

File No. 140925

Committee Item No. 2

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 17 2014

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input 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 type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input 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)

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Motion Nos. 18937 &amp; 18938</u> |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____  |

Completed by: Linda Wong

Date September 12, 2014

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

1 [Property Conveyance and Ground Lease - 67 Units Affordable Housing - Mercy Housing  
2 California 51 - 1009 Howard Street]

3 **Resolution approving and authorizing the conveyance of real property located at 1009**  
4 **Howard Street from the Office of Community Investment and Infrastructure to the**  
5 **Mayor's Office of Housing and Community Development (as Successor Housing**  
6 **Agency to the San Francisco Redevelopment Agency); approving and authorizing the**  
7 **Mayor's Office of Housing and Community Development to enter into a 99 year ground**  
8 **lease totaling \$99 with Mercy Housing California 51, a California limited partnership, for**  
9 **the development and operation of 66 units of affordable housing (plus one manager's**  
10 **unit) on such property and making findings that the conveyance and ground lease are**  
11 **in conformance with the California Environmental Quality Act, the General Plan, and the**  
12 **eight priority policies of Planning Code, Section 101.1.**

13  
14 WHEREAS, The Redevelopment Agency of the City and County of San Francisco (the  
15 "Former Agency") acquired a fee interest in 1009 Howard Street (Lot 3731, Block 001 and  
16 referred to herein as the "Property") through eminent domain on November 12, 2009 for the  
17 sum of \$4,600,000, and intended to develop the Property for affordable housing; and

18 WHEREAS, On May 27, 2010, the Former Agency issued a Housing Development  
19 Request for Proposals (the "RFP") for the development and management of very low-income,  
20 rental housing and ground floor uses at the Property; and

21 WHEREAS, Mercy Housing was selected as the winning RFP respondent and on  
22 November 16, 2010, the Former Agency authorized an Exclusive Negotiations Agreement with  
23 Mercy Housing California 51 L.P., a California limited partnership ("Mercy") for the  
24 development of very low-income family housing at the Property; and

25 WHEREAS, The proposed project will be the demolition of the existing improvements

1 on the Property and new construction of 66 very low income family rental units (plus one  
2 manager's unit), including 14 units specifically reserved for developmentally disabled adults,  
3 and 2,550 square feet of ground-level retail space (the "Project"), with all units restricted to  
4 households who shall have income no higher than 50% of the Area Median Income (as  
5 determined by the U.S. Department of Housing and Urban Development and as calculated by  
6 MOHCD) for 55 years after recordation of the memorandum of lease, and income no higher  
7 than 70% of the Area Median Income for the remaining term of the lease (the "Occupancy  
8 Restrictions"); and

9 WHEREAS, Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of  
10 2011-12, