing Plan, including Developer Completion of Infrastructure and Stormwater Management Controls in accordance with this Housing Plan, the Developer Housing Subsidy, tax increment financing generated from one or more infrastructure financing districts, the jobs-housing linkage fees, low-income housing tax credit proceeds and various State and Federal sources of funding. Collectively, the Project is expected to contribute more than \$460 million towards the creation of the Authority Housing Units, including the costs of needed infrastructure, site preparation and construction costs. The Project-generated funds will come from three sources:

- Net Available Increment and Developer contributions in an amount equal to the Housing Percentage, as defined in the Financing Plan, will be deposited into the Housing Fund in accordance with the Financing Plan and used by the Authority for the development of the Affordable Housing Units.
- Second, the commercial development on the Project Site is anticipated to generate Jobs-Housing Linkage fees paid by Vertical Developers in accordance with the DDA and the commercial Vertical DDAs/LDDAs. All Jobs-Housing Linkage fees payable under these DDAs from the commercial development on the Project Site will be used for the production of Authority Housing Units in accordance with this Housing Plan.
- Third, Developer shall pay a direct subsidy to the Authority to be used toward the costs of the Authority Housing Units and implementation of the Transition Housing Rules and Regulations. The Developer Housing Subsidy will equal Seventeen Thousand Five Hundred Dollars (\$17,500) per Market Rate Unit. The actual amount of the Developer Housing Subsidy will be determined based on the maximum number of Market Rate Units allowed for development in each Vertical DDA (but subject to a minimum and maximum amount, as described below), and will become payable upon the transfer of each Market Rate Lot to a Vertical Developer (subject to an initial five (5) year period in which no Developer

Housing Subsidy will be payable, except as described below). The Developer Housing Subsidy will be \$105 million if the maximum 6,000 Market Rate Residential Units are developed, and the minimum Developer Housing Subsidy will be \$73.5 million as set forth in Section 6.1 below.

The Parties acknowledge that the Development Plan Update contemplated that the Project Site would be included within a Redevelopment Project Area and that tax increment financing under the Community Redevelopment Law would be available to the Parties to finance Project Costs, including affordable housing. As a result of potential changes to the Community Redevelopment Law, the Parties have determined to proceed with development of the Project Site using an Infrastructure Financing District model rather than a redevelopment model under the Community Redevelopment Law. Current laws on Infrastructure Financing Districts provide substantially reduced incremental tax revenue from that provided under the Community Redevelopment Law, and furthermore place different restrictions and limitations on the use of such funds. Accordingly, the Parties have reduced the percentage of Authority Housing Units to twenty five percent of the total number of Residential Units with a corresponding increase in the number of Market Rate Units (as compared to the Development Plan Update) to compensate for the reduced public financing available for the Project. If, as a result of changes to the current Infrastructure Financing District law or other public financing vehicles, the amount of public financing available for affordable housing in the Project is increased, the Parties agree to increase the percentage of Authority Housing Units as set forth in Article 9 of this Housing Plan.

The foregoing summary is provided for convenience and for informational purposes only. In case of any conflict, the provisions of the Housing Plan and the DDA shall control.

## 1. DEFINITIONS

Initially capitalized terms unless separately defined in this Housing Plan have the meanings and content set forth in the DDA. Terms defined in the DDA and also set forth in this Section are provided herein for convenience only.

1.1 Adequate Security shall have the meaning set forth in the DDA.

1.2 Affordable, Affordability, or Affordable Housing Cost means (a) with respect to a Rental Unit, a monthly rental charge (including the Utility Allowance applicable to the Household Size of such Rental Unit but excluding Parking Charges) that does not exceed thirty percent (30%) of the maximum Area Median Income percentage permitted for the applicable type of Residential Unit, based upon Household Size; and (b) with respect to a For-Sale Residential Unit, a purchase price based on a five percent (5%) down payment and a commercially reasonable thirty (30) year fixed mortgage with an interest rate as set forth below, points and fees and total annual payments for principal, interest, taxes and owner association dues, but excluding Parking Charges, not exceeding thirty three percent (33%) of the maximum Area Median Income percentage permitted for the applicable type of Residential Unit reduced by five percent (5%), based upon Household Size. With respect to the Inclusionary Units, Parking Charges to be paid by residents shall be in addition to the Affordable Housing Cost and shall not be included in rent or the purchase price in determining Affordable Housing Cost. With respect to Authority Housing Units, the Authority shall have the right to determine whether Parking

Charges will be included in the rent or purchase price for purposes of determining the Affordable Housing Cost in accordance with Section 7.1 of this Housing Plan and the Design for Development. The interest rate for the mortgage loan that is used to calculate the purchase price for a Sale Unit shall be the higher of (1) the ten (10) year rolling average interest rate, as calculated by the Authority based on data provided by Fannie Mae or Freddie Mac, or if such data is not provided by Fannie Mae or Freddie Mac, then based on data from an equivalent, nationally recognized mortgage financing institution approved by the Vertical Developer and the Authority, or (2) the current commercially reasonable rate available through the Authority approved lender, in either case as in effect on a date mutually agreed upon between the Authority and the Vertical Developer but before the date the Authority approves the marketing plan for the Sale Residential Unit.

1.3 Affordable Housing Loan Fund has the meaning set forth in Section 6.4 of this Housing Plan.

1.4 Affordable Housing Unit means a Residential Unit constructed by a Qualified Housing Developer (including Qualified Housing Developers selected by TIHDI) on an Authority Housing Lot that is available for lease or purchase at an Affordable Housing Cost for households with an annual income up to one hundred twenty percent (120%) of Area Median Income, but may be leased or sold to households with lower income levels as determined by the Authority. Inclusionary Units are not included in Affordable Housing Units. The Authority shall determine the affordability level and other relevant restrictions for each Authority Housing Project in conformance with the Development Requirements, shall comply with Government Code Section 53395.3(c) to the extent applicable, and, with respect to the Replacement Housing Units shall comply with Government Code Section 53395.5, provided that Transition Units shall initially meet the standards required under the Transition Housing Rules and Regulations.

1.5 Approved Sites has the meaning set forth in Section 2.5 of this Housing Plan.

1.6 Approval (Approve, Approved and any variation) is defined in the DDA.

1.7 Area Median Income means for the Inclusionary Units, unadjusted median income for the San Francisco area as published from time to time by the United States Department of Housing and Urban Development ("HUD") adjusted solely for household size. If data provided by HUD that is specific to the median income figures for San Francisco are unavailable or are not updated for a period of at least eighteen months, the Area Median Income may be calculated by the Authority using other publicly available and credible data as approved by Developer and the Authority. For the Authority Housing Units, Area Median Income shall be the higher of the above definition or the definition used by any federal, State or local funding source providing financing for the Authority Housing Units.

1.8 Authority Housing Lot shall mean the lots identified as Authority Housing Lots on the Housing Map, subject to any revisions as may be requested by Developer and approved by the Authority as part of the Major Phase and Sub-Phase Approval processes, or otherwise as set forth in the DRDAP.

1.9 Authority Housing Lot Completion Date means the date an Authority Housing Lot meets the requirements for a Developable Lot including Completion of all Infrastructure and Stormwater Management Controls except for the Transferable Infrastructure related to the Authority Housing Lot.

1.10 Authority Housing Project means a Residential Project constructed by a Qualified Housing Developer selected by the Authority or TIHDI, as applicable, containing Authority Housing Units and possibly also containing other uses permitted under the Design for Development and this Housing Plan.

1.11 Authority Housing Unit means a Residential Unit developed on an Authority Housing Lot, which shall be either an Affordable Housing Unit or a Transition Unit. Transition Units may be Affordable Housing Units at inception (for income-qualifying Transitioning Households) or, if not, shall become Affordable Housing Units upon the vacancy of the initial Transitioning Household.

1.12 Commence (Commenced, Commencement and any variation) has the meaning set forth in the DDA.

1.13 Complete (Completed, Completion and any variation) has the meaning set forth in the DDA.

1.14 Completed Authority Housing Lot means an Authority Housing Lot that meets the requirements for a Developable Lot including with all Infrastructure and Stormwater Management Controls except for the Transferrable Infrastructure Completed.

1.15 CRL Funding Amount has the meaning set forth in Section 9.1 of this Housing Plan.

1.16 Declaration of Restrictions means a document or documents recorded against an Inclusionary Unit requiring that the Unit remain Affordable in accordance with the terms of this Housing Plan. The Declaration of Restrictions for the Rental and For Sale Inclusionary Units shall be in a form Approved by the Developer and the Authority in accordance with Section 5.1(f) of this Housing Plan.

1.17 Developer Housing Subsidy means the subsidy to be paid by Developer to the Authority for the development of Authority Housing Units on the Authority Housing Lots and the implementation of the Transition Housing Rules and Regulations. The Developer Housing Subsidy shall be paid over time as set forth in this Housing Plan, and shall equal the total number of Market Rate Units allowed to be constructed on each Market Rate Lot as set forth in the Vertical DDA for such Lot multiplied by Seventeen Thousand Five Hundred Dollars (\$17,500), subject to the true-up provision set forth in Section 6.1(b) of this Housing Plan.

1.18 Developable Lot has the meaning set forth in the DDA.

1.19 Developer Residential Units means the Market Rate Units and the Inclusionary Units.



- 1.20 Development Agreement has the meaning set forth in the DDA.
- 1.21 Development Requirements has the meaning set forth in the DDA.
- 1.22 Event of Default has the meaning set forth in the DDA.
- Housing Plan. 1.23 Fair Market Value Price has the meaning set forth in Section 9.3 of this
- Unit. 1.24 Financing Plan means the Financing Plan attached to the DDA.
- 1.25 For-Rent or Rental Unit means a Residential Unit which is not a For Sale
- 1.26 For-Sale or Sale Unit means a Residential Unit which is intended at the time of completion of construction to be offered for sale, e.g., as a condominium, for individual unit ownership.
- 1.27 Household Size means the total number of bedrooms in a Residential Unit plus one (1).
- 1.28 Housing Data Table means the table attached here to as Attachment A.
- 1.29 Housing Fund has the meaning set forth in the Financing Plan.
- 1.30 Housing Map means the map attached hereto as Attachment B.
- 1.31 Housing Percentage has the meaning set forth in the Financing Plan.
- 1.32 IFD has the meaning set forth in the Financing Plan.
- 1.33 IFD Act has the meaning set forth in the Financing Plan.
- Housing Plan. 1.34 Inclusionary Milestone has the meaning set forth in Section 5.1(c) of this
- Housing Plan. 1.35 Inclusionary Obligation has the meaning set forth in Section 5.1(a) of this
- 1.36 Inclusionary Units means (i) for a Rental Unit, a unit that is available to and occupied by a household with an income not exceeding sixty percent (60%) of Area Median Income and rented at an Affordable Housing Cost for households with incomes at or below sixty percent (60%) of Area Median Income, and (ii) for a For Sale Unit, a unit that is available to and occupied by households with incomes not exceeding One Hundred Twenty Percent (120%) of Area Median Income and sold at an Affordable Housing Cost for households with incomes from Eighty Percent (80%) to One Hundred Twenty Percent (120%) of Area Median Income. The mechanism for setting the maximum Affordable Housing Cost and income level for each Inclusionary Unit is set forth in Section 5 of this Housing Plan.

- 1.37 Infrastructure has the meaning set forth in the DDA.
- 1.38 Interim Move has the meaning set forth in the Transition Housing Rules and Regulations.
- 1.39 Major Phase has the meaning set forth in the DDA.
- 1.40 Market Rate or Market Rate Unit means a Residential Unit constructed on a Market Rate Lot that has no restrictions under this Housing Plan or the DDA with respect to Affordable Housing Cost levels or income restrictions for occupants.
- 1.41 Market Rate Lot shall mean a lot of the approximate size and location identified as a Market Rate Lot on the Housing Map at each Major Phase Approval, subject to any revisions as may be requested by Developer and Approved by the Authority as part of the Sub-Phase Approval process or otherwise as set forth in the DRDAP.
- 1.42 Market Rate Project means a Residential Project constructed by a Vertical Developer, including Developer and its Affiliates, and containing Market Rate Units, Inclusionary Units (if required), and possibly also containing other uses permitted under the Design for Development.
- 1.43 Marketing and Operations Guidelines has the meaning set forth in Section 5.1(h) of this Housing Plan.
- 1.44 Maximum Public Financing Revisions has the meaning set forth in Section 9.1 of this Housing Plan.
- 1.45 Minimum Affordable Percentage has the meaning set forth in Section 2.1 of this Housing Plan.
- 1.46 MOH shall mean the City of San Francisco's Mayor's Office of Housing or any successor agency.
- 1.47 Net Available Increment has the meaning set forth in the Financing Plan.
- 1.48 Non-Inclusionary Projects means the Residential Projects of the following types, on which Developer and Vertical Developers may, but are not required to, include any Inclusionary Housing: (i) any Residential Project of 19 or fewer units; (ii) townhomes; (iii) residential towers exceeding 240 feet in height; and (iv) residential condominiums with hotel services ("Condotel"). Notwithstanding the foregoing exclusions, not less than five percent (5%) of the total Developer Residential Units constructed on Treasure Island and not less than five percent (5%) of the total Developer Residential Units constructed on Yerba Buena Island must be Inclusionary Units.
- 1.49 Parking Charge means the rental rate or purchase price for a Parking Space, as determined in accordance with Section 7.2.

1.50 Parking Space means a parking space constructed in the Project Site by or on behalf of Vertical Developers or Qualified Housing Developers and accessory to one or more Residential Projects.

1.51 Partial Public Financing Revisions has the meaning set forth in Section 9.3 of this Housing Plan.

1.52 Premarketing Notice List has the meaning set forth in the Transition Rules and Regulations.

1.53 Proforma has the meaning set forth in the DDA.

1.54 Project Cost has the meaning set forth in the DDA.

1.55 Project Site has the meaning set forth in the DDA.

1.56 Qualified Housing Developer means non-profit or for-profit organizations selected by the Authority (or, for Authority Housing Lots to be developed by TIHDI member organizations, by TIHDI or the applicable TIHDI member organization with Authority Approval) with the financial and staffing capacity to develop affordable housing consistent with the character and quality of the Development Requirements and the Residential Projects, and a history of successful affordable housing development, demonstrated by the completion of not less than 75 affordable housing units and 2 affordable housing projects in the previous 7 years that are comparable to the Authority Housing Project the Qualified Housing Developer is selected to develop. If the Qualified Housing Developer is a joint venture, partnership or other type of entity consisting of two or more entities, then the joint venture managing partner, managing general partner or other entity primarily responsible for the development (but not necessarily the ownership or long-term management) of the Authority Housing Lot must meet the criteria of a Qualified Housing Developer.

1.57 Replacement Housing Obligation shall mean the obligation to construct or rehabilitate dwelling units as required under Government Code Section 53395.5.

1.58 Replacement Housing Units shall mean the Affordable Housing Units on the Project Site that satisfy the Replacement Housing Obligation, and any Inclusionary Units that are affordable under the standards set forth in Government Code Section 53395.3(c) that are designated as Replacement Housing Units pursuant to Section 3.1(a)(4).

1.59 Residential Acreage means buildable net acres including applicable setback areas as required by the Design for Development, but not including adjacent easement areas, midblock alleys, neighborhood parks, community facilities and central parking facilities serving residential and/or commercial developments.

1.60 Residential Developable Lot means the Developable Lots that are designated primarily for residential use on the Housing Map, as may be revised in a Major Phase Approval or Sub-Phase Approval or otherwise in accordance with the DRDAP. Residential Developable Lots shall only include lots that are not subject to the Tidelands Trust and shall not

include adjacent easement areas, midblock alleys, neighborhood parks, community facilities and central parking facilities serving residential and/or commercial developments.

1.61 Residential Project has the meaning set forth in the DDA.

1.62 Residential Unit means a room or suite of two or more rooms that is designed for residential occupancy for 32 consecutive days or more, including provisions for sleeping, eating and sanitation, for not more than one family, and may include senior and assisted living facilities.

1.63 Section 415 means San Francisco Planning Code section 415.

1.64 Stormwater Management Controls has the meaning set forth in the DDA.

1.65 Sub-Phase has the meaning set forth in the DDA.

1.66 Term shall have the meaning set forth in the DDA.

1.68 Thirty Percent Minimum has the meaning set forth in Section 2.1 of this Housing Plan.

1.69 TIHDI means the Treasure Island Homeless Development Initiative, Inc., a California nonprofit public benefit corporation.

1.70 TIHDI Replacement Units shall have the meaning set forth in the Amended and Restated Base Closure Homeless Assistance Agreement between the Authority and TIHDI entered into concurrently with the DDA.

1.71 TIHDI Units means the Affordable Housing Units constructed by Qualified Housing Developers selected by TIHDI subject to Authority Approval on Authority Housing Lots in accordance with this Housing Plan.

1.72 Transferable Infrastructure has the meaning set forth in the DDA.

1.73 Transferable Infrastructure Liquidation Amount has the meaning set forth in Section 2.8(d) of this Housing Plan.

1.74 Transition Housing Rules and Regulations means the rules and regulations adopted by the Authority, as amended from time to time. The currently adopted Transition Housing Rules and Regulations are attached as Attachment C.

1.75 Transition Units has the meaning set forth in the Transition Housing Rules and Regulations.

1.76 Transitioning Households shall have the meaning set forth in the Transition Housing Rules and Regulations.

1.77 Twenty-Five Percent Minimum has the meaning set forth in Section 2.1 of this Housing Plan.

1.78 Utility Allowance means a dollar amount determined in a manner acceptable to the California Tax Credit Allocation Committee, which may include a dollar amount established periodically by the San Francisco Housing Authority based on standards established by HUD for the cost of basic utilities for households, adjusted for Household Size. If such dollar amount is not available from the San Francisco Housing Authority or HUD, then Developer or Vertical Developer, as applicable, may use another publicly available and credible dollar amount that is Approved by the Authority.

1.79 Vertical Approval has the meaning set forth in the DRDAP.

1.80 Vertical DDA shall have the meaning in the DDA. Each reference to a Vertical DDA in this Housing Plan shall include Vertical LDDAs, as applicable.

1.81 Vertical Developer shall have the meaning set forth in the DDA.

1.82 Vertical Improvement is defined in the DDA.

## 2. HOUSING DEVELOPMENT

2.1 Development Program. Vertical Developers and Qualified Housing Developers may develop up to 8,000 Residential Units on the Project Site, including 1,684 Authority Housing Units (of which up to 435 will be TIHDI Units), 316 Inclusionary Units, and 6,000 Market Rate Units. The number of Authority Housing Units and the Inclusionary Units allowed shall be equal to twenty-five percent (25%) of the total number of Residential Units that are allowed to be developed on the Project Site (the "Twenty-Five Percent Minimum"), provided, if certain conditions are satisfied as described in Article 9 of this Housing Plan, then the Parties will increase the percentage of Authority Housing Units and Inclusionary Units that are allowed to be developed to thirty percent of the total number of Residential Units allowed on the Project Site (the "Thirty Percent Minimum"). The minimum percentage of Affordable Housing Units, as it may be increased from the Twenty-Five Percent Minimum to the Thirty Percent Minimum in accordance with Article 9, shall be referred to as the "Minimum Affordable Percentage". The Parties understand and agree that the Authority's right to construct the number of Authority Units and Vertical Developers' right to construct the number of Developer Residential Units specified in this Housing Plan is absolute and is based on the total number of Residential Units entitled under this Housing Plan. The Authority's right and entitlement shall not decrease if Vertical Developers ultimately build less than the full entitlement of Developer Residential Units permitted on the Project Site, and Vertical Developers' right and entitlement shall not decrease if the Authority ultimately builds less than the full entitlement of Authority Housing Units on the Project Site. Any such decrease in the actual number of Developer Residential Units or Authority Housing Units constructed may, at Project completion, cause the actual affordable housing percentage (expressed as a comparison of Affordable Units to Market Rate Units) to vary from the Minimum Affordable Percentage.

2.2 Development Process.

(1) Subject to the terms of the DDA, Developer shall develop the Project Site in a series of Major Phases and, within each Major Phase, in a series of Sub-Phases. The DDA includes a process for Developer's submittal of Major Phase Applications and Sub-Phase Applications, and for the Authority's review and grant of Major Phase Approvals and Sub-Phase Approvals, in accordance with the DRDAP. The anticipated order of development of Major Phases, and Sub-Phases in each Major Phase, including the Completion of the Authority Housing Lots, is set forth in the Phasing Plan and the Schedule of Performance, subject to revision in accordance with the procedures set forth in the DDA and the DRDAP.

(2) Developer shall preliminarily identify the number and location of anticipated Inclusionary Units for each anticipated Market Rate Project in a Major Phase Application, and may revise such number in a Sub-Phase Application, subject to the requirements of this Housing Plan. The final number of Inclusionary Units for each Market Rate Project (if any) shall be specified in the applicable Vertical DDA.

(3) Subject to the terms of the DDA: (i) upon receipt of a Sub-Phase Approval, Developer shall construct Infrastructure and Stormwater Management Controls within such Sub-Phase in accordance with the Schedule of Performance, including Infrastructure and Stormwater Management Controls to serve the Authority Housing Lots; and (ii) at the close of conveyance of Market Rate Lots to Vertical Developers (including Developer and Affiliates of Developer) for the construction of Residential Projects, Developer shall transfer such Market Rate Lots consistent with the requirements of the DDA and this Housing Plan and shall pay to the Authority the Developer Housing Subsidy as set forth in this Housing Plan.

(4) Subject to the terms of the applicable Vertical DDA, following receipt of all Vertical Approvals, the Vertical Developer may construct the applicable Market Rate Project(s), and upon such construction, the Vertical Developer must include the number of Inclusionary Units for such Market Rate Project(s) as are set forth in the Vertical DDA.

2.3 Developer's Obligations Related to Authority Housing Units. Developer's obligations related to the Authority Housing Units are: (i) Completion of the Infrastructure and Stormwater Management Controls (or, with respect to Transferable Infrastructure, payment of the Transferable Infrastructure Liquidation Amount as set forth in Section 2.8(e) of this Housing Plan) on the Authority Housing Lots in accordance with the DDA; (ii) if the Authority retains the Authority Housing Lots as anticipated, to cooperate with the Authority in effectuating any post-closing boundary adjustments in accordance with Section 10.5 of the DDA; (iii) if the Authority transfers the Authority Housing Lots to Developer pursuant to Section 2.7(b), transfer of all Authority Housing Lots to the Authority upon Completion of all Infrastructure and Stormwater Management Controls serving that Lot except for the Transferable Infrastructure in accordance with the provisions of the DDA, including this Housing Plan as set forth in Section 2.7(b) at no cost to the Authority and without consideration to either Party; (iv) payment of the Developer Housing Subsidy in compliance with Section 6.1 of this Housing Plan; (v) recordation of Vertical DDAs on the Market Rate Lots specifying the number of Inclusionary Units to be built on the Market Rate Lots consistent with the applicable Sub-Phase Approval; and (vi) if applicable, completion of the Replacement Housing Units as set forth in Section 3.1(a) of this Housing Plan. Except as set forth in Section 3.1(a) of this Housing Plan, Developer shall have

no obligation to Complete the Replacement Housing Units or the Authority Housing Projects. Developer shall have no obligation to Complete the Transition Units except as may be agreed to by Developer in accordance with Section 8.4 of this Housing Plan.

#### 2.4 Developer Land Conveyances.

(a) Authority Housing Lots. The Completed Authority Housing Lots shall comprise Residential Acreage equal to approximately twenty-one and seven-tenths percent (21.7%) of the total Residential Acreage of the Residential Developable Lots on Treasure Island. The total expected Residential Acreage of the Residential Developable Lots and the Completed Authority Housing Lots is set forth on the Housing Map.

(b) Major Phases. The approximate location and size of the Authority Housing Lots is set forth in the Housing Map, and may be revised as part of a Major Phase Approval or Sub-Phase Approval or otherwise as set forth in the DRDAP. The Housing Map has been designed and Approved so as to maintain general proportionality in location and phasing between the development of Market Rate Units and Authority Housing Units at all times. Without limiting the foregoing, the Parties agree that in order to provide flexibility in implementation: (i) within each Major Phase, the total Residential Acreage of the Authority Housing Lots on Treasure Island shall not be less than fifteen percent (15%) of the total Residential Acreage of the Market Rate Lots and Authority Housing Lots combined in that Major Phase, (ii) at the time of the Approval of the Major Phase that includes the 3,160th Developer Residential Unit, the Cumulative Total Authority Housing Acreage on Treasure Island shall not be less than twenty percent (20%) of the total Residential Acreage of the Market Rate Lots and Authority Housing Lots combined; and (iii) upon the Completion of all Major Phases, the Cumulative Total Authority Housing Acreage on Treasure Island shall not be less than twenty-one and seven-tenths percent (21.7%) of the total Residential Acreage of the Market Rate Lots and Authority Housing Lots combined. For purposes of this Section, the Percentage of Cumulative Total Authority Housing Acreage shall be calculated as follows: (i) the total Residential Acreage of the Authority Housing Lots on Treasure Island in a Major Phase Application plus the total Residential Acreage of all Authority Housing Lots on Treasure Island in all previously Approved Major Phases, divided by (ii) the total Residential Acreage of all Market Rate Lots and Authority Housing Lots on Treasure Island in that same Major Phase Application plus the total Residential Acreage of all Market Rate Lots and Authority Housing Lots on Treasure Island in all previously Approved Major Phases.

(c) Housing Data Table. In order to track Developer's compliance with this Housing Plan, Developer shall submit a Housing Data Table as part of each Major Phase Application and Sub-Phase Application that includes Residential Projects, in the form and containing the information set forth in Attachment A, subject to changes and modifications Approved by the Authority. The Authority shall review the Housing Data Table in connection with its consideration and Approval of each Major Phase or Sub-Phase Application in accordance with the procedures set forth in the DRDAP. Each Housing Data Table shall include the applicable information set forth in Attachment A, including:

(1) The location and Residential Acreage for each Authority Housing Lot and each Market Rate Lot in that Major Phase or Sub-Phase, as applicable, and whether there are any proposed changes from the Housing Map or previous Approvals;

(2) The percentage of Residential Acreage of Authority Housing Lot(s) to the Residential Acreage of Authority Housing Lot(s) and Market Rate Lot(s) in that Major Phase or Sub-Phase, as applicable, and the Cumulative Total Authority Housing Acreage to date;

(3) The cumulative number of Developer Residential Units (including the number of Inclusionary Units) permitted for development, or if construction is complete, actually developed, on Market Rate Lots previously conveyed to Vertical Developers, and the number of Developer Residential Units (including the number of Inclusionary Units) allocated for development in that Major Phase or Sub-Phase, as applicable; and

(4) the anticipated location of each anticipated Residential Project within the Major Phase or Sub-Phase, as applicable, and the anticipated Authority Housing Lot Completion Date, and for each such Market Rate Project, the anticipated acreage, height and density and the number of residential units, including the proposed number of Inclusionary Units.

(d) Upon conveyance of property within a Sub-Phase to the Developer in accordance with the DDA, the Authority shall retain the Authority Housing Lots; unless the Parties mutually agree to the transfer of the Authority Housing Lots to the Developer. In connection with development of each Sub-Phase, if the Authority Housing Lots are transferred to Developer, Developer shall convey to the Authority Developer's interest in the Authority Housing Lots without cost to the Authority upon Completion of all Infrastructure and Stormwater Management Controls except for the Transferable Infrastructure for such Authority Housing Lots in accordance with the procedures set forth below in the DDA and Section 2.7(b) of this Housing Plan. If the Authority Housing Lots are retained by the Authority, Developer shall Complete the Infrastructure and Stormwater Management Controls on the Authority Housing Lots in accordance with the procedures set forth below in Section 2.8 of this Housing Plan.

## 2.5 Selection of Approved Sites.

(a) Developer has selected and the Authority has Approved generally designated sites for the development of the Authority Housing Units as shown on the Housing Map (individually, an "Approved Site" and collectively, the "Approved Sites"), including additional sites if the Maximum Public Financing Revisions or the Partial Public Financing Revisions are made as set forth in Article 9 below.

(b) In each Major Phase Application and Sub-Phase Application, Developer will confirm the location and size of the Approved Sites, or propose any changes to the Approved Sites with an explanation for the proposed change. Any proposed change will be shown on a revised Housing Map in the form of Attachment B. The final Approved Sites shall be as set forth in each Sub-Phase Approval, and shall be the Authority Housing Lots in that Sub-



Phase. Notwithstanding a Sub-Phase Approval, Developer may subsequently seek a substitution or alteration as set forth in Section 2.6 of this Housing Plan.

(c) Within sixty (60) days following the Authority Housing Lot Completion Date, Developer shall (if applicable) convey to the Authority Developer's interest in the applicable Authority Housing Lot.

2.6 Site Alteration Process. Developer may request to substitute an alternate Authority Housing Lot for any of the Approved Sites or to make material changes to the size or boundaries of an Approved Site, with a brief explanation as to why Developer is requesting the substitution or change. Any substitution or material change shall be subject to the Authority's review and Approval, in its reasonable discretion if the request is made before or as part of a Sub-Phase Application, and in its sole discretion if the request is made at any time after receipt of a Sub-Phase Approval. In determining whether to approve a substitution or material change before or as part of a Sub-Phase Application, the Authority will consider, at a minimum, the following:

(1) Size. The alternative parcel should be approximately the same size as the parcel it is intended to replace (or, if it is different, then Developer shall show what other adjustment(s) are proposed to Approved Sites on the Housing Map to meet the required Percentage of Cumulative Total Authority Housing Acreage as required pursuant to Section 2.4(b)).

(2) Dimensions. Parcel dimensions shall be generally typical in shape as compared to Market Rate Lots, reflective of the block configuration.

(3) Frontages. Each parcel shall have a minimum of one (1) frontage that provides immediate vehicular access in a manner consistent with the Design for Development and immediate pedestrian access to a public walkway or right of way.

(4) Fiscal Impact. The alternative parcel or material change should not have a negative impact on the reasonably anticipated or proposed financing for the development of Affordable Housing Units on the site when compared to the original parcel.

(5) Dispersion of Affordable Units, Timing and Location. The alternative parcel, when compared to the site it is intended to replace, maintains the overall balance of providing Authority Housing Lots with access to transit, proximity to parks and other public amenities and that are dispersed throughout the Project Site, integrates the Affordable Housing Units and the Market Rate Units, and generally maintains the timing and proportionality of Market Rate Lots and Authority Housing Lots relative to the Phasing Plan and the Schedule of Performance.

(6) Site Conditions. The proposed substitution or change should not result in a parcel that is more difficult or expensive to develop (i.e., sites that include the need for extensive retaining walls, subsurface improvements, ongoing monitoring responsibilities, or that cannot accommodate the contemplated parking or common areas).

(7) TIHDI Approval. If the proposed substitution or change is to an Authority Housing Lot that the Authority has designated for development by TIHDI or a TIHDI member organization, then the Authority will consult with TIHDI and the TIHDI member organization and take into account any reasonable objections raised by TIHDI or the TIHDI member organization.

(8) Other Matters. The Authority may consider such additional or unique matters as may arise during the course of the development of the Project.

## 2.7 Transfer of Authority Housing Lots.

(a) Retention of Authority Housing Lots. The Parties anticipate that the Authority will retain the Authority Housing Lots in each Sub-Phase (although the Authority may transfer the Authority Housing Lots to Developer at Sub-Phase Approval upon mutual agreement of the parties, as set forth in the DDA). If boundary corrections to the Authority Housing Lots and the Market Rate Lots are required upon Completion of the Infrastructure and Stormwater Management Controls in a Sub-Phase or in connection with the conveyance of a Residential Developable Lot, the Parties agree to cooperate in effecting such boundary adjustments in accordance with the DDA.

(b) Transfer of Authority Housing Lots. In the event that the Authority transfers the Authority Housing Lots to Developer at the time of the Sub-Phase conveyance, Developer shall convey back to the Authority and the Authority shall accept Developer's interest in the Authority Housing Lots in accordance with Section 3.7 of the DDA. Any conveyance of the Authority Housing Lots from Developer to the Authority shall be at no cost to the Authority and without consideration to either Party. The Authority shall accept conveyance of the Authority Housing Lots no later than sixty (60) days following the Authority Housing Lot Completion Date.

## 2.8 Completion of Authority Housing Lots.

(a) Subject to the terms of the DDA, Developer shall Complete the Infrastructure and Stormwater Management Controls for the Authority Housing Lots as set forth in the Schedule of Performance and the applicable Sub-Phase Approval and Developer shall either Complete the Transferable Infrastructure or pay the Transferable Infrastructure Liquidation Amount as set forth in subsection (d) or (e) below. Each Completed Authority Housing Lot shall meet the standards for it to be a Developable Lot as set forth in the DDA. The Parties understand and agree that the Infrastructure and Stormwater Management Controls (excluding the Transferable Infrastructure) on the Authority Housing Lots and the Market Rate Lots within a Sub-Phase shall be Completed at or around the same time, subject to variations as set forth in the applicable Sub-Phase Approval and the Phasing Plan.

(b) Developer and the Authority agree to work together and keep the other informed as to the expected dates for the Completion of Infrastructure and Stormwater Management Controls within a Sub-Phase, the Authority Housing Lot Completion Date, the status of any pending tax credit applications, the closing date for the transfer of Market Rate Lots to Vertical Developers, the expected date for the Commencement of Market Rate Projects and

Authority Housing Projects, and the expected payment date for the Developer Housing Subsidy. Without limiting the foregoing, Developer shall use good faith efforts to notify the Authority approximately six (6) months before the anticipated date of the Authority Housing Lot Completion Date.

(c) Not less than ninety (90) days before the Authority Housing Lot Completion Date, Developer shall give the Authority notice of the availability of the Authority Housing Lot and include with such notice a parcel map showing the Authority Housing Lot.

(d) The Parties intend that Transferable Infrastructure related to an Authority Housing Lot will be completed by Developer in coordination with the development of the Authority Housing Project on the Authority Housing Lot. Developer's obligation to Complete the Transferable Infrastructure will be secured by Adequate Security as set forth in the DDA, and the Authority shall provide Developer with all access needed to Complete the Transferable Infrastructure on the Authority Housing Lots. Developer shall coordinate the construction of the Transferable Infrastructure with the construction of the Authority Housing Project to ensure that (i) the Transferable Infrastructure (other than utility laterals serving the applicable Authority Housing Lot) is Completed at or before Completion of the Authority Housing Project, (ii) the utility laterals serving the applicable Authority Housing Lot are Completed in coordination with the construction of the Authority Housing Project, and (iii) Developer's work does not interfere with or obstruct the Qualified Housing Developer's work during such construction to the maximum extent reasonably feasible and that the Qualified Housing Developer's work similarly does not interfere with Developer's work. Notwithstanding the foregoing, if Developer or Vertical Developer have Commenced the Transferable Infrastructure on all of the Lots adjacent to an Authority Housing Lot, then Developer shall have the right to Commence and Complete the Transferable Infrastructure related to that Authority Housing Lot (other than the utility laterals for that particular Authority Housing Lot) even though development of the applicable Authority Housing Project may not yet have Commenced. Developer may exercise such right by providing to the Authority not less than ninety (90) days notice of its intent to Commence the Transferable Infrastructure, and such right shall accrue unless (i) the Authority objects within thirty (30) days following the Authority's receipt of Developer's notice, and (ii) the Parties agree, within ninety (90) days following the Authority's objection, to a payment amount equal to Developer's anticipated cost of Completing some or all of the Transferable Infrastructure on the remaining Authority Housing Lots (the "Transferable Infrastructure Liquidation Amount"). The Parties shall meet and confer in good faith during the 90-day period (or such longer period as may be agreed to by the Parties) to reach agreement on the Transferable Infrastructure Liquidation Amount. Developer shall provide its estimate of such costs, together with reasonable backup documentation, based upon the Transferable Infrastructure Completed by Developer to date in that Sub-Phase. If the Parties are able to reach agreement on the Transferable Infrastructure Liquidation Amount, then Developer shall promptly pay this sum to the Authority and thereafter (i) Developer shall be released from the obligation to Complete that portion of the Transferable Infrastructure for which Developer has paid the Transferable Infrastructure Liquidation Amount, and (ii) the Authority shall release any associated Adequate Security in accordance with the DDA. Upon receipt, the Authority shall contribute the Transferable Infrastructure Liquidation Amount to the applicable Authority Housing Projects for Completion of the Transferable Infrastructure and for no other purpose. If the Parties are not able to reach agreement on the Transferable Infrastructure Liquidation

Amount within the time frame set forth above, then Developer shall have the right to Complete the Transferable Infrastructure related to the Authority Housing Lots notwithstanding the Authority's failure to Commence the applicable Authority Housing Projects. The Parties agree that Completion of the utility laterals on the Authority Housing Lots prior to commencement of construction of the Authority Housing Project on a particular Authority Housing Lot may result in the lateral being moved or replaced. Notwithstanding anything to the contrary above, to avoid unnecessary costs and duplication of work if Developer elects to Complete the Transferable Infrastructure on an Authority Housing Lot before Completion of the Authority Housing Project on that Authority Housing Lot, Developer shall complete all of the Transferable Infrastructure except for the utility laterals and Developer shall pay to the Authority a Transferable Infrastructure Liquidation Amount payment equal to the cost of Completing the utility lateral, as determined by Developer and Approved by the Authority. Developer shall pay this amount upon Completion of the remaining Transferable Infrastructure and upon such payment (i) Developer shall be released from any obligation to Complete the applicable utility lateral and (ii) the Authority shall release any associated Adequate Security in accordance with the DDA.

(e) Developer shall also have the right to request at any time following the Authority Housing Lot Completion Date to pay the Transferable Infrastructure Liquidation Amount in lieu of the obligation to Complete the Transferable Infrastructure for such Authority Housing Lot. If the Parties are able to agree upon the Transferable Infrastructure Liquidation Amount as set forth in subsection (d) above, then Developer shall pay this amount to the Authority at such time and thereafter (i) Developer shall be released from the obligation to Complete the Transferable Infrastructure for which the Transferable Infrastructure Liquidation Amount has been paid and (ii) the Authority shall release any associated Adequate Security as set forth in the DDA. The Authority shall use such funds for the Transferable Infrastructure, and for no other purpose, as set forth in subsection (d) above. If the Parties are not able to agree upon the Transferable Infrastructure Liquidation Amount, then there will be no action or payment on the Transferable Infrastructure unless and until Developer provides notice to the Authority pursuant to subsection (d) above of its intent to Commence the Transferable Infrastructure on a particular Authority Housing Lot or Developer is otherwise required to Commence and Complete the Transferable Infrastructure in accordance with this Section 2.8.

(f) If Developer has Completed all of the Infrastructure and Stormwater Management Controls except for the Transferable Infrastructure in a Sub-Phase and Developer or a Vertical Developer have Commenced the Transferable Infrastructure on all of the Market Rate Lots in the Sub-Phase, and Developer has not yet begun the Transferable Infrastructure or paid the Transferable Infrastructure Liquidation Amount for one or more of the Authority Housing Lots in that Sub-Phase, then the Authority shall have the right, by giving Developer written notice, to require Developer to Complete the Transferable Infrastructure related to the Authority Housing Lots in that Sub-Phase in accordance with the DDA and the Development Requirements. Developer shall Commence the Transferable Infrastructure within one hundred twenty (120) days following the Authority's notice and diligently prosecute the same to Completion, in accordance with the DDA and the Development Requirements (and in a time frame generally consistent with the Completion of the Transferable Infrastructure on the Market Rate Lots but in no event later than 12 months following the date of Commencement of the Transferable Infrastructure). Transferable Infrastructure shall be accepted in accordance with

the process and procedures set forth in the DDA and the Treasure Island Subdivision Code for the acceptance of public infrastructure.

(g) If the Authority transfers the Authority Housing Lots to Developer as part of a Sub-Phase conveyance, Developer shall take such actions as may be reasonably requested by the Authority (including the early transfer of the applicable real property or entering into binding agreements for the transfer of the real property) to provide evidence of site control for the Authority or a Qualified Housing Developer (including a Qualified Housing Developer selected by THDI) or as otherwise may be needed in connection with any financing application for an Authority Housing Lot, provided that Developer shall assume no liability relating to any such application or the failure to obtain financing.

#### 2.9 Maintenance of Authority Housing Lots.

Following Completion and conveyance to the Authority, the Authority shall maintain or cause to be maintained the Authority Housing Lots in a safe and orderly condition free from debris and unsightly vegetation.

### 3. AFFORDABLE HOUSING DEVELOPMENT

#### 3.1 Authority Development of Authority Housing Units.

(a) The Authority may cause to be constructed by Qualified Housing Developers, (including Qualified Housing Developers selected by THDI with Authority Approval) up to One Thousand Six Hundred Eighty Four (1,684) Authority Housing Units on the Authority Housing Lots (or 21.1% of the maximum build-out of the Project Site with Eight Thousand (8,000) Residential Units). The mix of For-Sale and For-Rent Residential Units, the size of the Authority Housing Units, whether the Authority Housing Units are senior or family units and the allocations of Authority Housing Units among affordability levels shall be determined by the Authority in the exercise of its sole and absolute discretion in accordance with applicable law, including the Replacement Housing Obligation, provided that the Authority shall ensure that the Transition Housing Rules and Regulations are properly and timely implemented. Notwithstanding anything to the contrary set forth above, the Parties have agreed to the following to ensure that the Replacement Housing Obligation are satisfied:

(1) Developer shall not demolish any housing units on YBI until Developer has (i) obtained a Sub-Phase Approval for the first Sub-Phase that includes an Authority Housing Lot large enough to build not fewer than 55 Affordable Housing Units, the Market Rate Lots in that Sub-Phase are conveyed to Developer, Developer has Commenced the construction of Infrastructure and Stormwater Management Controls in that Sub-Phase and provides evidence reasonably satisfactory to the Authority that the Authority Housing Lot Completion Date for the applicable Authority Housing Lot is scheduled to occur within twenty-four (24) months, or (ii) the Authority has approved an alternative means of meeting the Replacement Housing Obligation;

(2) Developer shall not have the right to rely on a Developer Extension or Economic Delay (as those terms are defined in the DDA) to extend the Authority

Housing Lot Completion Date for the Authority Housing Lot designated for satisfaction of the Replacement Housing Obligation related to the demolition of the YBI units;

(3) Notwithstanding the five (5) year deferral on the payment of the Developer Housing Subsidy as set forth in Section 6.1 of this Housing Plan, the Authority shall have the right to all of the accrued Developer Housing Subsidy during such five (5) year period as and when needed to Complete the first Authority Housing Project satisfying the Replacement Housing Obligation (including, at the Authority's sole discretion, a smaller number of Authority Housing Units than contemplated on the Housing Data Table if the Authority elects to develop a smaller project);

(4) Inclusionary Units that meet the Affordability requirements of the Replacement Housing Obligation may be counted for purposes of satisfying the Replacement Housing Obligation. Furthermore, if the Authority reasonably believes that the first Authority Housing Project will not be completed in time to satisfy the Replacement Housing Obligation for the demolished YBI housing units, the Parties shall designate additional Inclusionary Units as may be required to satisfy the Replacement Housing Obligation, and the cost to Developer of any required decrease in the Affordable Housing Cost for any Inclusionary Unit will be credited against the next Developer Housing Subsidy payable by Developer. Developer shall include in the Vertical DDAs entered into before satisfaction of the Replacement Housing Obligation related to the demolition of the YBI units the ability for Developer to adjust the Affordable Housing Cost level for Inclusionary Units required in such Vertical DDA (and not yet Completed or sold to occupying households) in order to meet this requirement. Upon any such adjustment in the Affordable Housing Cost level for an Inclusionary Unit, Developer (or Vertical Developer, if applicable) shall provide evidence of the increased cost to Developer (or Vertical Developer) and the parties shall meet and confer in good faith to reach agreement on the amount of such cost. If the Parties are not able to agree on the cost within sixty (60) days, then either Party shall have the right to initiate arbitration to determine the cost in accordance with section 15.3.2 of the DDA;

(5) If the Replacement Housing Obligation is not satisfied for the demolished YBI housing units notwithstanding the agreement in clauses (1) through (4) above, then Developer shall be required, upon the Authority's request, to Complete the first Authority Housing Project on the Authority Housing Lot as needed to satisfy the Replacement Housing Obligation, provided (i) Developer shall be permitted to develop the Authority Housing Project with only as many Affordable Housing Units as may be required to satisfy the Replacement Housing Obligation but Developer may increase the number of Affordable Housing Units to the extent there is available Developer Housing Subsidy to Complete such larger project, and (ii) the Authority and Developer shall meet and confer in good faith to reach agreement on the number of additional Affordable Housing Units to be built, the cost of building such Affordable Housing Units, and the building footprint of the Affordable Housing Project to be built recognizing the Authority's goal of maximizing land available for future development of Affordable Housing Projects. If the parties are not able to reach agreement on the number, cost or building footprint of additional Affordable Housing Units to be built within sixty (60) days, and the Authority still wants Developer to Complete the Affordable Housing Units to satisfy the Replacement Housing Obligation, then Developer shall only be obligated to build the number of Affordable Housing Units needed to satisfy the Replacement Housing Obligation for the

demolished YBI housing units and Developer shall retain and use existing or future Developer Housing Subsidy as needed to Complete the Authority Housing Project, and such Developer Housing Subsidy used by Developer shall no longer be due or payable to the Authority.

(b) The Authority shall have the sole discretion to determine the number of Authority Housing Units to be constructed on an Authority Housing Lot, provided that such construction is permitted by the Development Requirements and is supportable by the Infrastructure and Stormwater Management Controls applicable to such Authority Housing Lot.

(c) The Parties currently contemplate that the Authority will construct up to 1,684 Authority Housing Units on the Authority Housing Lots in order to meet the Twenty-Five Percent Minimum when combined with the Inclusionary Units. Notwithstanding the foregoing, the Authority shall have the right to construct or cause the construction of Affordable Housing Units in excess of the Twenty-Five Percent Minimum if construction will not (i) materially adversely affect Developer's development in the remaining portions of the Project Site, (ii) require any material changes in the Infrastructure and Stormwater Management Controls or the costs thereof, (iii) create any material adverse changes in traffic or other environmental considerations, including delays to Developer or Vertical Developer because of environmental review or compliance, (iv) decrease the number of Market Rate Units that can be developed by Developer and Vertical Developers below 6,000 Market Rate Units, or (v) otherwise materially increase the cost to Developer or any Vertical Developer of performing its obligations under the DDA; provided, however, in no event will the Authority have the right to construct or cause to be constructed more than the 2,105 Authority Housing Units allowed under the Thirty Percent Minimum, except as may occur pursuant to subsection (d) below.

(d) Upon the last Sub-Phase Approval in the last Major Phase, any difference between the cumulative total of Market Rate Units to be built by Vertical Developers at the Project Site (as set forth in all of the Sub-Phase Approvals) and the cumulative total number of Market Rate Units that were entitled under the Project Approvals shall be available for Affordable Housing on the Authority Lots. Any increase in the number of Authority Units under this Section 3.1(d) shall be made without cost to Developer and without any change to the Infrastructure and Stormwater Management Controls to be Completed by Developer.

3.2 Authority Housing Project Design. On or before submission to the Authority Board, the Authority or a Qualified Housing Developer (including a Qualified Housing Developer selected by TIHDI with Authority Approval), as applicable, shall submit proposed Schematic Design Drawings for each proposed Authority Housing Project to Developer for review and comment. Developer's review shall be reasonable and shall be limited to conformity with the Development Requirements. If Developer believes that any Design Drawings are not consistent with the Development Requirements, Developer shall provide a written statement of the inconsistencies and a statement of the changes needed in order to cause the Authority Housing Project to be consistent with the Development Requirements. Developer shall review and provide any comments within thirty (30) days of submission to Developer. Notwithstanding anything to the contrary above, the Authority shall have the right to approve or reject the Schematic Design Drawings notwithstanding any Developer objection, provided that the Schematic Design Drawings are consistent with the Development Requirements.

3.3 Uses of Authority Housing Lots. The Authority Housing Lots shall only be used for development of Authority Housing Units, provided that the Authority Housing Projects may contain Parking Spaces and ancillary uses such as child care, social services or related tenant-serving uses consistent with the Development Requirements. Ancillary neighborhood retail uses may only be developed on the Authority Housing Lots with the prior Approval of Developer. The Authority shall record restrictions on the Authority Housing Lots to ensure that the Affordable Housing Units remain affordable in accordance with the requirements of this Agreement. The Authority shall record covenants on Transition Units that do not initially qualify as Affordable Housing Units (based on the income level of the applicable Transitioning Household) to make them Affordable Housing Units immediately upon the vacancy or departure of the initial Transitioning Household. The Authority will not subordinate its fee interest in the Authority Housing Lots to any financing lien; provided, however, the affordability restrictions may in the Authority's sole discretion, be subordinated to construction and permanent financing related to the development of an Authority Housing Project.

3.4 Requirements for Authority Housing Projects. The Authority shall require all Qualified Housing Developers to comply with the applicable requirements of the DDA and this Housing Plan, including but not limited to the Development Requirements. Each Authority Housing Project will be developed under a lease disposition and development agreement Approved by the Authority and substantially similar in form to the Vertical DDA attached to the DDA.

#### 4. VERTICAL HOUSING PROGRAM

4.1 Unit Count and Mix. Vertical Developers may develop up to Six Thousand (6,000) Market Rate Units on the Project Site. The Vertical DDAs for the Market Rate Projects will require a mix of For Sale and Rental Residential Units, provided that, at the time of Approval of each Major Phase, not less than ten percent (10%) of the Developer Residential Units designated to date shall be For Rent, subject to any deviations as may be agreed to by the Authority Director in his or her discretion. Units shall be considered designated For Rent (i) if located on a Lot that has not been transferred to a Vertical Developer, they are identified in the then current Approved Housing Data Table as For Rent (and, as a condition subsequent, such Units will be designated as For Rent in the applicable Vertical DDA), and (ii) if located on a Lot that has been transferred to a Vertical Developer, the Vertical DDA for that Lot requires the Units be For Rent. The Developer Residential Units required under this Section 4.1 to be Rental Residential Units shall remain For Rent for the useful life of the applicable building and such units will not be mapped for individual unit ownership, provided, however, this prohibition on condominium conversion shall only apply to the ten percent of the Rental Residential Units required pursuant to this Section 4.1 and shall not apply to any Developer Residential Units Developer elects to designate as Rental Residential Units that exceed the required ten percent (10%). The prohibition on condominium conversion on the required Rental Residential Units shall be included in the applicable Vertical DDAs.

The Housing Data Table submitted with each Major Phase and Sub-Phase Application will provide the maximum number of Developer Residential Units, including the number of Inclusionary Units, per Market Rate Lot. The Housing Data Table shall also provide the breakout between the number of For-Rent and For-Sale Units. Developer may revise these



numbers at any time before execution of a Vertical DDA and the corresponding transfer of a Market Rate Lot to a Vertical Developer, subject to the prior written Approval of the Authority in accordance with this Housing Plan and the DRDAP.

4.2 Vertical DDA. Each Vertical Developer of a Market Rate Lot shall enter into a Vertical DDA before or in connection with the conveyance of the applicable real property to a Vertical Developer and before the start of development of that Residential Developable Lot. The Vertical DDA will be substantially in the form required under section 4.1 of the DDA and shall specify, among other things (i) the maximum number of Market Rate Units allowed to be developed on the Residential Developable Lot, (ii) if applicable, the minimum number of Inclusionary Units to be constructed in connection with the development of the Residential Developable Lot (consistent with Section 5.1(a) of this Housing Plan), (iii) if applicable, the Affordability level of each Inclusionary Unit (consistent with Section 5.1(a) of this Housing Plan), (iv) the maximum number of Parking Spaces that can be developed on the Residential Developable Lot, and (v) the Authority's right to approve the location of the Inclusionary Units before recordation of the Declaration of Restrictions as set forth in Section 5.1(f) of this Housing Plan.

4.3 Vertical Developer Discretion. Vertical Developers will have the flexibility to select the size and type of Residential Units, subject to the Development Requirements and the approved Vertical DDA. Vertical Developers may also adjust the number of Market Rate Units so long as they do not exceed the maximum number of Market Rate Units permitted in the Vertical DDA, provided, any such adjustment shall not change the Developer Housing Subsidy payment obligations of Developer as set forth in this Housing Plan.

## 5. INCLUSIONARY HOUSING REQUIREMENTS

### 5.1 Inclusionary Housing Requirements.

(a) Development of Inclusionary Units. Five percent (5%) of all Developer Residential Units shall be Inclusionary Units, with an average Affordable Housing Cost for the For-Sale Inclusionary Units Affordable to households with incomes not exceeding one hundred percent (100%) of Area Median Income and an Affordable Housing Cost for the For-Rent Inclusionary Units Affordable to households with incomes not exceeding sixty percent (60%) of Area Median Income (the "Inclusionary Obligation").

(b) Developer Flexibility. Developers shall not be required to include any Inclusionary Units within the Non-Inclusionary Projects. Developer shall have discretion to determine the exact number of Inclusionary Units to be developed on each Market Rate Lot and the Affordability level of each Inclusionary Unit, provided that (i) the Housing Data Table to be provided with each Major Phase and Sub-Phase Application shall identify the location of the Market Rate Lots containing Inclusionary Units, the number of Inclusionary Units, and for Sub-Phase Applications only, the Affordability level and tenure (i.e., ownership or rental) for the Inclusionary Units, and the Inclusionary Unit allocation shall be in accordance with the Approved Housing Data Table subject to any subsequent revisions approved by the Authority in accordance with the DRDAP, (ii) the number of Inclusionary Units in each Market Rate Project, excluding the Non-Inclusionary Projects, shall range from five percent (5%) to no more than ten

percent (10%) of the total For-Sale Units and to no more than twenty percent (20%) of the total For-Rent Units within that Market Rate Project (subject to the Authority's right to require a higher number of Inclusionary Units in a Market Rate Project if required following Developer's failure to meet an Inclusionary Milestone as set forth in subsection (c) below); and (iii) Developer can demonstrate that the Inclusionary Obligation has been or will be satisfied at each Inclusionary Milestone as set forth in Section 5.1(c) of this Housing Plan.

(c) Inclusionary Milestones. Developer shall demonstrate compliance with the Inclusionary Obligation at each Inclusionary Milestone, which are the dates of the conveyance to Vertical Developers of Market Rate Lots allowing for the development of (i) two thousand two hundred ten (2,210) Developer Residential Units, (ii) three thousand one hundred sixty (3,160) Developer Residential Units, (iii) four thousand seven hundred forty (4,740) Developer Residential Units, and (iv) the last Residential Developable Lot (each, an "Inclusionary Milestone"). Developer shall demonstrate compliance with the Inclusionary Obligation at each Inclusionary Milestone by providing the Authority with executed Vertical DDAs stating the required number of Inclusionary Units and the required Affordability level for those units, as well as the maximum number of Developer Residential Units allowed in the Vertical DDAs. If for any reason, the number of Inclusionary Units is less than five percent (5%) or the average Affordable Housing Cost level is higher than one hundred percent (100%) of Area Median Income for the For Sale Units at any one of the Inclusionary Milestones, then the Authority may, in its discretion, delay Approval of the next Major Phase or Sub-Phase Application, as the case may be, until the Authority has Approved a plan prepared by Developer to achieve the required number of Inclusionary Units as soon as possible. As part of the Approved plan, the Authority may allow exceptions to the requirements or limitations in this Housing Plan, including, but not limited to an increase in the percentage of Inclusionary Units exceeding the maximum percentages set forth in Section 5.1(b) above, the inclusion of Inclusionary Units in Non-Inclusionary Projects and/or Affordable Housing Costs lower than the ranges set forth in Section 5.1(f). As part of an Approved plan, the Authority may also require Developer to record Notices of Special Restrictions on Lots that are Completed but not yet sold to a Vertical Developer setting forth the required number of Inclusionary Units for such Lots, but this shall not, by itself, count toward compliance with the Inclusionary Obligation unless the Approved plan expressly provides that it will count toward compliance. Developer's proposed plan for achieving the Inclusionary Housing obligation shall be presented to the Authority no later than thirty (30) days after the Inclusionary Milestone in which the Inclusionary Obligation was not met. Notwithstanding anything to the contrary above, if Developer has not satisfied the Inclusionary Obligation at an Inclusionary Milestone, and such failure is not remedied in accordance with the requirements and timing set forth in the Approved plan, then the failure to meet the requirements of the Approved plan shall be an Event of Default.

(d) Recordation of Inclusionary Restrictions. Developer shall impose the Inclusionary Obligation on each Vertical Developer of a Market Rate Lot excluding the Non-Inclusionary Projects. The obligation will be imposed in the Vertical DDA for the Market Rate Lot and shall include the following (i) the designated number and Affordable Housing Cost level of Inclusionary Units to be developed on that Market Rate Lot, (ii) whether the Market Rate Units (and thereby the Inclusionary Units) will be For Rent or For Sale and the minimum term of the Inclusionary Obligation, and (iii) specifying the Authority's right to Approve the location of each Inclusionary Unit.

(e) Financing Inclusionary Units. Vertical Developers are responsible for financing the development of the Inclusionary Units included within their Market Rate Residential Projects and may access financing sources such as Four Percent (4%) Low Income Housing Tax Credits, Tax Exempt Bond proceeds and other sources of below market rate housing financing, to the extent the Market Rate Residential Project qualifies for such financing and such financing is available. The Authority has no obligation to provide any funding to Vertical Developers for the construction of Inclusionary Units or otherwise. Units that are financed with Four Percent Low Income Housing Tax Credits shall count as Inclusionary Units but such Inclusionary Units shall not be subject to any restrictions or monitoring by MOH or the Authority except as set forth in Section 415.3(c)(4)(C) and (D). Upon recordation of the deed restriction required by the Four Percent Low Income Housing Tax Credits, any Notice of Special Restriction or other Declaration of Restriction recorded against the Inclusionary Units or the property for the benefit of the City or the Authority shall be removed.

(f) Continued Affordability of Inclusionary Units. No later than the first rental or sale of an Inclusionary Unit (except for those Inclusionary Units financed with Four Percent (4%) Low Income Housing Tax Credits), Vertical Developers will record against the Inclusionary Unit a Declaration of Restrictions appropriate for the Inclusionary Unit as required by MOH. The form of such restrictions or notices shall be consistent with the forms used by MOH under Section 415 as of the effective date of the DDA, with such modifications to conform to this Housing Plan and shall be Approved by the Developer and the Authority. Vertical Developers will, upon recordation, provide to the Authority a copy of the applicable Declaration of Restriction. Upon the sale of each For-Sale Inclusionary Unit, the Vertical Developer shall promptly provide to the Authority a copy of the recorded grant deed as well as the above recorded documents showing the date of recording and the document numbers. Sale Inclusionary Units shall be Affordable to households with incomes permitted by the specified Affordable Housing Cost for that Inclusionary Unit in accordance with this Housing Plan.

(g) Comparability. The Inclusionary Units shall be intermixed and dispersed throughout the Project Site in locations approved by the Authority, and will be indistinguishable in exterior appearance from the Market Rate Units in the same Residential Project. The Inclusionary Units and the Market Rate Units in the same Residential Project with the same Household Size shall be substantially similar in size, type, amenities and overall quality of construction, but interior features need not be the same as those of the Market Rate Units as long as such features are of good quality and are consistent with the Development Requirements.

(h) Marketing and Operations Guidelines for Inclusionary Units. A Vertical Developer may not market, rent or sell Inclusionary Units until MOH has Approved the following for such Inclusionary Units: (i) the marketing plan (that includes any preferences required by MOH pursuant to the MOH Manual following the pre-marketing set forth in Section 8.5 of this Housing Plan); (ii) conformity of the rental charges and purchase prices for such Inclusionary Units with this Housing Plan; (iii) conformity of purchase prices or rental charges for Parking Spaces with this Housing Plan; (iv) eligibility and income-qualifications of renters and purchasers (collectively "Marketing and Operations Guidelines"). The Marketing and Operating Guidelines shall conform to the City and County of San Francisco Residential Inclusionary Affordable Housing Program Monitoring and Procedures Manual, attached to this Housing Plan as Attachment D (the "MOH Manual") with such updates or changes as are

permitted under the Development Agreement. To the extent that the terms of the MOH Manual, either in its current form or as amended from time to time, are inconsistent with or conflict with this Housing Plan as amended from time to time, the terms of this Housing Plan shall prevail. Accordingly, the Parties agree to the following changes to the MOH Manual: (a) all Inclusionary Units shall be on the Project Site, and there will be no in-lieu payment, off-site, or land dedication option; (b) the income requirements for ownership units shall be 100% of Area Median Income on average and 60% of Area Median Income for rental units; (c) the pricing methodology for the Sale Inclusionary Units shall be calculated as provided in Section 1.2 of this Housing Plan; (d) there shall be no bundling of parking with an Inclusionary Unit as set forth in Section 7.1 of the Housing Plan; and (e) pre-marketing requirements as set forth in Section 8.5 of this Housing Plan shall prevail. Vertical Developers shall submit the Marketing and Operations Guidelines to the Authority not later than ninety (90) days before the date Vertical Developer expects to begin marketing the Market Rate Units. The Authority shall review and consider Approval of the Marketing and Operations Guidelines in accordance with the Vertical DDA and this Housing Plan.

(i) Homeowners' Association Assessments. The initial amount of contributions to a homeowners association required to be made by a purchaser of an Inclusionary Unit shall not be increased for a period of one year following the date that the first Inclusionary Unit in the Residential Project has been sold to an owner/occupant, provided, any such provisions are approved by the California Department of Real Estate. Neither Developer nor any Vertical Developer shall be required to make any contribution to any homeowners' association to cover any shortfall in the association budgets as a result of the above requirement.

(j) Planning Code Section 415. Due to the detail set forth in this Housing Plan, and the differences between the City's inclusionary program under San Francisco Planning Code section 415 and 415.1 through 415.11 (collectively "Section 415") and the Inclusionary Obligation as defined in this Housing Plan, the Parties have not imposed or incorporated the requirements of Section 415 into this Agreement. However, the Parties acknowledge and agree that (i) the location of the Inclusionary Units within a Market Rate Project shall be approved by the City's Planning Department in accordance with the standards and practices established by the Planning Department to comply with Section 415, (ii) the monitoring and enforcement of the Inclusionary Obligation shall be performed by MOH in accordance with Sections 415.9(b) and (c), except that all references therein to Section 415.1 *et seq.* shall instead refer to the requirements under this Housing Plan, (iii) the provisions of Section 415(c)(4)(C) and (D) shall apply, if applicable, as set forth in Section 5.1(e) of this Housing Plan, and (iv) if and to the extent there are Inclusionary Obligation implementation issues that have not been addressed in this Housing Plan, then the provisions of Section 415 and the MOH Manual (as updated from time and time, with such changes to the extent permitted under the Development Agreement) shall govern and control such issues.

## 6. FINANCING OF AFFORDABLE HOUSING UNITS

### 6.1 Developer Housing Subsidy.

(a) Payment of Developer Housing Subsidy. The Developer Housing Subsidy shall accrue and be payable by Developer to the Authority upon each transfer of a

Market Rate Lot to a Vertical Developer, including Developer and its Affiliates, provided that for transfers during the first five (5) years following the first Sub-Phase Approval, the Developer Housing Subsidy shall accrue but shall not be payable until the earlier of (i) the date that is five (5) years following the first Sub-Phase Approval, (ii) forty-five (45) days after the Authority provides notice that it requires all or a portion of the accrued Developer Housing Subsidy to fulfill the Replacement Housing Obligation, to develop TIHDI Units, or to implement the Transition Housing Rules and Regulations, including predevelopment and administrative expenses as needed or (iii) an Event of Default by Developer. If the Authority requests payment pursuant to subsection (ii) above, Developer shall pay to the Authority the amount of the funds requested up to the accrued balance of the Developer Housing Subsidy. Developer may, before making any payment pursuant to subsection (ii) above, request evidence from the Authority verifying the amount requested is necessary for the purposes set forth in the request and that no other affordable housing funds are reasonably available to the Authority from the Project for such requested activity. The amount of the Developer Housing Subsidy shall be calculated in accordance with Section 1.17 of this Housing Plan. Except as set forth above, the Developer Housing Subsidy shall be paid by Developer to the Authority at the closing for each transfer of a Market Rate Lot to a Vertical Developer.

(b) Housing Subsidy True-Up Requirements. As set forth in section 1.17 of this Housing Plan, each payment of the Developer Housing Subsidy will be equal to \$17,500 times the total number of Market Rate Units allowed to be constructed on a Market Rate Lot as set forth in the applicable Vertical DDA. The Parties have further agreed (i) that the minimum total amount of the Developer Housing Subsidy shall not be less than \$73,500,000 (the "Minimum Subsidy Amount"), which is based on a minimum number of Market Rate Units of 4,200 and (ii) to a mid-point and end-point true-up for payment of the Minimum Subsidy Amount. On the date that Developer transfers the Market Rate Lot to a Vertical Developer that causes fifty percent (50%) or more of the total Residential Acreage of Market Rate Lots on Treasure Island to have been transferred to Vertical Developers (the "Mid-Point Date"), Developer shall notify the Authority of the transfer and of the total Developer Housing Subsidy paid by Developer to the Authority as of such date. If Developer has not paid to the Authority a Developer Housing Subsidy equal to or greater than one-half of the Minimum Subsidy Amount or \$36,750,000 as of the Mid-Point Date, then Developer shall pay to the Authority within sixty (60) days of the Mid-Point Date an amount equal to the difference between \$36,750,000 and the amount of the Developer Housing Subsidy previously paid to the Authority ("Mid-Point True-Up Amount").

Subsequent to the payment of the Mid-Point True-Up Amount, if any, Developer will continue to pay the Developer Housing Subsidy upon each transfer of a Market Rate Lot to a Vertical Developer in accordance with Section 6.1(a) above, provided, however, after Developer has paid the Developer Housing Subsidy equal to the Minimum Subsidy Amount excluding the Mid-Point True-Up Amount, then the Mid-Point True-Up Amount shall be credited toward the Developer's Housing Subsidy payments owed by Developer on subsequent transfers of Market Rate Lots (including Market Rate Lots on Treasure Island and Yerba Buena Island) until the amount of the Developer Housing Subsidy paid by Developer to the Authority including the Mid-Point True-Up Amount is equal to the Minimum Subsidy Amount. Upon completion of the credit (i.e., when Developer has paid the Minimum Subsidy Amount including any Mid-Point True-Up Payment), Developer will thereafter continue to pay the Developer Housing Subsidy

upon each transfer of a Market Rate Lot to a Vertical Developer in accordance with Section 6.1(a).

In addition, not less than 15 days before the date that Developer transfers the last Market Rate Lot to a Vertical Developer, Developer shall notify the Authority of the proposed transfer and of the total Developer Housing Subsidy paid by Developer to the Authority as of such date. If Developer has not paid to the Authority a Developer Housing Subsidy equal to or greater than the Minimum Subsidy Amount as of such date, then Developer shall pay to the Authority on or before the transfer of the last Market Rate Lot an amount equal to the difference between Minimum Subsidy Amount and the amount of the Developer Housing Subsidy previously paid to the Authority.

(c) Use of Developer Housing Subsidy. The Authority shall use the Developer Housing Subsidy for predevelopment and development expenses and administrative costs associated with the construction of the Authority Housing Projects on the Authority Housing Lots and for implementation of the Transition Housing Rules and Regulations, and for no other purpose. The Authority shall maintain reasonable books and records to account for all expenditures of the Developer Housing Subsidy, and make such books and records available to Developer upon request. Developer shall maintain reasonable books and records to account for all payments of the Developer Housing Subsidy, and shall make such books and records available for inspection to the Authority upon request. The Parties shall coordinate and keep each other informed of all development timelines. The Authority shall prioritize the use of the Developer Housing Subsidy for predevelopment and development expenses associated with the construction of Transition Units and TIHDI Replacement Units before other Authority Housing Units, as may be necessary to prevent delays in the close of Escrow for failure to satisfy Section 10.3.3.(h) of the DDA.

6.2 Designated Tax Increment and Other Funds. Each year, the Housing Percentage shall be deposited into the Housing Fund in accordance with Section 3.6 of the Financing Plan. All funds deposited into the Housing Fund shall be used by the Authority for administrative, predevelopment and development costs associated with the construction of the Affordable Housing Units on the Authority Housing Lots, and shall not be used to reimburse Developer for any of Developer's costs in Completing Infrastructure and Stormwater Management Controls on the Authority Housing Lots.

6.3 Jobs-Housing Linkage Fees. The commercial development within the Project Site is anticipated to generate Jobs-Housing Linkage fees to be paid into a housing fund held by the Authority in accordance with the DDA. The Authority shall use all Jobs-Housing Linkage fees payable by Vertical Developers of commercial uses within the Project Site for the development of Authority Housing Projects on the Authority Housing Lots and the implementation of the Transition Housing Rules and Regulations in accordance with this Housing Plan. The Authority shall maintain at all times an accounting of the Jobs-Housing Linkage fees that have been paid and that have been used to date, and shall make that information available to the Developer upon request.

6.4 Affordable Housing Loan Fund. To facilitate the design and construction of the Affordable Housing Units and the implementation of the Transition Housing Rules and

Regulations, Developer shall provide and make available to the Authority within thirty (30) days following the first Sub-Phase Approval a revolving loan fund in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000) to be administered by the Authority or by a designee of the Authority Approved by Developer (the "Affordable Housing Loan Fund"). The Authority or its designee shall maintain the Affordable Housing Loan Fund in a segregated interest-bearing account, with interest earned to be retained in the account and added to the Affordable Housing Loan Fund. The Authority shall use the Affordable Housing Loan Fund for the Authority Housing Projects and for the implementation of the Transition Housing Rules and Regulations, including payment of administrative costs such as consultant costs and planning costs, to pay benefits to Transitioning Households and other related costs, and to pay construction costs for the Transition Housing Units. The Authority may also make loans to Qualified Housing Developers to aid their development activities, with such loans to be repaid when sufficient sources are available to finance the Authority Housing Projects. The Authority shall maintain books and records to account for all revenues and expenditures from the Affordable Housing Loan Fund and make all such records available to Developer upon request. The amounts deposited in the Affordable Housing Loan Fund by the Developer shall be credited against all future payments of the Developer Housing Subsidy without interest until the credit is exhausted. Developer shall not be responsible for any loan losses, write-offs or any other diminution in the balance of the Affordable Housing Loan Fund and has no obligation to replenish the Affordable Housing Loan Fund once established. The Authority may choose at any time to use amounts in the Affordable Housing Loan Fund to directly pay for construction costs relating to the Authority Housing Units, and any remaining balance shall be used by the Authority to fund the construction of the Authority Housing Units.

## 7. VERTICAL DEVELOPMENT PARKING REQUIREMENTS

7.1 Separation. For Market Rate Projects, all Parking Spaces shall be "unbundled" (i.e., purchased or rented separately from a Unit within such Residential Project). For the Authority Housing Projects, Parking Space can be bundled with an Authority Unit if such bundling is Approved by the Planning Director in accordance with the Design for Development. It is anticipated that such bundling may be necessary in connection with the financing of the Authority Housing Project. Vertical Developers shall have the sole discretion to determine whether Parking Spaces in a Market Rate Project are available for rent or purchase, if parking is offered.

### 7.2 Parking Charge.

(a) Market Rate and Inclusionary Units. The Vertical Developer of the Market Rate Lot will determine, in its sole discretion, the charge for Parking Spaces that are owned or developed by the Vertical Developer. The rental charge or purchase price for each Inclusionary Unit shall not include the Parking Charge, and the Parking Charge to a renter or purchaser of an Inclusionary Unit shall be the same as the Parking Charge charged to a renter or purchaser of a Market Rate Unit for a comparable Parking Space. Vertical Developers (and their successors) may not charge renters or purchasers of Inclusionary Units any fees, charges or costs, or impose rules, conditions or procedures on such renters or purchasers, that do not equally apply to all Market Rate renters or purchasers.

(b) Authority Housing Units. In the event a Qualified Housing Developer constructs Parking Spaces as part of or in connection with an Authority Housing Project, the Qualified Housing Developer may set and the Authority shall Approve in its sole discretion, the Parking Charge for such Parking Spaces.

7.3 Parking Allotments. The permitted parking allowance for each Authority Housing Lots shall be the same as the Island-wide ratio for residential parking set forth in the Design for Development, as it may be amended from time to time. As of the Effective Date, the permitted parking allowance for each Authority Housing Lot shall be one Parking Space per Authority Housing Unit. The Authority or a Qualified Housing Developer (including a Qualified Housing Developer selected by TIHDI with Authority Approval) may elect to build Parking Spaces on the Authority Housing Lots. To the extent that Developer or Vertical Developer construct or cause to be constructed Parking Spaces in a central garage for use by multiple Residential Projects, the Authority or the Qualified Housing Developer (including the Qualified Housing Developer selected by TIHDI with Authority Approval) may contract with the owner of such central garage to rent or purchase spaces in the garage for use by residents of the Authority Housing Projects; provided, however, that the number of spaces constructed on the Authority Housing Lots and the number of spaces constructed in a central garage and dedicated to the Authority Housing Projects cannot exceed the number of residential units constructed on the Authority Housing Lots. Within each Major Phase, if and to the extent the Authority or a Qualified Housing Developer (including a Qualified Housing Developer selected by TIHDI with Approval) does not wish to construct the full allotment of Parking Spaces permitted on an Authority Housing Lot and does not wish to use this permitted allotment on another Authority Housing Lot or on other Authority property in the Major Phase, then Developer shall have the right to use the unused parking allotment for a Market Rate Lot subject to terms and conditions agreed upon by the Parties.

7.4 Inclusionary Parking Allotment. For each Market Rate Project containing Inclusionary Units, the number of Parking Spaces first offered to renters or purchasers of Inclusionary Units shall be equal to the number of Inclusionary Units in the Market Rate Project, divided by the number of Residential Units in the Market Rate Project, times the total number of Parking Spaces associated with the Market Rate Project. Allotments yielding a fractional number of Parking Spaces shall be rounded down to the nearest whole number. The Parking Spaces reserved for Inclusionary Units must be first offered to Inclusionary Units. After all Inclusionary Units have been offered an opportunity to rent or purchase the Parking Spaces in the Inclusionary allotment as set forth above, the Vertical Developer may sell or rent any remaining Parking Spaces to the occupants of Market Rate Units, provided when new Parking Spaces become available, there shall be no discrimination between occupants of Market Rate Units and Inclusionary Units as set forth in Section 7.2 of this Housing Plan.

7.5 Transit Passes. Residents of Market Rate Units and Inclusionary Units shall be required to purchase a Prepaid Transit Voucher, the cost of which shall not be included in determining the Affordable Housing Cost for the Inclusionary Unit. Residents of the Authority Housing Units will not be charged for, nor will they receive, a Prepaid Transit Voucher, but they will have an opportunity to purchase a Transit Voucher at the same price as the price offered to other residents in the Project.



7.6 Congestion Pricing. As set forth in the Transportation Plan, all residents in the Project will be subject to Congestion Pricing and residents of Inclusionary Units and the Authority Housing Units will not receive any discount or reduction in the Congestion Pricing.

## 8. TRANSITION HOUSING

8.1 Transition Housing Plan. The Authority has adopted Transition Housing Rules and Regulations to govern the Authority's obligations regarding the Transitioning Households, which rules shall not be amended in a manner that materially impacts Developer without Developer's Approval. The Transition Housing Rules and Regulations provide certain benefits to Transitioning Households, including the opportunity to occupy Transition Units in the Project, moving benefits and down payment assistance. Developer and the Authority have estimated the costs of implementing the Transition Housing Rules and Regulations and have included those costs as part of the Developer Housing Subsidy.

8.2 Transition Benefits. Under the Transition Housing Rules and Regulations, the Authority shall offer all Transitioning Households Transition Benefits (as defined in the Transition Housing Rules and Regulations). Transition Benefits include the opportunity to rent a unit on Treasure Island, the opportunity to purchase a newly constructed unit within the Project, or the opportunity to select an in lieu payment, as more particularly described in the Transition Housing Rules and Regulations.

8.3 No Damages. Nothing in this Housing Plan, the Transition Housing Rules and Regulations or any rules or regulations subsequently Approved by the Authority regarding the transition of residents gives any person or tenant, including any member of any Transitioning Household, the right to sue the Authority, TIHDI or Developer for damages of any kind, including but not limited to actual, incidental, consequential, special or punitive damages. The Parties have determined and agreed that (i) monetary damages are inappropriate, (ii) equitable remedies and remedies at law, including specific performance but excluding damages, are particularly appropriate remedies for enforcement of tenant rights under the Transition Housing Rules and Regulations or any other rules or regulations Approved by the Authority regarding the transition of residents, (iii) the payment of damages would, if made, adversely impact the amount of Affordable Housing Units that could be developed on the Project Site, and (iv) the Authority, TIHDI and Developer would not have made the commitments to tenants set forth in the Transition Housing Rules and Regulations or any other rules or regulations Approved by the Authority regarding the transition of residents if it could subject them to liability for damages as a result thereof. Accordingly, notwithstanding anything to the contrary set forth in this Housing Plan, the Transition Housing Rules and Regulations or any other rules or regulations Approved by the Authority regarding the transition of residents, the Authority, TIHDI and the Developer shall not be liable in damages to any third party or tenant as a result of the failure to implement this Housing Plan, the Transition Housing Rules and Regulations or any other rules or regulations Approved by the Authority regarding the transition of residents in any manner. The foregoing shall not limit any rights or remedies available to persons or tenants under applicable law or any rights or remedies that the Parties may have with respect to other Parties pursuant to the DDA.

8.4 Implementation.

(a) Order; Costs. The Authority shall use good faith efforts to first transition households that are located on land to be transferred to the Developer as set forth in the Phasing Plan. Subject to the terms of this Housing Plan, the Authority shall be responsible for all costs associated with the implementation of the Transition Housing Rules and Regulations, including, to the extent applicable, payment of relocation benefits under the Uniform Relocation Act and California Government Code section 7260 et seq. and its implementing guidelines. The Parties understand and agree that all of the costs of implementing the Transition Housing Rules and Regulations shall be funded with the Developer Housing Subsidy or other Project-generated affordable housing funds, and implementation of the Transition Housing Rules and Regulations may be delayed until such time as there are sufficient Developer Housing Subsidy or other Project-generated affordable housing funds available.

(b) Construction. Except as set forth in this Housing Plan, the Authority shall be responsible for the construction of the units offered to Transitioning Households in accordance with the Transition Housing Rules and Regulations, including the obligation to construct sufficient units of the appropriate size based on the occupancy standards in the Transition Housing Rules and Regulations. To the extent Transitioning Households qualify for occupancy of Affordable Housing Units, Transition Units will be Affordable Housing Units as set forth in Section 3.3 of this Housing Plan. For any Transition Unit that is not an Affordable Housing Unit at inception, each such Transition Unit will be deed restricted so that it will become an Affordable Housing Unit immediately upon the vacancy of the Transitioning Household. Without limiting Developer's obligations under the DDA, Developer shall use good faith efforts to ensure that the Authority Housing Lots are Completed, and the Authority shall use good faith efforts thereafter to ensure that Authority Housing Projects are Completed for the Transitioning Households, at the times required for development of the Major Phases and Sub-Phases as contemplated in the DDA.

(c) Timing; Delay. The DDA provides that, as a mutual condition to close on any Sub-Phase, the Transition Housing Rules and Regulations must be implemented as to all units in that Sub-Phase. Accordingly, Developer shall not have the right to demolish any existing occupied residential units on YBI or Treasure Island until the Transition Requirements, as defined in Section 10.3.3.(h) of the DDA, have been satisfied. In the event that the failure to satisfy the Transition Requirements causes a delay in the closing of a Sub-Phase, the Parties agree to meet and confer in order to determine how best to proceed with the Project in the most efficient and cost-effective manner, provided that (i) the Authority and TIHDI shall have no liability to Developer for the failure to Complete any Transition Units on or before specified dates, (ii) Developer shall have the right, but not the obligation, to offer Market Rate Units, and for income-qualifying Transitioning Households, Inclusionary Units, as may be needed in order to implement the Transition Housing Rules and Regulations and permit Developer to close escrow for the Sub-Phase, (iii) the Parties shall consider Interim Moves for Transitioning Households if the Parties can reach agreement on the source of payment for such Interim Moves and (iv) Developer shall have the right, but not the obligation to satisfy the condition to closing by electing to construct Transition Units on Authority Housing Lots as provided in Section 8.4(d) below. Without limiting the foregoing, the Parties understand and agree that (A) Interim Moves for Transitioning Households from YBI to Treasure Island as contemplated by the Phasing Plan shall be paid for by the Authority as part of the implementation of the Transition Housing Rules and Regulations, (B) Interim Moves for TIHDI units shall be paid for by

Developer, as set forth in subsection (f) below, and (C) any additional Interim Moves shall not be required unless the Parties reach agreement on the payment source for such moves as set forth above.

(d) Potential Developer Construction. The Authority may request that Developer construct the Transition Units on Authority Housing Lots in order to facilitate the implementation of the Transition Housing Rules and Regulations, provided the Authority shall not request that Developer construct any such Transition Units if such construction is not required for the satisfaction of the Transition Requirements by the anticipated closing date of a Sub-Phase that would trigger the Transition Requirements. If all conditions to close a Sub-Phase have been met except for satisfaction of the Transition Requirements, then Developer may satisfy the Transition Requirements by electing to construct the Transition Units on one or more Authority Housing Lots. The Parties shall meet and confer in good faith to reach agreement on the location, density, funding and the terms for construction of the Transition Units to enable Developer to construct such Transition Units in accordance with this Agreement, provided, however, Developer agrees that any Transition Units constructed by Developer shall have a density of at least fifty dwelling units per acre. The cost to construct the Transition Units shall be a Project Cost and either (i) an advance payment of the Developer Housing Subsidy in an amount agreed to by the Parties or (ii) subject to such alternative financial arrangement as agreed to by the Parties. If the Developer undertakes the obligation to construct the Transition Units, the Authority shall cooperate with Developer, including entering into necessary Permits to Enter and issuing approvals consistent with the Design for Development and the DRDAP.

(e) Potential Subsidy Advance. The Authority may also request from time to time that the Developer provide an advance of the Developer Housing Subsidy, in excess of the amounts deposited in the Affordable Housing Loan Fund and in excess of any payments required under Section 3.1 of this Housing Plan, if necessary to implement the Transition Housing Rules and Regulations, including the payment of reasonable administrative costs associated with the Transition Housing Rules and Regulations, the cost of providing benefits to Transitioning Households for either Interim Moves or Long Term Moves and costs associated with the construction of the Transition Units. Before requesting any advance of the Developer Housing Subsidy, the Authority shall first use any funds available in the Affordable Housing Loan Fund that have not been pledged for the construction of an Authority Housing Project that has already Commenced construction. Developer shall be required to advance the sums requested by the Authority for implementation of the Transition Housing Rules and Regulations if the funds are necessary to provide benefits to Transitioning Households required to move in order for Developer to proceed with residential or commercial development in an Approved Sub-Phase, unless (i) the Developer chooses to delay proceeding with that Sub-Phase if and as permitted by the Schedule of Performance and Excusable Delay provisions of the DDA and (ii) Transition Benefits have not yet accrued to Transitioning Households. Developer shall not be obligated to fund any such requested advance if the funds are requested for Transitioning Households who could remain in their existing housing without interfering with Developer or Vertical Developer's construction in an Approved Sub-Phase.

(f) TIHDI Interim Moves. Notwithstanding anything to the contrary above, if the Developer's schedule for construction results in the need to move residents of existing TIHDI units before replacement units for the TIHDI units have been constructed, (i)

Developer shall pay for the costs associated with moving those TIHDI residents to other units currently existing on Treasure Island, including the costs associated with upgrading such existing units to meet any licensing requirements and to allow for continuation of the then existing programs and (ii) the costs of such moves and upgrades shall be in addition to the Developer Housing Subsidy.

8.5 Premarketing Requirement. The Vertical DDAs will require that all Vertical Developers of Market Rate Lots comply with the requirements of the Transition Housing Rules and Regulations to offer Transitioning Households and certain other Households that are former residents of NSTI, as more particularly described in the Transition Housing Rules and Regulations, an opportunity to make an offer to purchase a new unit during a premarketing window of not less than 30 days for any Sale Units in accordance with the requirements of the Transition Rules and Regulations. Each Vertical Developer will be required to offer only one premarketing opportunity per Market Rate Project. In the event that the Authority has not Approved the Marketing and Operations Guidelines for Inclusionary Units as set forth in Section 5.1(h) of this Housing Plan within 60 days following submittal, Vertical Developers may proceed with the premarketing and marketing of the Market Rate Units in that Residential Project and will offer a one-time, separate premarketing window of 30 days for the Inclusionary Units in that Residential Project following the Authority's Approval of the Marketing and Operations Guidelines.

The Authority will be responsible for maintaining the Premarketing Notice List and Transitioning Households and former residents of NSTI are exclusively responsible for updating their own contact information with the Authority. Vertical Developers will be obligated to provide the Authority with the required notice regarding the availability of new units and it shall be the Authority's responsibility to distribute such Notice to the Premarketing Notice List. Neither Developer nor Vertical Developers will be responsible for updating the Premarketing Notice List, verifying the accuracy of the information in the list, or for any errors or omissions in the list. The Authority's provision of notice to the address on the Premarketing Notice List will be conclusive evidence that the Households on the Premarketing Notice List were provided adequate and proper notice.

**9. INCREASED AFFORDABLE HOUSING IF LAW AMENDED OR ADDITIONAL PUBLIC FUNDS BECOME AVAILABLE.**

9.1 IFD Revisions. As described in the Summary of this Housing Plan, the Minimum Affordable Percentage for the Project was reduced from the Thirty Percent Minimum to the Twenty-Five Percent Minimum as a result of the Parties' reliance on available property tax increment from Infrastructure Financing Districts instead of Community Redevelopment Law for the public financing component of the Project. The Parties understand and agree that if the following revisions are made to the IFD Act, then the public funding available for the Project, including the funds available for Affordable Housing, will equate to the public funding that would have been available under the Community Redevelopment Law as of the Effective Date as estimated by the Parties (the "CRL Funding Amount"): (i) the incremental tax revenue available for Project Costs excluding the Housing Percentage is equal to sixty percent (60%) or more of the total incremental tax revenue from the property in the IFD; (ii) the life of an IFD is extended to forty-five (45) years or longer, and the ability to incur debt to fund Project Costs is at least

twenty years; (iii) subordination of taxing agencies' share of incremental tax revenues to debt issued by the IFD is authorized in a manner similar to the current provisions of Health and Safety Code Section 33607.5; and (iv) the public improvements eligible to be funded with the incremental tax revenues from the IFD are consistent with those allowed to be funded with tax increment revenue under the California Community Redevelopment Law (collectively, the "Maximum Public Financing Revisions").

9.2 Potential Future Changes to Housing Plan. If, on or before the later of (i) the date that is sixty (60) months after the Effective Date, and (ii) the Initial Closing under the Conveyance Agreement (the "Outside IFD Revision Date"), the Maximum Public Financing Revisions are made to the IFD Law or other public financing options become available so that the public funding available for the Project is the same as the CRL Funding Amount, then the Twenty-Five Percent Minimum shall become the Thirty Percent Minimum and:

(a) the Authority Housing Units shall be increased to a maximum of 2,105 units and the Developer Residential Units shall be decreased to a maximum of 5,895 unit and the Authority Housing Lots shall include the Additional Authority Housing Lots Under the Thirty Percent Minimum as shown on the Housing Map attached as Attachment B;

(b) this Housing Plan shall be amended to provide that Completed Authority Housing Lots shall comprise 27% of the total Residential Acreage of the Residential Developable Lots, the total Residential Acreage of the Authority Housing Lots on Treasure Island shall not be less than twenty percent (20%) in each Major Phase, and that the Cumulative Total Authority Housing Acreage on Treasure Island shall be twenty five percent (25%) at the time of Approval of the Major Phase that includes the 2,950 Developer Residential Unit;

(c) the Inclusionary Milestones set forth in Section 5.1(c) of this Housing Plan shall be amended to be the dates of conveyance to Vertical Developers of Market Rate Lots allowing for development of (i) 2,065 Developer Residential Units; (ii) 2,950 Developer Residential Units and (iii) 4,420 Developer Residential Units; and

(d) Developer shall submit a new or revised Housing Data Table that reflects the revised Authority and Market Rate Housing Units numbers.

If the Maximum Public Financing Revisions are not made on or before the Outside IFD Revision Date, then: (A) the Authority Housing Units shall be increased to a maximum of 1,866 units and the Developer Residential Units shall be decreased to a maximum of 6,134 units, although there will be no change to the number, acreage or location of Authority Housing Lots shown on Exhibit B; (B) the Inclusionary Milestones set forth in Section 5.1(c) of this Housing Plan shall be amended to be the dates of conveyance to Vertical Developers of Market Rate Lots allowing for development of (i) 2,150 Developer Residential Units; (ii) 3,065 Developer Residential Units and (iii) 4,600 Developer Residential Units; and (C) Developer shall submit a new or revised Housing Data Table that reflects the revised Authority and Market Rate Housing Units numbers.

9.3 Increases from the Twenty-Five Percent Minimum to the Thirty Percent Minimum. If some but not all of the Maximum Public Financing Revisions are made to the IFD

Act or other public funding for affordable housing is made available during the Term ("Partial Public Financing Revisions"), then the Authority shall have the right to acquire one or more of the Authority Housing Lots shown as Additional Authority Housing Lots Under the Thirty Percent Minimum on the Housing Map attached as Attachment B, together with an appropriate increase in the Minimum Affordable Percentage if requested, at the Fair Market Value Price. The Fair Market Value Price shall be fair market value of the land and the corresponding housing entitlement (if any), using the same methodology as used in the Proforma and taking into account all costs and savings to Developer resulting from the loss of the land and any increase in the Minimum Affordable Percentage, including all changes in estimated IFD and CFD revenues to Developer and the decrease in the Developer Housing Subsidy payable by Developer, but excluding estimated profits from the vertical development on the land. Upon the Authority's request following a Partial Public Financing Revision, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days to determine the Fair Market Value Price and any change in the Minimum Affordable Percentage (if applicable) and the corresponding adjustments to this Housing Plan. If the Parties are not able to agree on the Fair Market Value Price, the Minimum Affordable Percentage, or the corresponding adjustments to this Housing Plan within ninety (90) days, then either Party shall have the right to initiate the appraisal process set forth in Section 17.4 of the DDA.

9.4 Initial Applications. The Parties agree that before such time as the Maximum Public Financing Revisions or the Partial Public Financing Revisions occur, Developer may submit Major Phase Applications and Sub-Phase Applications based upon the terms of this Housing Plan without assuming that there will be any change to the IFD Law or the public financing available for Affordable Housing at the Project Site. However, the Parties agree to make the revisions set forth in Section 9.2 above as soon as the Maximum Public Financing Revisions occur and the revisions in Section 9.3 above as soon as the Partial Public Financing Revisions occur.

## 10. NON-APPLICABILITY OF COSTA HAWKINS ACT

The Parties understand and agree that the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 et seq.; the "Costa-Hawkins Act") does not and in no way shall limit or otherwise affect the restriction of rental charges for the Affordable Housing Units or the Inclusionary Units developed pursuant to the DDA and the Development Agreement (including this Housing Plan). This DDA falls within an express exception to the Costa-Hawkins Act because the DDA is a contract with a public entity in consideration for a direct financial contribution and other forms of assistance specified in Chapter 4.3 (commencing with section 65915) of Division 1 of Title 7 of the California Government Code. Accordingly, Developer, on behalf of itself and all of its successors and assigns, including all Vertical Developers, agrees not to challenge, and expressly waives, now and forever, any and all rights to challenge, Developer's obligations set forth in this Housing Plan related to Inclusionary Units, under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time. Developer shall include the following language, in substantially the following form, in all Vertical DDAs:

"The DDA (including the Housing Plan) implements the California Infrastructure Financing District Law, Cal. Government Code §§ 53395 et seq. and City of San

Francisco policies and includes regulatory concessions and significant public investment in the Project. The regulatory concessions and public investment include, without limitation, a direct financial contribution of net tax increment, the conveyance of real property without payment, and other forms of public assistance specified in California Government Code section 65915 et seq. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of Developer and Vertical Developers, as contemplated by California Government Code section 65915. In light of the Authority's authority under Government Code Section 53395.3 and in consideration of the direct financial contribution and other forms of public assistance described above, the parties understand and agree that the Costa-Hawkins Act does not and shall not apply to the Inclusionary Units developed at the Project under the DDA."

The Parties understand and agree that the Authority would not be willing to enter into the DDA, without the agreement and waivers as set forth in this Article 9.

## 11. MISCELLANEOUS

11.1 No Third Party Beneficiary. Except to the extent set forth in the DDA, there are no express or implied third party beneficiaries to this Housing Plan:

11.2 Severability. If any provision of this Housing Plan, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Housing Plan or the application of such provision to any other Person or circumstance, and the remaining portions of this Housing Plan shall continue in full force and effect. Without limiting the foregoing, in the event that any applicable law prevents or precludes compliance with any term of this Housing Plan, the Parties shall promptly modify this Housing Plan to the extent necessary to comply with such law in a manner that preserves, to the greatest extent possible, the benefits to each of the Parties. In connection with the foregoing, the Parties shall develop an alternative of substantially equal, but not greater, cost and benefit to Developer and any applicable Vertical Developer so as to realize from the Project substantially the same (i) overall benefit (from a cost perspective) to the public and (ii) overall benefit to Developer and any applicable Vertical Developer.

EXHIBIT E, ATTACHMENT A  
HOUSING DATA TABLE

MAJOR PHASE AND SUB-PHASE (Cells that are shaded to be provided at Sub-Phase Only)

Major Phase: Sub-Phase: Block:		MARKET RATE LOTS ONLY													AUTHORITY LOTS			
Residential Project Lot Number & Location	Lot Type (Authority, Auction, Other)	Acres	Anticipated Product Type (TH, Flat, Tower, etc.)	Max Bldg Ht Allowed	Anticipated Bldg Ht	Density (in DUA)	Total Developer Unit Count	Number Mkt Rt Units	Number IndUnits (Total)	Rental or For Sale	Number IndUnits @ 60% (Rental)	Number IndUnits @ 80% (For Sale)	Number IndUnits @ 90% (For Sale)	Number IndUnits @ 100% (For Sale)	Number IndUnits @ 110% (For Sale)	Number IndUnits @ 120% (For Sale)	Change to Auth Lot Size or Location?	Target Infrastructure Completion Date
1																		
2																		
3																		
4																		
5																		
Block Subtotal:		0.00				#DIV/0!	0	0	0									

Major Phase: Sub-Phase: Block:		MARKET RATE LOTS ONLY													AUTHORITY LOTS			
Residential Project Lot Number & Location	Lot Type (Authority, Auction, Other)	Acres	Anticipated Product Type (TH, Flat, Tower, etc.)	Max Bldg Ht Allowed	Anticipated Bldg Ht	Density (in DUA)	Total Developer Unit Count	Number Mkt Rt Units	Number IndUnits (Total)	Rental or For Sale	Number IndUnits @ 60% (Rental)	Number IndUnits @ 80% (For Sale)	Number IndUnits @ 90% (For Sale)	Number IndUnits @ 100% (For Sale)	Number IndUnits @ 110% (For Sale)	Number IndUnits @ 120% (For Sale)	Change to Auth Lot Size or Location?	Target Infrastructure Completion Date
1																		
2																		
3																		
4																		
5																		
Block Subtotal:		0.00				#DIV/0!	0	0	0									

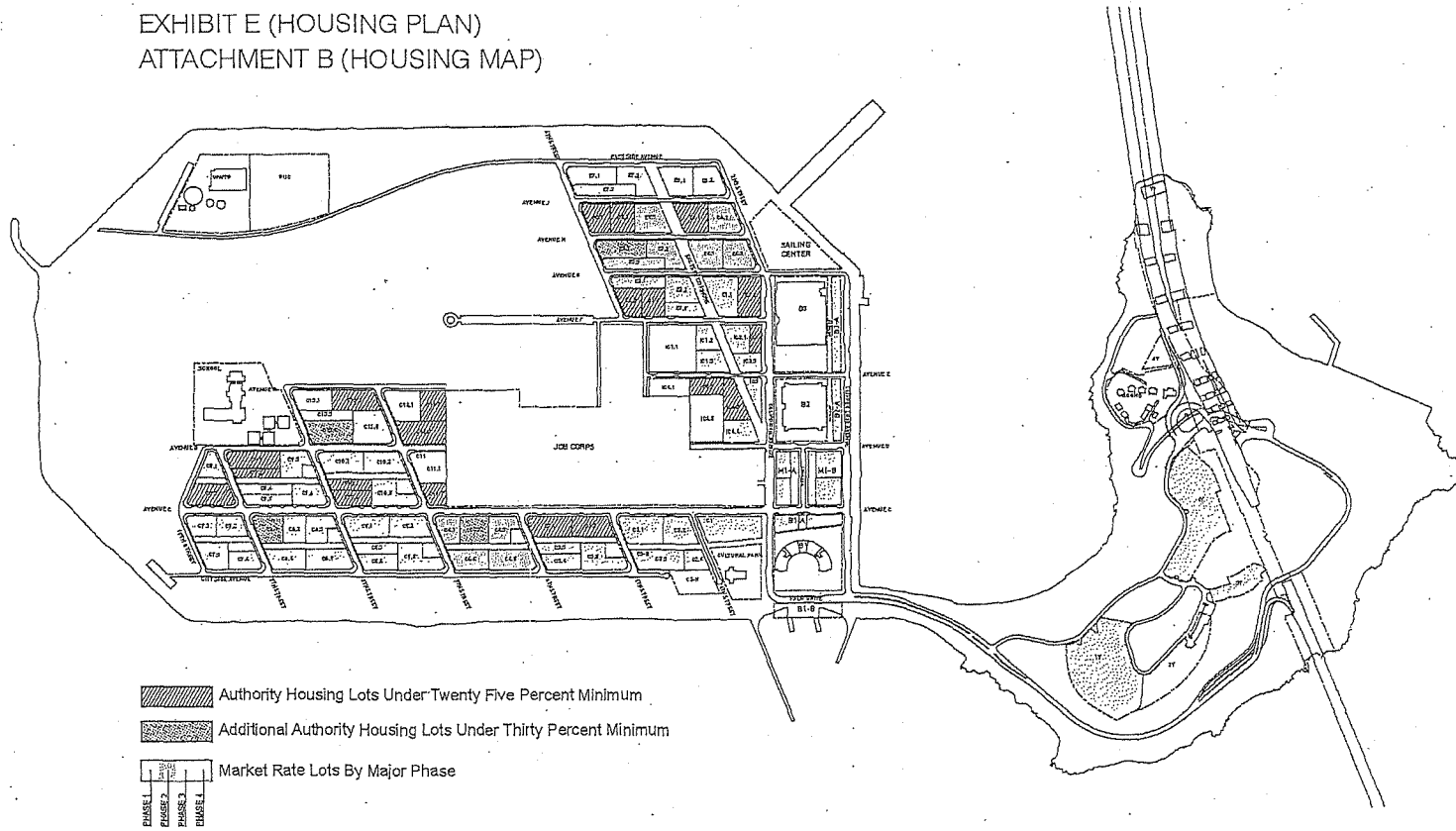
PROJECT SUMMARY

	Total Residential Acreage	Total Authority Residential Acreage	Total Market Rate Residential Acreage	Total Developer Residential Units	Number Mkt Rt Units (For Sale)	Number IndUnits (For Sale)	Number Mkt Rt Units (Rental)	Number IndUnits (Rental)	Number IndUnits @ 60%	Number IndUnits @ 80%	Number IndUnits @ 90%	Number IndUnits @ 100%	Number IndUnits @ 110%	Number IndUnits @ 120%
Total for all Prior Approved Major Phases / Sub-Phases														
Total for this Major Phase/Sub-Phase														
Total of Prior Approved plus Proposed Major Phase / Sub-Phase														
Percentage for this Major Phase/Sub-Phase	% Auth Land:	#DIV/0!												
Cumulative Percentage	% Auth Land:	#DIV/0!	% Rental:	#DIV/0!										

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EXHIBIT E (HOUSING PLAN)  
ATTACHMENT B (HOUSING MAP)



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TREASURE ISLAND DEVELOPMENT AUTHORITY

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TRANSITION HOUSING RULES AND REGULATIONS

FOR THE VILLAGES AT TREASURE ISLAND

ADOPTED BY

TREASURE ISLAND DEVELOPMENT AUTHORITY

BOARD OF DIRECTORS

Resolution No.

[date]

TRANSITION HOUSING RULES AND REGULATIONS  
FOR THE VILLAGES AT TREASURE ISLAND

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#### EXHIBITS AND APPENDICES

- Appendix 1: Sample Tenant Income Certification Form
- Appendix 2: 2010 In-Lieu Payment Schedule, Based on the 2010 San Francisco Rent Board  
Schedule for Relocation Payments for No Fault Evictions, adjusted for up to four  
adults
- Appendix 3: Sample Moving Expense Allowance Schedule
- Appendix 4: Definitions

TRANSITION HOUSING RULES AND REGULATIONS  
FOR THE VILLAGES AT TREASURE ISLAND

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I. GENERAL

A. Background

These Transition Housing Rules and Regulations for The Villages at Treasure Island ("Transition Housing Rules and Regulations") reflect the decision of the Treasure Island Development Authority Board of Directors ("TIDA Board") to implement certain recommendations made by the Board of Supervisors of the City and County of San Francisco ("City") in Resolution No. 699-06 (the "Term Sheet Resolution"). Definitions used in these Transition Housing Rules and Regulations are provided in Appendix 4 for reference.

During World War II, Naval Station Treasure Island ("NSTI") was used as a center for receiving, training, and dispatching service personnel.

After the war, NSTI was used primarily as a naval training and administrative center. In 1993, Congress and the President selected NSTI for closure and disposition by the Base Realignment and Closure Commission acting under Public Law 101-510, 10 U.S.C. § 2687 and its subsequent amendments ("BRAC"). The Department of Defense subsequently designated the City as the Local Reuse Authority responsible for the conversion of NSTI to civilian use under the federal disposition process.

The City opted to negotiate for the transfer of NSTI under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. Law 103-421) (the "Base Redevelopment Act") amending BRAC, under which certain portions of NSTI would be set aside for homeless assistance programs in a manner that balances the economic development needs of the redevelopment process. A consortium of nonprofit organizations is providing a variety of services to the formerly homeless (currently, Catholic Charities, Community Housing Partnership, Rubicon Programs, Swords for Ploughshares, and Walden House), organized as the Treasure Island Homeless Development Initiative ("TIHDI"), to coordinate the homeless assistance programs to be provided under the Base Redevelopment Act.

In anticipation of base closure and following a public planning process, the Mayor, the Board of Supervisors, and the Planning Commission endorsed a Draft Base Reuse Plan for NSTI in 1996 outlining opportunities, constraints, policy goals, and recommendations for the redevelopment of NSTI. The City entered into an agreement with TIHDI in 1996 to develop and implement the homeless component under the Base Reuse Plan, which includes the right to temporary use of former military housing at NSTI and permanent housing through the base redevelopment process. The City formed Treasure Island Development Authority ("TIDA") as a redevelopment agency under California redevelopment law and designated TIDA as the City's

Local Reuse Authority for NSTI as authorized under the Treasure Island Conversion Act of 1997 (Assembly Bill No. 699, Stats. 1997, ch. 898).

TIDA initiated formal negotiations with the Navy in 1997, the same year the Navy formally closed base operations at NSTI. Also in 1997, the Navy contracted with the City (and subsequently, TIDA) to manage the property pending negotiations for its transfer and redevelopment. As part of managing NSTI on behalf of the Navy, TIDA began subleasing at market rates a portion of the former military housing now known as The Villages at Treasure Island ("The Villages") through a master lease with The John Stewart Company, and directly leasing space to a variety of commercial tenants. The master leases, the Residential Leases for Villages units, and commercial leases are interim pending the Navy's transfer of NSTI to TIDA for redevelopment and reuse.

TIDA selected Treasure Island Community Development, LLC ("TICD") in 2003 for exclusive negotiations for the master redevelopment of NSTI. The Board of Supervisors adopted the Term Sheet Resolution in 2006, endorsing the Development Plan and Term Sheet for the Redevelopment of Naval Station Treasure Island (as updated and endorsed by the TIDA Board of Directors and the Board of Supervisors in 2010, the "Development Plan"), conditioned on completion of environmental review under the California Environmental Quality Act ("CEQA"), an extensive community review process, and endorsement by the Treasure Island/Yerba Buena Island Citizen's Advisory Board and the TIDA Board. The Development Plan will serve as the basis for a Development and Disposition Agreement between TIDA and TICD (as amended, the "DDA"), which will govern their respective rights and obligations for the redevelopment of certain portions of NSTI if approved by the TIDA Board and the Board of Supervisors after completion of CEQA review. In the Term Sheet Resolution, the Board of Supervisors recommended that the TIDA Board create a transition program setting forth terms by which existing residents of NSTI could have the opportunity to rent at reduced rents or buy newly-constructed units on Treasure Island.

Consistent with Assembly Bill No. 699, the Development Plan specifies that all of the former military housing on the NSTI (except certain historic buildings) eventually will be demolished. As outlined in the Development Plan, TIDA and TICD intend to phase redevelopment so that new housing can be built on NSTI before demolishing most of the existing residential structures as follows.

- Redevelopment of Yerba Buena Island is planned as part of the first phase of the redevelopment project, requiring demolition of existing Yerba Buena Island housing to be among TICD's first development activities. Transitioning Households on Yerba Buena Island affected by the early phases of redevelopment will be offered Existing Units on Treasure Island through Interim Moves.
- Demolition of the housing on Treasure Island is proposed to occur in the later phases of the redevelopment project. But some Transitioning Households may be asked to make Long-Term Moves in earlier phases as new housing becomes available for occupancy.

## B. Purpose

These Transition Housing Rules and Regulations:

- are designed to ensure that eligible Villages Households who satisfy all qualifications of Transitioning Households under Section II.A (Determination of Household Eligibility for Transition Benefits) receive housing opportunities consistent with the Term Sheet Resolution;
- describe benefits below (“Transition Benefits”) that are available only to Transitioning Households;
- specify the eligibility criteria for Transitioning Households to receive Transition Benefits; and
- outline the procedures by which Transitioning Households will be offered Transition Benefits, including the opportunity to occupy new housing to be built on TI.

## C. Limits of Applicability

The Transition Benefits under these Transition Rules and Regulations:

- apply only to Transitioning Households required to move to accommodate redevelopment of NSTI in accordance with the DDA;
- do not apply if TIDA must relocate Villages and TIHDI residents due to disaster or other declared emergency affecting living conditions on NSTI; and
- do not apply to:
  - Villages Households that do not satisfy all qualifications of Transitioning Households under Section II.A (Determination of Household Eligibility for Transition Benefits); or
  - residents in housing managed by TIHDI member organizations, who will have the opportunity to move to new supportive housing that TIHDI will develop under the proposed Amended and Restated Base Closure Homeless Assistance Agreement; or
  - TIDA’s commercial tenants.

#### D. Overview and Program Framework

Two types of moves affecting Transitioning Households are anticipated as NSTI is redeveloped:

- **Interim Moves**, in which a Transitioning Household moves from one Existing Unit in The Villages to another Villages Existing Unit on Treasure Island following receipt of a Notice to Move. An example of this would be a move from an Existing Unit in an area proposed for redevelopment in an early phase to an Existing Unit on Treasure Island. *Most Transitioning Households will not be asked to make an Interim Move.*
- **Long-Term Moves**, in which a Transitioning Household moves from one of the Existing Units to a newly-constructed Dwelling on Treasure Island. All Transitioning Households (including those that previously made an Interim Move) will have the opportunity to make this move.

Key elements of these Transition Housing Rules and Regulations are:

- All Transitioning Households that receive a Notice to Move for either an Interim Move or a Long-Term Move will be eligible for Transition Benefits under these Transition Housing Rules and Regulations.
- NSTI residents who move off-Island before they receive a Notice to Move and an offer of Transition Benefits are not Transitioning Households and will not be eligible for Transition Benefits.
- All Transitioning Households will have the opportunity to remain on Treasure Island. No eligible Transitioning Household will be required to move before receiving an offer of Transition Benefits.
- Transitioning Households will have an opportunity to select one of the three Transition Benefit Options described in these Transition Housing Rules and Regulations:
  - the Transition Unit Option to move into rental housing on Treasure Island (See **Article V** (Description of Transition Unit Option));
  - the In-Lieu Payment Option for a lump sum payment upon moving off-Island (See **Article VI** (Description of In-Lieu Payment Option)); or
  - the Unit Purchase Assistance Option for down payment assistance in the purchase of a newly-constructed Dwelling on NSTI (See **Article VII** (Description of Unit Purchase Assistance Option)).



- Moving assistance will be provided to Transitioning Households that:
  - make Interim Moves to other Existing Units on Treasure Island; or
  - select the Transition Unit Option and make Long-Term Moves from their Existing Units to new Transition Units.
- A Premarketing Window to purchase newly-constructed Dwellings on NSTI will be available to:
  - all Transitioning Households in Existing Units before they have selected a Transition Benefit; and
  - Post-Transition Tenants that selected the In-Lieu Payment Option and received an In-Lieu Payment.
- Any resident of The Villages who moves onto NSTI after the DDA Effective Date will be a Post-DDA Tenant under these Transition Housing Rules and Regulations. Post-DDA Tenants who by definition do not qualify for an exception under Section II.A.1 (Defined Terms for Determining Eligibility) are ineligible for Transition Benefits, but will be offered transition advisory services when required to move.

#### E. Effective Date

These Transition Housing Rules and Regulations will be effective on the date the DDA becomes effective (the "DDA Effective Date"), if the DDA is approved by the TIDA Board and the Board of Supervisors after completion of CEQA review.

## II. ELIGIBILITY

### A. Determination of Household Eligibility for Transition Benefits

The first step in determining whether a Villages Household is eligible for Transition Benefits is determining the status of the Household, based on the criteria below.

Only Transitioning Households are eligible for Transition Benefits. Transition Benefits are offered to each Transitioning Household as a Household and not to individual members of the Household.

1. Defined Terms for Determining Eligibility. TIDA will determine the members of a Transitioning Household based on the following definitions:

a. "Existing Unit" means a Dwelling located on NSTI that is occupied by a Transitioning Household as its primary Dwelling before receipt of a First Notice to Move or an Interim Notice to Move.

b. **"Good Standing"** means that TIDA does not have grounds for eviction as described in Section XII.A (Eviction).

c. **"Household"** means an individual, or two or more individuals, related or unrelated, who live together in an Existing Unit as their primary Dwelling, or one or more families occupying a single Existing Unit as their primary Dwelling, including: (i) all adult Household members who are named in the Residential Lease; (ii) minor children in the Household; and (iii) the spouse or registered domestic partner of a Household member. Under these Transition Housing Rules and Regulations, all occupants of a single Existing Unit constitute a single Household, and a Household may include both Post-DDA Tenants and members of a Transitioning Household.

d. **"Post-DDA Tenant"** means a resident who moves onto NSTI after the DDA Effective Date, except as follows: (i) a spouse or registered domestic partner of a member of a Transitioning Household; (ii) a minor child of a member of a Transitioning Household; and (iii) a live-in caregiver for a member of a Transitioning Household who has been approved by TIDA or its agent to reside in the Existing Unit. Persons in categories (i) and (ii) above will only be considered Post-DDA Tenants if the Household notified TIDA in writing of the new Household member, and requested that the Person's name be added to the Residential Lease at the time that the Household member joined the Household, or, if that Person became a member of the Household after TIDA's most recent notice of annual change in base rent under the Residential Lease.

e. **"Residential Lease"** means the lease agreement, including any addenda, under which a Transitioning Household or a Post-DDA Tenant lawfully occupies an Existing Unit, or under which an employer provides employee housing for employees working on NSTI.

f. **"Transitioning Household"** means a Villages Household consisting of residents who: (i) lawfully occupied an Existing Unit in The Villages as its primary Dwelling on the DDA Effective Date as evidenced by each adult resident's signature on the Residential Lease and each minor child identified as an occupant in the Residential Lease; (ii) continue to live in an Existing Unit until the Household receives a First Notice to Move for a Long-Term Move or accepts an In-Lieu Payment or Down Payment Assistance; and (iii) remain in Good Standing under its Residential Lease until the Household receives a First Notice to Move for a Long Term Move or accepts an In-Lieu Payment or Down Payment Assistance. A Transitioning Household specifically excludes the following: (A) any Person or Household in Unlawful Occupancy of the Existing Unit; (B) any Post-DDA Tenant in the Household; (C) any Person who occupies an Existing Unit under an arrangement with a business entity that has entered into a Residential Lease with TIDA; and (D) any Person who occupies the Existing Unit solely for the purpose of obtaining Transition Benefits.

g. **"Unlawful Occupancy"** means: (i) a Person or Household has been ordered to move by a valid court order; (ii) the Person's or Household's tenancy has been lawfully terminated, if the termination was not undertaken for the purpose of evading the obligations of these Transition Housing Rules and Regulations; or (iii) a Person is not listed on

the Residential Lease, except for a: (x) spouse or registered domestic partner of a member of a Transitioning Household; (y) minor child of a member of a Transitioning Household; or (z) live-in caregiver for a member of a Transitioning Household who has been approved by TIDA or TIDA's agent to reside in the unit, provided that Persons in categories (x) and (y) have met the requirements to be considered a Post-DDA Tenant.

2. TIDA Records of Eligibility. Based on information available to TIDA, including information provided by Villages Households during and in follow-up to interviews under Section III.B (Interview Households and Offer Advisory Services), TIDA will maintain records indicating which members of each Villages Household constitute an eligible Transitioning Household and which members are Post-DDA Tenants or otherwise not qualified for Transition Benefits.

#### **B. Ineligible Residents**

1. Post-DDA Tenants. Post-DDA Tenants are ineligible for Transition Benefits. A Post-DDA Tenant may be a resident in an Existing Unit in which other residents constitute a Transitioning Household. Post-DDA Tenants will be eligible only for transition advisory services under these Transition Housing Rules and Regulations.

2. Unlawful Occupancy. A resident in Unlawful Occupancy of an Existing Unit is ineligible for Transition Benefits or advisory services under these Transition Housing Rules and Regulations.

### **III. TRANSITION NOTICES AND PROCEDURES**

#### **A. First Notice to Move**

1. Delivery of First Notice to Move. TIDA will deliver a First Notice to Move to each affected Household before the Household is required to move to facilitate the ongoing redevelopment of NSTI.

2. Time of Notice. The First Notice to Move will be delivered: (a) no less than 90 days before the date by which an Interim Move must occur; and (b) no less than 120 days before the date by which a Long-Term Move must occur.

3. Contents of Notice. The First Notice to Move will state:

- a. whether the move will be an Interim Move or a Long-Term Move;
- b. TIDA's intent to terminate the Residential Lease for the Existing Unit on a specified date, by which the Household will be required to move;
- c. whether TIDA records: (i) list any or all of the members of the Household as an eligible Transitioning Household; or (ii) indicate that any members of the Household are Post-DDA Tenants or are otherwise ineligible for Transition Benefits;

d. if TIDA records indicate that any members of the Household are or may be a Transitioning Household: (i) additional information or verifications necessary to determine eligibility as a Transitioning Household; (ii) a general description of the Transition Benefits that a Transitioning Household may receive under these Transition Housing Rules and Regulations; (iii) additional steps a Transitioning Household must take to secure Transition Benefits, such as setting up an interview to provide TIDA with the information necessary to complete income certification requirements and determine the composition of the Transitioning Household; and (iv) the time-frame for setting up the informational interview to establish the Transitioning Household's housing needs and certify Household Income;

e. if TIDA records indicate that the entire Household (or any member of the Household) is not a Transitioning Household but is a Post-DDA Tenant, information regarding advisory services available to Post-DDA Tenants and on the Household's opportunity to present information demonstrating its eligibility as a Transitioning Household;

f. contact information for questions about the notice or process; and

g. that the notice and all future notices will be translated into a language understood by the Household if the Household notifies TIDA that the Household does not include an adult fluent in English.

#### **B. Interview Household and Offer Advisory Services**

1. Schedule Interview. After the First Notice to Move is delivered, TIDA will contact each Household to set up interviews. TIDA will provide sufficient advance notice and scheduling flexibility to enable each adult in the Household (except those in Unlawful Occupancy of the Existing Unit) to be interviewed, so that TIDA can obtain required information and provide advisory services described below.

#### **2. Advisory Services for Transitioning Households:**

a. The interviews will enable TIDA to: (i) describe and explain any applicable eligibility requirements for the specific Transition Benefits available to the Transitioning Household under these Transition Housing Rules and Regulations; (ii) advise and assist the Transitioning Household in evaluating its housing needs; (iii) identify any special needs for that Transitioning Household; (iv) assist each Transitioning Household to complete applications for Transition Benefits; and (v) ensure that no Transitioning Household will be required to move from an Existing Unit without an opportunity to relocate to a Transition Unit, except in the case of: (A) an Interim Move; (B) a major disaster as defined in § 102(2) of the federal Disaster Relief Act of 1974; (C) a state of emergency declared by the President of the United States or the Governor of the State of California; or (D) any other emergency that requires the Household to move immediately from the Existing Unit because continued occupancy of the Existing Unit by the Household constitutes a substantial danger to the health or safety, or both, of the Household.

b. For Long-Term Moves only: (i) the Transitioning Household must begin the process of determining Household Income; and (ii) to qualify for an income-restricted Transition Unit under Sections V.E.1, V.E.2, or V.E.3 (Calculation of Base Monthly Rental Cost), Household Income of the entire Transitioning Household must be certified, subject to third-party verification. For all Households, TIDA will use the then-current Tenant Income Certification Form published by the California Tax Credit Allocation Committee to determine Household Income. A copy of the current form is attached as Appendix 1.

c. If all adult members of a Transitioning Household do not consent to be interviewed or do not provide all of the required information requested during or within 30 days after the interview, TIDA will be entitled to rely solely on the limited information provided in response to the interview and contained in its records relating to the Household when making its determination about eligibility for Transition Benefits.

3. Advisory Services for Post-DDA Tenants. The interviews will enable TIDA to offer the following advisory services to Post-DDA Tenants: (a) assist in evaluating their housing needs and any special needs; (b) provide references to providers of special needs services and other housing in San Francisco; and (c) provide a Household with the opportunity to present information to TIDA to support a claim of eligibility for Transition Benefits.

#### C. Second Notice to Move

1. Time and Contents of Second Notice to Move. No less than 60 days before a Household is required to move, TIDA will deliver a Second Notice to Move. The Second Notice to Move will state:

- a. TIDA's determination of whether the Household is an eligible Transitioning Household;
- b. which members of the Household, if any, are Post-DDA Tenants, in Unlawful Occupancy, or otherwise ineligible for Transition Benefits;
- c. the actual date by which the move must be complete (the "Move Date"); and
- d. the options available to the Transitioning Household under these Transition Rules and Regulations.

#### D. Selection of a Transition Benefit

After receipt of the Second Notice to Move, each Transitioning Household will be required to make certain decisions about Transition Benefits.

1. Transition Benefit Options for Long-Term Moves. For Long-Term Moves, the Second Notice to Move will offer each Transitioning Household a choice of:

- a. the Transition Unit Option to move into a Transition Unit in a specifically identified new building on TI, with the number of bedrooms, initial rent, and long-term rent protection as described in **Article V** (Description of Transition Unit Option);
- b. the In-Lieu Payment Option to receive an In-Lieu Payment, calculated in accordance with **Article VI** (Description of In-Lieu Payment Option); or
- c. the Unit Purchase Assistance Option to receive Down Payment Assistance calculated in accordance with **Article VII** (Description Unit Purchase Assistance Option), but only if new for-sale units are then available for purchase and the Transitioning Household can demonstrate that it can close escrow on the purchase of and move into a new Dwelling on NSTI before the Move Date.

2. Options for Interim Moves. For Interim Moves, the Second Notice to Move will offer each Transitioning Household a choice of the following options:

- a. the right to occupy an Existing Unit on Treasure Island with the number of bedrooms and initial rent calculated in accordance with **Article IV** (Interim Moves); or
- b. the option to receive an In-Lieu Payment in accordance with **Article VI** (In-Lieu Payment Option).

3. Written Notice to TIDA of Selection. For both Long-Term Moves and Interim Moves, the Transitioning Household's selection may be made by delivering written notice to TIDA, signed by each adult member of the Transitioning Household at any time up to 45 days before the Move Date.

4. Transitioning Household Entitled to Single Transition Benefit. Each Transitioning Household receiving a Long Term Move Notice is entitled to only one of the Transition Benefits described in **Article V** (Transition Unit Option), **Article VI** (In-Lieu Payment Option), and **Article VII** (Unit Purchase Assistance Option). As a condition to receipt of the selected Transition Benefit, each member of the Transitioning Household will be required to waive all other Transition Benefits under these Transition Housing Rules and Regulations.

#### E. Complete the Move

1. Eligibility for Moving Assistance. Moving assistance to cover the costs of moving the Household will be provided to every Transitioning Household that makes an Interim Move from an Existing Unit on NSTI to another Existing Unit on TI and/or a Long-Term Move from an Existing Unit on NSTI to a Transition Unit. Moving assistance is not provided to: (a) Transitioning Households that receive the In-Lieu Payment Option or Down Payment Assistance; (b) Post-DDA Tenants; (c) Persons in Unlawful Occupancy of their Existing Unit; or (d) other Persons ineligible for Transition Benefits.

2. Actual Costs. A Transitioning Household will be compensated for Actual Reasonable Moving Expenses incurred in moving the Household for an Interim Move to an

Existing Unit or a Long-Term Move to a Transition Unit. Costs that may be included in a claim for Actual Reasonable Moving Expenses are listed in **Article VIII.B (Moving Assistance)**.

3. **Moving Allowance Alternative.** A Transitioning Household that is eligible to be reimbursed for Actual Reasonable Moving Expenses may elect instead to receive a Moving Expense Allowance that will be determined according to a schedule established by TIDA, based on a moving expense allowance determined in accordance with established federal Highway Administration schedules maintained by the California Department of Transportation. The current schedule is shown in **Appendix 3**.

#### **F. Early Transition Benefits**

1. **Limited Circumstances.** Under certain circumstances, Transitioning Households may be eligible to receive certain Transition Benefits before receipt of a Notice to Move.

a. The In-Lieu Payment Option may be available earlier, if, and only if, TIDA provides written notice to Transitioning Households offering an early opportunity to receive an In-Lieu Payment, which may be conditioned on the Household moving out of its Existing Unit by a specified date ("Notice of Early In-Lieu Payment Option").

b. The Unit Purchase Assistance Option is available at any time a Transitioning Household completes the purchase of a new Dwelling on NSTI, unless the Transitioning Household has previously lost its status as a Transitioning Household by accepting an In-Lieu Payment or moving into a Transition Unit.

### **IV. INTERIM MOVES**

#### **A. Required Interim Moves**

Some Transitioning Households will be required to make an Interim Move from one Existing Unit to another Existing Unit on TI.

An Interim Move will be required for those Transitioning Households that reside in areas proposed for redevelopment in an early phase of development. Although not currently anticipated, Interim Moves also may be required in later phases of development. Transitioning Households required to make an Interim Move will receive a First Notice to Move not less than 90 days before the Move Date and a Second Notice to Move not less than 60 days before the Move Date.

#### **B. Benefits for Interim Moves**

Transitioning Households required to make an Interim Move may elect to move to an Existing Unit on TI under the following terms:

1. **Size.** The offered Dwelling will have at least the same number of bedrooms as the Existing Unit unless the Transitioning Household elects to move to a smaller unit. The

Transitioning Household may be offered a Dwelling that has a greater number of bedrooms if the available Dwellings with the same number of bedrooms as the Existing Unit will result in a reduction in total square footage from the Existing Unit by 10% or more.

2. Rent. The initial monthly rent for Transitioning Households making an Interim Move to an Existing Unit on TI will be determined as set forth below. In each case, the initial monthly rent will be subject to annual increases calculated by the Rent Board Adjustment.

a. If the offered Dwelling has the same or a greater number of bedrooms as the Existing Unit, the initial monthly rent for the offered Dwelling will be the lesser of: (a) the rent the Transitioning Household is paying for its Existing Unit on the date of the First Notice to Move; or (b) the market rent that TIDA would otherwise charge for the offered Dwelling on the date of the First Notice to Move.

b. If Transitioning Household has elected to move to an offered Dwelling with fewer bedrooms than its Existing Unit, the initial monthly rent on the offered Dwelling will be the lesser of: (a) the monthly rent for the Existing Unit on the date of the First Notice to Move, reduced by 10% for each reduction in bedroom count, or (b) the market rent that TIDA would otherwise charge for the offered Dwelling on the date of the First Notice to Move. For example, if a Transitioning Household occupies an Existing Unit with four bedrooms on the DDA Effective Date, but elects in an Interim Move to move into an offered Dwelling with two bedrooms, the initial monthly rent under (a) would be 80% of the monthly rent on the Existing Unit on the date of the First Notice to Move.

3. Unit Selection. The Notice to Move for an Interim Move will provide information on the process for Transitioning Households electing to move to an Existing Unit on TI to select a Dwelling.

4. Status as Transitioning Household. The Transitioning Household will retain its status as a Transitioning Household following an Interim Move, and will continue to be eligible for Transition Benefits as long as the Household continues to meet the eligibility requirements stated in Section II.A.1.d (Determination of Household Eligibility for Transition Benefits).

#### C. Option to Elect In-Lieu Payment

Instead of making an Interim Move, Transitioning Households may elect the In-Lieu Payment Option in accordance with Article VI (Description of In-Lieu Payment Option).

### V. DESCRIPTION OF TRANSITION UNIT OPTION

#### A. Transition Unit Option

1. Time of Option. The Transition Unit Option is available for Transitioning Households only after TIDA delivers a Notice to Move for a Long-Term Move.



2. Benefits. Transitioning Households will have the opportunity to rent a newly-constructed Transition Unit on Treasure Island. Transitioning Households that elect to move into the offered Transition Unit will be eligible for Actual Reasonable Moving Expenses or a Moving Expense Allowance.

3. Designated Unit. TIDA will designate at least one Transition Unit for each Transitioning Household selecting the Transition Unit Option.

4. Loss of Status. A Transition Unit will be offered to each Transitioning Household unless it has lost its status as a Transitioning Household by its prior receipt of Transition Benefits for a Long-Term Move or it no longer meets the eligibility requirements stated in Section II.A (Determination of Household Eligibility for Transition Benefits).

5. Leases for Income-Restricted Units. Leases for Households with Section 8 vouchers, Tax Credit Eligible Households and others occupying Transition Units assisted with state, federal, or local housing funds will be subject to applicable regulations and requirements of such funding programs.

6. Loss of Option. TIDA's obligation to provide a Transitioning Household selecting the Transition Unit Option with a Transition Unit will be deemed to be satisfied if the Transitioning Household is offered and refuses to accept the Transition Unit offered.

#### B. Standards Applicable to Transition Units

1. Size. Except as provided below, a Transition Unit offered to a Transitioning Household under the Transition Unit Option must contain the same number of bedrooms as in the Existing Unit. Exceptions include:

a. Program regulations of certain government housing programs (e.g. tenant-based Section 8) may limit the number of bedrooms that participating Transitioning Households can be offered.

b. In determining the size of a Transition Unit, Post-DDA Tenants, Persons in Unlawful Occupancy and other Persons ineligible for Transition Benefits are excluded as Persons in the Transitioning Household, but Post-DDA Tenants will be allowed to move into a Transitioning Household's Transition Unit.

c. If the Transitioning Household is smaller when it moves into the Transition Unit than it was when its eligibility was established, TIDA will offer a Transition Unit with one bedroom per Person remaining in the Transitioning Household up to a maximum of four bedrooms.

2. Decent, Safe and Sanitary. The Dwelling must be "Decent, Safe and Sanitary," which means it:

a. conforms with all applicable provisions for existing structures that have been constructed under state or local building, plumbing, electrical, housing and occupancy codes, and similar ordinances or regulations;

b. has a continuing and adequate supply of potable water;

c. has a kitchen or an area set aside for kitchen use that: (i) contains a sink in good working condition connected to hot and cold water and to an adequate sewage system; and (ii) has utility service connections and adequate space for the installation of a stove and a refrigerator;

d. has an adequate heating system in good working order that will maintain a minimum temperature of 70 degrees in all habitable rooms, and all rooms must be adequately ventilated;

e. has a bathroom, well lit and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system;

f. has an adequate and safe wiring system for lighting and other electrical services;

g. is structurally sound, weather tight, in good repair, and adequately maintained;

h. has a safe unobstructed means of egress leading to safe open space at ground level that conforms to building and fire codes;

i. has at least one room that has not less than 150 square feet of floor area, and other habitable rooms, except kitchens, that have an area of not less than 70 square feet;

j. has sleeping room(s) that include at least 70 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant; and

k. is available to the Transitioning Household regardless of race, color, sex, marital status, religion, or national origin in a manner consistent with Title VIII of the Civil Rights Act of 1968 and any other applicable local, state, or federal nondiscrimination laws.

### C. Required Information for Option

1. Relevant Household Information. Transitioning Households must provide all of the following information to receive the Transition Unit Option:

a. Household Income;

b. Household composition and size, including: (i) the full names of all Household members and relationship of Household members to each other; (ii) age and number of any children and elderly members of the Household; (iii) whether any members of the Transitioning Household are disabled; (iv) whether any members of the Transitioning Household are Adult Students; and (v) special needs (social and public services, special schools, and other services, need for in-home care); and

2. Time to Provide Information. To the extent all required information is not provided at the interview, Transitioning Households wishing to obtain Transition Benefits will have 30 days after the interview to provide all required information to TIDA.

#### D. Calculation of Household Income

A Transitioning Household's annual Household Income will be determined using the current Tenant Income Certification Form (see Appendix 1).

Households will be required to verify Household Income with third-party documentation such as W-2 forms, pay check stubs, tax returns or other forms of verification. Monthly Household Income will be determined based on the most recent 12 month period preceding the First Notice to Move.

#### E. Calculation of Base Monthly Rental Cost

The Transitioning Household will be offered a Transition Unit at an initial rent not exceeding the Base Monthly Rental Cost as determined below:

1. Adjustments for Changes in Bedroom Count. If the size of the Transitioning Household changed after the Effective Date, and the Transition Unit contains fewer bedrooms than the Household's Existing Unit as provided in Section V.B(1)(c) (Standards Applicable to Transition Units), for purposes of determining the Base Monthly Rental Cost the monthly rent for the Existing Unit will "Adjusted for Changes in Bedroom Count," according to the following calculation: (a) calculate the Existing Unit's monthly rent by adding any annual Rent Board Adjustments to the rent for the Existing Unit on the DDA Effective Date; (b) multiply (a) by the product of 10% times the reduction in bedroom count and (c) deduct the applicable Utility Adjustment. For example, if a Transitioning Household originally rented an Existing Unit with four bedrooms but due to changes in the Transitioning Household's size received a unit with two bedrooms, the monthly rent would be reduced by 20% and adjusted for the applicable Utility Allowance based on the new unit bedroom count.

#### 2. Households Participating in Governmental Housing Programs

a. Tax Credit Eligible Households: Base Monthly Rental Cost for Tax Credit Eligible Households will be the lesser of: (i) the Existing Unit's monthly rent on the DDA Effective Date, plus annual Rent Board Adjustments, then Adjusted for Changes in the Bedroom Count (as defined below), if applicable, less Utility Adjustment; (ii) 30% of the Transitioning Household's Average Monthly Income; or (iii) the maximum allowable rent under applicable tax credit regulations less Utility Adjustment. Tax Credit Eligible Households will be offered a

Transition Unit in housing financed with low income housing tax credits and may be required to certify Household Income annually while occupying the rent-restricted unit.

b. Households with Section 8 Vouchers: Base Monthly Rental Cost for Households with Section 8 vouchers will be the fair market rent for a Dwelling for the Household size under Section 8 program regulations, less Utility Adjustments.

3. Low Income Household (defined in Calif. Health & Safety Code § 50079.5): Base Monthly Rental Cost for Low Income Households that do not include Adult Students will be the lesser of: (a) the Existing Unit's monthly rent on the DDA Effective Date, plus annual Rent Board Adjustments, then Adjusted for Changes in the Bedroom Count, if applicable, less Utility Adjustment; or (b) the maximum rent for a Low Income Household allowed by Health and Safety Code § 50053, less Utility Adjustment.

4. Moderate Income Household (defined in Calif. Health & Safety Code § 50079.5): Base Monthly Rental Cost for Moderate Income Households that do not include Adult Students will be the lesser of: (a) the Existing Unit's monthly rent on the DDA Effective Date, plus annual Rent Board Adjustments, then Adjusted for Changes in the Bedroom Count, if applicable, less Utility Adjustment; or (b) the maximum rent for a Moderate Income Household allowed by Health and Safety Code § 50053, less Utility Adjustment.

5. All Other Transitioning Households: Base Monthly Rental Costs for all other Households, consisting of: (i) Transitioning Households that are not Tax Credit Eligible Households, Households with Section 8 vouchers, Low Income Households, or Moderate Income Households; (ii) Transitioning Households that include an Adult Student; and (iii) Transitioning Households that do not provide the required Household information within 30 days after their interview under Section III.B (Interview Household and Offer Advisory Services) will be the lesser of: (a) the Existing Unit's monthly rent on the DDA Effective Date, plus annual Rent Board Adjustments, then Adjusted for Changes in the Bedroom Count, if applicable, less the Utility Adjustment; or (b) the market rent that would otherwise be charged for the Transition Unit.

#### F. Lease Terms for Transition Unit; Occupancy Verification

1. Lease Terms. The following will apply to each Transitioning Household accepting a Transition Unit, except for Tax Credit Eligible Households and Households with Section 8 vouchers (whose leases will comply with applicable federal regulations):

a. The Transitioning Household will enter into a lease containing the following key terms: (i) an initial period of 12 months, with automatic renewal on a month-to-month basis; (ii) a limitation on annual rent increases to the Rent Board Adjustment; (iii) a statement that the Transitioning Household may remain in the Transition Unit as long as the Household remains in Good Standing under its lease, and a description of the events that will cause the Household to be in default of its lease; and (iv) a prohibition against subleasing.

b. Each lease for a Transition Unit will require the Transitioning Household to: (i) identify each occupant of the Household by name; (ii) acknowledge that subleasing is not permitted and that subleasing will be a default under the lease; (iii) acknowledge that at least one member of the Transitioning Household must maintain the Transition Unit as his or her primary Dwelling; (iv) cooperate fully with any subsequent occupancy verification; and (v) comply with all other terms of the lease.

2. Right to Verify Occupancy by Transitioning Household. TIDA, or any subsequent owner or property management company for the Transition Unit, will have the right to verify occupancy of the Transition Unit at any time. If a Transitioning Household does not cooperate with an occupancy verification request or any member of the Household is discovered to have provided knowingly false responses: (a) the entire Transitioning Household will lose the right to continue to rent at the Base Monthly Rental Cost; (b) rent will be increased to the then-current market rate; and (c) future rent increases will not be limited to the Rent Board Adjustment. In addition, TIDA, or any subsequent owner or property management company for the Transition Unit will have the right to charge and collect the additional rent it would have charged, had the rents not been reduced under these Transition Rules and Regulations.

3. Termination of Lease for Transition Unit. If the Transition Unit is no longer occupied by any members of the Transitioning Household, the Transitioning Household's lease for the Transition Unit will terminate.

## VI. DESCRIPTION OF IN-LIEU PAYMENT OPTION

### A. In-Lieu Payment Option

1. Time. A Transitioning Household may elect to receive an In-Lieu Payment in response to a written offer from TIDA. TIDA currently anticipates offering the In-Lieu Payment Option at the following times:

- a. when TIDA delivers a Notice to Move for an Interim Move to a Transitioning Household;
- b. when TIDA delivers a Notice of Early In-Lieu Payment Option, currently anticipated to occur during a specified period between TIDA's approvals of Major Phase 2 and Major Phase 4; and
- c. when TIDA delivers a Notice to Move for a Long-Term Move to a Transitioning Household.

2. Calculation of Payment. The amount of the In-Lieu Payment will be calculated using the schedule for Relocation Payments for No Fault Evictions published and updated annually by the San Francisco Rent Board (as of the date of the calculation, the "Rent Board Schedule"). The 2010 In-Lieu Payment Schedule, based on the 2010 Rent Board Schedule, adjusted for up to four adults, is attached as **Appendix 2**. The Transitioning Household's In-Lieu Payment will be the product of the payment per adult tenant in the Rent

Board Schedule times the number of adults in the Transitioning Household, up to a maximum of four, plus any of the following applicable adjustments:

a. if the Transitioning Household includes elderly or disabled Persons, the product of the payment per elderly or disabled Person under the Rent Board Schedule times the number of elderly or disabled persons in the Transitioning Household; and

b. if the Transitioning Household includes any minor children, an additional lump sum equal to the payment for minors under the Rent Board Schedule.

c. In determining the number of adults in a Transitioning Household, Post-DDA Tenants and Persons in Unlawful Occupancy and other Persons ineligible for Transition Benefits are excluded as Persons in the Transitioning Household.

3. Effect of Election. Transitioning Households that elect to receive the In-Lieu Payment:

a. will no longer be eligible for the Transition Unit Option or the Unit Purchase Assistance Option

b. will not receive moving assistance;

c. will be required to vacate their Existing Units by the date specified in the Notice to Move or Notice of Early In-Lieu Payment Option to receive the In-Lieu Payment; and

d. upon written request to TIDA, will be placed on the Premarketing Notice List if not already listed.

## VII. DESCRIPTION OF UNIT PURCHASE ASSISTANCE OPTION

Transitioning Households that elect to receive the Unit Purchase Assistance Option will be entitled to Down Payment Assistance.

### A. Down Payment Assistance

1. Amount of Payment. A Transitioning Household electing the Unit Purchase Assistance Option will receive "Down Payment Assistance" described in this Section. The amount of Down Payment Assistance will be equal to the amount the Transitioning Household would have received had it chosen an In-Lieu Payment, based on the Rent Board Schedule and the number of eligible members in the Transitioning Household, up to four Persons, when the Household enters into the purchase contract for the new Dwelling on NSTI.

2. Conditions to Payment. A Transitioning Household electing to purchase a new Dwelling on NSTI will receive Down Payment Assistance only if: (a) the Household meets all applicable eligibility criteria to purchase the new Dwelling; (b) its purchase offer for the new

Dwelling is accepted; and (c) the purchase closes escrow. No Household is guaranteed that its offer to purchase a new Dwelling on NSTI will be accepted, and the purchased Dwelling need not be similar in size, bedroom count, and amenities to the Existing Unit previously occupied by the Household.

3. Escrow and Closing. Down Payment Assistance will be paid at closing into escrow. TIDA will verify the Transitioning Household's eligibility for and amount of the Down Payment Assistance to lenders and sellers of Dwellings during escrow upon request. If escrow does not close, the escrow officer will be instructed to return any Down Payment Assistance funds on deposit to TIDA.

4. Termination of Status. A Transitioning Household that elects to receive the Down Payment Assistance and closes its purchase on a new for-sale Dwelling on NSTI:

- a. will no longer be eligible for the Transition Unit Option or the In-Lieu Payment Option
- b. will not receive moving assistance;
- c. will be required to vacate its Existing Unit by the date specified in the Notice to Move; and
- d. will be removed from the Premarketing Notice List.

#### VIII. ADDITIONAL ASSISTANCE

##### A. Premarketing Assistance

1. Definitions. The following definitions will apply to the Assistance described in this Section VIII.A (Premarketing Assistance):

- a. "Post-Transition Household" means a Transitioning Household that previously received an In-Lieu Payment.
- b. "Post-Transition Tenant" means a Person who was a member of a Transitioning Household that previously received an In-Lieu Payment.
- c. "Premarketing Notice List" means that email contact list that TIDA will maintain to provide notice of a Premarketing Window.
- d. "Premarketing Window" means a specific and limited time period of no less than 30 days before the Dwellings in each new for-sale housing development on NSTI are offered for sale to the general public.
- e. "Sunset Date" means the date that is seven years after the date that a Transitioning Household or a Post-Transition Tenant is placed on the Premarketing Notice List.

2. Early Notice. Transitioning Households, Post-Transition Households, and Post-Transition Tenants on the Premarketing Notice List will have the opportunity to make purchase offers on Dwellings in each new for-sale housing development on NSTI during the Premarketing Window.

a. If the purchase offer of a Transitioning Household that is not a Post-Transition Household is accepted: (i) the Transitioning Household also may select the Unit Purchase Assistance Option to receive Down Payment Assistance under Section VII.A (Down Payment Assistance); and (ii) TIDA will remove the Transitioning Household from the Premarketing Notice List after close of escrow. Post-Transition Households are not eligible for Down Payment Assistance.

b. If the purchase offer of a Post-Transition Tenant or Post Transition Household is accepted and escrow closes, TIDA will: (i) remove the Post-Transition Tenant or Post Transition Household from the Premarketing Notice List; and (ii) have no further obligation to the Post-Transition Tenant or Post Transition Household under these Transition Housing Rules and Regulations. Post-Transition Tenants are not eligible for Down Payment Assistance.

c. A Transitioning Household whose purchase offer is not accepted may stay on the Premarketing Notice List for subsequent notices of Premarketing Windows until the earliest of: (i) the date escrow closes on a subsequent purchase offer; (ii) the date the Transitioning Household moves into a Transition Unit; or (iii) the Sunset Date.

d. Post-Transition Households and Post-Transition Tenants whose purchase offers are not accepted may stay on the Premarketing Notice List for subsequent notices of Premarketing Windows until the earlier of: (i) the date escrow closes on a subsequent purchase offer; or (ii) the Sunset Date.

3. Notice List.

a. Each Transitioning Household and Post-Transition Household must: (i) provide TIDA with the names of Household members, the designated Household contact's name, and an email address for notices; and (ii) notify TIDA of any changes to Household information to remain on the Premarketing Notice List.

b. Each Post-Transition Tenant must: (i) provide TIDA with an email address for notices; and (ii) notify TIDA of any changes in the email notice address to remain on the Premarketing Notice List.

c. TIDA will have no obligation to: (i) verify that email notices that are sent are actually delivered; or (ii) update contact information of Transitioning Households, Post-Transition Households, or Post-Transition Tenants that do not notify TIDA that their email addresses have changed. TIDA will remove Transitioning Households, Post-Transition Households, and Post-Transition Tenants from the Premarketing Notice List on their respective Sunset Dates if they are then still on the list.



4. Required Acknowledgement. Before TIDA is obligated to add contact information to the Premarketing Notice List, each member of a Transitioning Household, Post Transition Household and Post-Transition Tenants will be required to sign an acknowledgment that neither TIDA nor any for-sale housing developer will be responsible for: (a) ensuring that the contact email address provided is current; (b) any inadvertent omission from the Premarketing Notice List, as long as the housing opportunity is marketed generally in the San Francisco area; or (c) guaranteeing that a Transitioning Household or a Post-Transition Tenant will qualify to purchase a new Dwelling.

5. Developer Notice Requirements. For-sale housing developers will be required to provide TIDA with advance notice of the Premarketing Window for each new for-sale housing development on NSTI, stating: (a) the start and end dates of the Premarketing Window; (ii) for each available Dwelling, the unit address, number of bedrooms, and initial offered price; (iii) the date(s) on which interested Transitioning Households, Post-Transition Households, and Post-Transition Tenants may tour the available Dwellings; and (iv) contact information for an authorized representative of the housing developer who can answer questions about the available Dwelling(s). TIDA will send email notices to all Transitioning Households, Post-Transition Households, and Post-Transition Tenants on the Premarketing Notice List before the Premarketing Window begins.

6. No Preferential Treatment. Transitioning Households, Post-Transition Households, and Post-Transition Tenants on the Premarketing Notice List will be offered the same purchase terms for the for-sale units as those offered to the general public.

a. Inclusionary units will be offered at a specified below-market-rate price to Transitioning Households, Post-Transition Households, and Post-Transition Tenants that meet all qualifying income and occupancy criteria for that Dwelling.

b. The purchase price of all other for-sale Dwellings will be the market-rate price.

c. Transitioning Households, Post-Transition Households, and Post-Transition Tenants will be required to qualify to purchase any Dwellings offered for sale during the Premarketing Window in the same manner as other members of the general public.

d. The Premarketing Window does not guarantee that a Transitioning Household, Post-Transition Household, or Post-Transition Tenant will qualify for the purchase or that its purchase offer will be accepted.

#### B. Moving Assistance

1. Covered Moving Expenses. All Transitioning Households that make Interim Moves and that select the Transition Unit Option for a Long-Term Move will receive either Actual Reasonable Moving Expenses or a Moving Expense Allowance. Actual Reasonable Moving Expenses will include:

a. transportation of persons and property upon NSTI;

- b. packing, crating, unpacking, and uncrating Personal Property;
- c. insurance covering Personal Property while in transit;
- d. connection charges imposed by public utilities for starting utility service;
- e. the reasonable replacement value of Personal Property lost, stolen, or damaged (unless caused by the Transitioning Household or its agent) in the process of moving, where insurance covering such loss, theft, or damage is not reasonably available; and
- f. the removal of barriers to the disabled and installations in and modifications to a disabled Person's new Dwelling as needed to accommodate special needs.

2. Allowance Alternative. A Transitioning Household electing a self-move for an Interim Move or a Long-Term Move into a Transition Unit will be paid according to the Moving Allowance Schedule in Appendix 3 promptly after filing a claim form provided by TIDA and vacating the Existing Unit, unless the Household seeks and is granted an advance payment to avoid hardship.

3. Advance Payment to Avoid Hardship. A Transitioning Household may be paid for anticipated moving expenses in advance of the actual move. TIDA will make an advance payment whenever the Household files a claim form provided by TIDA supported by documents and other evidence that later payment would result in financial hardship. Particular consideration will be given to the financial limitations and difficulties experienced by low and moderate income residents.

4. Moving Expense Claims. A claim for payment of Actual Reasonable Moving Expenses must be supported by a bill or other evidence of expenses incurred.

a. Each claim greater than \$1,000 for the moving costs incurred by a Transitioning Household hiring a moving company must be supported by at least 2 competitive bids. If TIDA determines that compliance with the bid requirement is impractical, or if the claimant obtains estimates of less \$1,000, a claim may be supported by estimates instead. TIDA may make payment directly to the moving company.

b. A Transitioning Household's Actual Reasonable Moving Expenses will be exempt from regulation by the State Public Utilities Commission. TIDA may effect the moves by directly soliciting competitive bids from qualified bidders for performance of the work. Bids submitted in response to such solicitations will be exempt from regulation by the State Public Utilities Commission.

## IX. IMPLEMENTATION OF TRANSITION HOUSING RULES AND REGULATIONS

### A. Administration

1. Information Program. TIDA will maintain an information program using meetings, newsletters, and other mechanisms, including local media, to keep Villages residents informed on a continuing basis about: (a) TIDA's transition housing program and other information about the redevelopment process; (b) the timing and scope of any anticipated Interim Moves; (c) the timing and scope of anticipated Long-Term Moves, (c) procedures for implementing and making claims under these Transition Rules and Regulations; and (d) other information relevant to these Transition Rules and Regulations.

2. Nondiscrimination. TIDA will administer these Transition Housing Rules and Regulations in a manner that will not result in different or separate treatment on account of race, color, religion, national origin, sex, sexual orientation, marital status, familial status, or any basis protected by local, state, or federal nondiscrimination laws.

3. Site Office. TIDA may establish a site office that is accessible to all Households to provide advisory assistance described in Section III.B (Interview Households and Offer Advisory Services). If TIDA establishes a site office, it will be staffed with trained and experienced personnel, who may be third-party housing specialists.

4. Amendments. These Transition Rules and Regulations may be amended by TIDA from time to time by a resolution of the TIDA Board adopting an amendment at a duly noticed public meeting.

### B. Household Records

1. Contents. TIDA will maintain records for each Household containing information obtained during interviews, documents submitted by residents, and existing files of its property manager. The records will contain a description of the pertinent characteristics of the Persons in the Household, the assistance determined to be necessary, and the Household's decisions on Transition Benefits. Members of a Transitioning Household will have the right to inspect their own Transitioning Household records to the extent and in the manner provided by law.

2. Confidentiality. Household income information is confidential and will only be used for its intended purpose. Confidential information will not be disclosed to third parties outside of the Household unless all members of the Household provide their written consent to disclosure or a valid court order requires disclosure.

3. Publication of Aggregate Resident Data. TIDA will have the right to publish aggregate data about the resident population on NSTI, including information that is segmented according to aggregate Villages resident data and aggregate TIHDI resident data.

**X. CLAIM AND PAYMENT PROCEDURES; TERMINATION OF TRANSITION HOUSING ASSISTANCE**

**A. Filing Claims; Tax Forms**

1. Written Claims Required. TIDA will provide claim forms for payment under these Transition Rules and Regulations. All claims for In-Lieu Payments and Down Payment Assistance must be submitted to TIDA with the Household's notice of election of that specific Transition Benefit. All claims for moving expense payments must be submitted to TIDA within six months after the date on which the claimant makes an Interim Move or moves into a Transition Unit.

2. Tax Forms. TIDA: (a) makes no representations about the tax treatment of any payments or benefits of monetary value any Person receives under these Transition Housing Rules and Regulations; (b) will require all Persons who receive an In-Lieu Payment, Down Payment Assistance, moving assistance, or any other payment under these Transition Housing Rules and Regulations to provide TIDA with valid Social Security numbers for all recipients; and (c) will file W-9 forms for all payments and benefits of monetary value made or provided to any Person under these Transition Housing Rules and Regulations.

**B. Treatment of Dependents**

1. Allocation of Transition Benefits. The following will apply to any Person who derives 51% or more of his or her income from one or more Persons within the same Transitioning Household in an Existing Unit (the "Supporting Household") or otherwise meets his or her living expenses primarily through the monetary support of the Supporting Household (a "Dependent").

a. A Dependent who lives with the Transitioning Household will not be entitled to any Transition Benefit except as a part of the Household, and will be counted as a member of the Transitioning Household for determining Household size.

b. If the Dependent's primary Dwelling, as determined by voter registration, driver's license, or other forms of verification, is different from that of the Supporting Household when the Supporting Household selects and receives a Transition Benefit, the Dependent will not be counted as part of the Transitioning Household when determining: (i) the size of a Transition Unit; (ii) the amount of an In-Lieu Payment; or (iii) the amount of Down Payment Assistance.

2. Documentation of Dependent Status. Any Transitioning Household claiming a Dependent must provide third-party documentation that it is a Supporting Household. TIDA will have the right to require that the Supporting Household and Dependent, if applicable, provide copies of tax returns filed for tax years preceding the claim.

### C. Adjustments for Multiple Claims; Nontransferability

1. Multiple Claimants. The amount of an In-Lieu Payment, Down Payment Assistance, or Moving Expense Allowance will be determined based on the total number of eligible members in the Transitioning Household. All adult members of a Household must sign the claim form and any other required documents as a condition to TIDA's obligation to pay Transition Benefits and moving assistance.

2. Multiple Claims. A single claim form for each payment claim by a Transitioning Household is preferred, but not required. Unless otherwise specified in a claim form, TIDA will issue separate checks to each adult in the Transitioning Household in equal shares, adjusted for Dependents and elderly or disabled members of the Household. If two or more eligible Persons in a single Transitioning Household submit more than one claim for any payment under these Transition Rules and Regulations, which in the aggregate exceed the payment limits to be made to the entire Transitioning Household, TIDA will pay each eligible claimant an equal share of the payment, up to the aggregate amount of the payment limits. As provided in Section VII.A (Down Payment Assistance), Transitioning Households that choose Down Payment Assistance will not receive direct payment; TIDA will deposit the entire amount of any Down Payment Assistance directly into escrow.

3. Nontransferability. The right to Transition Benefits and other assistance under these Transition Housing Rules and Regulations is personal to each member of a Transitioning Household and is not a property right. Therefore, a Transitioning Household's member's right to Transition Benefits and other assistance cannot be transferred by contract, inheritance, or any other means.

### D. Termination of TIDA's Obligations

1. Termination of Right to Transition Benefits. TIDA's obligation to provide Transition Benefits to a Transitioning Household under these Transition Housing Rules and Regulations will terminate under the following circumstances:

- a. The Transitioning Household moves off-NSTI before receiving a Long-Term Notice to Move or a Notice of Early In-Lieu Payment Option.
- b. The Transitioning Household moves to a Transition Unit and receives all moving assistance to which it is entitled.
- c. The Transitioning Household moves off-NSTI after receiving a Notice to Move or a Notice of Early In-Lieu Payment Option and receives an In-Lieu Payment.
- d. The Transitioning Household moves from an Existing Unit to a new for-sale Dwelling on NSTI and receives Down Payment Assistance.
- e. The Transitioning Household refuses reasonable offers of assistance, payments, and a Transition Unit after receiving a Notice to Move.

f. TIDA determines a Household is not or has ceased to be a Transitioning Household or is otherwise not entitled to Transition Benefits.

2. Acknowledgement of Change in Status upon Receipt of Benefits. Each member of a Transitioning Household that receives Transition Benefits will be required to acknowledge in writing that he or she has received or is about to receive the Transition Benefits, and, upon receipt, the Household will cease to be a Transitioning Household entitled to any Transition Benefits, other assistance, and advisory services under these Transition Housing Rules and Regulations.

3. Records as Evidence. TIDA will be entitled to rely on and use its written offers of Transition Benefits to a Transitioning Household that refuses them, and all other information in the Transitioning Household's records, as evidence in any grievance proceeding or lawsuit.

4. Notice of Status. Except for a change in status after the Transitioning Household receives a Transition Benefit, TIDA will provide written notice of any determination that a Household is not or has ceased to be a Transitioning Household or is otherwise not entitled to Transition Benefits, delivered to the Transitioning Household's last known address.

5. Termination of Other Assistance. TIDA's obligations to provide moving assistance and to provide notices of Premarketing Windows will terminate as provided in Article VIII (Other Assistance).

## XI. GRIEVANCE PROCEDURES

### A. Administrative Remedies

1. Right to Appeal and Be Represented by Counsel. Any member of a Household, and any Household, that disagrees with a TIDA determination regarding eligibility for Transition Benefits, the proposed amount of payment, or the adequacy of the Transition Unit to which the Transitioning Household was referred may appeal the determination, but the Person or Household (individually, or as a Household, the "Grievant") must exhaust the prescribed administrative remedies before seeking judicial review. The Grievant will be entitled to be represented by an attorney at his or her, or the Household's, own expense at all stages of review under these Transition Housing Rules and Regulations.

2. Executive Director Review. The first step in administrative remedies available to a Grievant is the right to an appeal to the Executive Director of TIDA, as follows:

a. The Grievant must make a written request for review by the Executive Director no later than 12 months after the Grievant receives either a Long Term Notice to Move or an Interim Notice to Move. The Grievant's written request must state the basis for the claim and the relief sought.

b. The Grievant will be entitled to meet with the Executive Director and to present additional evidence and information that the Grievant has not presented previously through the interview process.

c. The Executive Director will make a determination based on the information the Grievant has provided to TIDA through the interview processes as well as any additional information presented by the Grievant.

d. The Executive Director must make a final determination in writing, stating the reasons for the determination within six weeks after conferring with the Grievant.

3. Hearing Before Relocation Appeals Board. If the Grievant is not satisfied with the Executive Director's determination, the second step in the administrative remedies available to a Grievant is an appeal to the Treasure Island Relocation Appeals Board (the "RAB"), which will be determined according to the procedures below.

a. No later than 30 days after the TIDA Executive Director delivers his or her written determination under Section XI.A.2 (Executive Director Review) to the Grievant, the Grievant must submit a written appeal to the RAB, with a copy to TIDA, stating the basis for his or her claim and the relief sought by the Grievant. If the Grievant wishes to submit information in addition to that previously provided to TIDA, the additional information must be submitted with the written appeal, and TIDA will have 30 days to provide a response to any new material.

b. The RAB will review and reconsider the Grievant's claim in light of: (i) all material upon which the Executive Director based his or her original determination, including these Transition Housing Rules and Regulations; (ii) the Grievant's written request for an appeal; (iii) any additional written or relevant documentary material submitted by the Grievant; (iv) any material submitted by TIDA in response to new information submitted by the Grievant with the appeal; and (v) any further information that the RAB, in its discretion, obtains by request to ensure fair and full review of the claim.

c. The RAB may choose to hold a hearing, and must hold a hearing if requested by the Grievant. All RAB hearings will be public meetings subject to state and local public meeting laws. The RAB's review will be limited to whether the Grievant is entitled to the claimed relief under these Transition Housing Rules and Regulations. Its determination must be based on the information presented during the appeal and these Transition Rules and Regulations. All members of the RAB shall be required to disclose in a public meeting any communications and contacts such member has had with the Grievant outside of the hearing. The RAB will not be authorized to make any monetary award (including attorneys' fees and costs of appeal) other than a payment authorized under these Transition Rules and Regulations.

d. The RAB must issue a written determination to the Grievant and TIDA no later than six weeks from receipt of the last material submitted by any party or the date of the hearing, whichever is later, stating: (i) the RAB's decision; (ii) the basis upon which the decision rests, including any pertinent explanation or rationale; and (iii) a statement that the Grievant may appeal the decision in accordance with the procedure set forth below.

e. The RAB may reject an appeal for untimeliness by a written statement to the Grievant.

4. Administrative Law Judge Review. The final step in administrative remedies available to a Grievant is an appeal to an administrative law judge ("ALJ") on the Rent Board staff who is assigned to hear appeals under these Transition Rules and Regulations, as follows:

a. No later than 30 days after the RAB delivers its written determination under Section XLA.3 (Hearing Before Relocation Appeals Board) to the Grievant, the Grievant must submit a written appeal to the ALJ, and deliver a copy of the appeal to TIDA at the same time, stating the basis for the claim and the relief sought.

b. TIDA will have 15 days after a signed appeal is filed with the ALJ to provide the ALJ with copies of information related to the Grievant's case, including all additional evidence or information submitted by the Grievant to the RAB and TIDA's records related to the Grievant.

c. The assigned ALJ may attempt to resolve the dispute without a hearing, but is not required to do so.

d. The ALJ will conduct a hearing unless the dispute has been resolved before the hearing date.

e. The ALJ must make a final determination in writing, stating the reasons for the determination, and deliver the determination to the Grievant, with a copy to TIDA at the same time. The ALJ determination must include a statement that the Grievant has exhausted administrative remedies under these Transition Rules and Regulations.

5. Right to Judicial Review. The Grievant may seek judicial review after the administrative remedies described above have been exhausted.

## XII. PROPERTY MANAGEMENT PRACTICES

### A. Eviction

1. Grounds for Eviction. In addition to all other grounds under the Residential Leases and California law, TIDA may initiate eviction proceedings to remove a Household from its Existing Unit:

a. after the date specified in a Notice to Move for an Interim Move or for a Long-Term Move has passed, and: (i) the Household is a Transitioning Household that has refused TIDA's offers of a Transition Benefit, including the right to relocate to a Transition Unit; or (ii) the Household is a Transitioning Household that has not vacated its Existing Unit after selecting and receiving a Transition Benefit; or (iii) the Household is a Post-DDA Household and has failed to vacate the Existing Unit after receipt of a Notice of Move.



b. after TIDA issues a notice to move due to: (i) a major disaster as defined in § 102(2) of the federal Disaster Relief Act of 1974; (ii) a state of emergency declared by the President of the United States or the Governor of the State of California; or (iii) any other emergency that requires the Household to move immediately from the Existing Unit because continued occupancy of the Existing Unit by the Household constitutes a substantial danger to the health or safety, or both, of the Household.

#### B. Post-DDA Tenants

1. Notice of Status. Before prospective Post-DDA Tenants move into any Existing Unit, TIDA will inform them:

a. that the Existing Unit will be available only for an interim period pending redevelopment of NSTI;

b. of the projected date that the Existing Unit is expected to be vacated and demolished for development, if known;

c. that, along with all other Villages residents, all Post-DDA Tenants will receive periodic notices from TIDA with updates about the progress of the project;

d. that TIDA will provide 90 days' notice of the date by which they must vacate their Existing Unit; and

e. that no Post-DDA Tenant is eligible for Transition Benefits under these Transition Rules and Regulations or relocation benefits under applicable relocation laws.

2. Advisory Services. Post-DDA Tenants are not eligible for Transition Benefits under these Transition Housing Rules and Regulations, unless an exception under **Section II.A.1** (Defined Terms for Determining Eligibility) applies, but are eligible for advisory services under **Section III.B** (Interview Households and Offer Advisory Services).

### XIII. INTERPRETATION

#### A. Rules of Interpretation and Severability

1. The captions preceding the articles and sections of these Transition Housing Rules and Regulations and in the table of contents have been inserted for convenience of reference only and must be disregarded in interpreting these Transition Housing Rules and Regulations. Whenever reference is made to any provision, term, or matter in these Transition Housing Rules and Regulations, the term "in these Transition Housing Rules and Regulations" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of these Transition Housing Rules and Regulations in the context of the reference, unless the reference refers solely to a specific numbered or lettered section, subdivision, or paragraph of these Transition Housing Rules and Regulations.

2. References to all laws, including specific statutes, relating to the rights and obligations of any person or entity mean the laws in effect on the effective date of these Transition Housing Rules and Regulations and as they are amended, replaced, supplemented, clarified, or superseded at any time while any obligations under these Transition Housing Rules and Regulations are outstanding, whether or not foreseen or contemplated.

3. The terms "include," "included," "including," and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

4. Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waived," "waiving").

5. The provisions of these Transition Housing Rules and Regulations are severable, and if any provision or its application to any person or circumstances is held invalid by a final order or judgment of a court with valid jurisdiction over the matter, the invalid provision will not affect the other provisions or the application of those Transition Housing Rules and Regulations that can be given effect without the invalid provision or application.

APPENDIX 1

Sample of Tenant Income Certification Form  
(as published by the California Tax Credit Allocation Committee)

1529102929188.2  
1/5/2011

OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: Kanishka Cheng *KC*  
RE: Loan Agreement – Maceo May Apts, L.P. – 100% Affordable Housing at  
401 Avenue of the Palms – Not to Exceed \$24,255,000  
DATE: Tuesday, December 17, 2019

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**Resolution approving and authorizing the execution of a Loan Agreement with Maceo May Apts, L.P., a California limited partnership, in an amount not to exceed \$24,255,000 for a minimum term of 57 years to finance the construction of a 100% affordable, 105-unit multifamily rental housing development (plus 1 staff unit) for low and moderate income veteran households (“Maceo Project”); and adopting findings that the Loan Agreement is consistent with the City’s General Plan and the priority policies of Planning Code Section 101.1.**

Please note that Supervisor Haney is a co-sponsor of this legislation.

Should you have any questions, please contact Kanishka Cheng at 415-554-6696.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2019 DEC 17 PM 2:54  
*[Signature]*

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200  
SAN FRANCISCO, CALIFORNIA 94102-4681  
TELEPHONE: (415) 554-6141



**San Francisco Ethics Commission**

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102  
 Phone: 415.252.3100 . Fax: 415.252.3112  
 ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #:  
191300

Bid/RFP #:

**Notification of Contract Approval**

SFEC Form 126(f)4

(SF Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION	
TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD	
OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT	
NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT	
NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Amy Chan	415-701-5508
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
MYR MOHCD	amy.chan@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Maceo May Apts, L.P.	TELEPHONE NUMBER 415-929-0759
STREET ADDRESS (including City, State and Zip Code) 1515 Vallejo Street, 4th Floor	EMAIL joanna.ladd@chinatowncdc.org

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (if applicable) 191300
DESCRIPTION OF AMOUNT OF CONTRACT 24,255,000		
NATURE OF THE CONTRACT (Please describe) MOHCD gap funds to complete new construction of 105 unit affordable housing veterans housing project on Treasure Island.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS			
List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.			
#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Chin	Gregory	Board of Directors
2	Chin	Jane	Board of Directors
3	Chin	Philip	Board of Directors
4	Craig	Catherine	Board of Directors
5	Fong	Mark	Board of Directors
6	Golvin	Benjamin	Board of Directors
7	Jew	Clayton	Board of Directors
8	Leadbetter	Julie	Board of Directors
9	Lee	Winston	Board of Directors
10	Lin	Barbara	Board of Directors
11	Lin	Wendell	Board of Directors
12	McGray	James	Board of Directors
13	Nguyen	James	Board of Directors
14	Quock	Lindsey	Board of Directors
15	Rosenquest	Nils	Board of Directors
16	Ruiz	Santiago	Board of Directors
17	Tse	Janet	Board of Directors
18	Tse	Nigel	Board of Directors
19	Wong	Susan	Board of Directors

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of: (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Wu	Jade	Board of Directors
21	Zhang	Mary	Board of Directors
22	Zoubi	Fady	Board of Directors
23	Cane	Julie	Board of Directors
24	Deksheniaks	Michael	Board of Directors
25	Fassler	Michael	Board of Directors
26	Buzaid	Felipe	Board of Directors
27	Cox	Paul	Board of Directors
28	Edwards	Erik	Board of Directors
29	Houlberg	Rick	Board of Directors
30	Kennedy	Ronan	Board of Directors
31	Marquez	John	Board of Directors
32	Plath	Stephen	Board of Directors
33	Seymour	Deleano	Board of Directors
34	Thiel	Michael	Board of Directors
35	Trevorrow	Robert	Board of Directors
36	Richardson	Kate	Board of Directors
37	Fong	Norman	CEO
38	Blecker	Michael	CEO



9. AFFILIATES AND SUBCONTRACTORS			
List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.			
#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39	Gansen	Karen	CFO
40	Frost	Karen	CFO
41	Winston	Leon	COO
42	Wu	Cindy	Other Principal officer
43	Yeung	Malcolm	Other Principal officer
44			
45			
46			
47			
48			
49			
50			
<input type="checkbox"/> Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.			

10. VERIFICATION	
I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.	
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	
SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK	DATE SIGNED
BOS Clerk of the Board	

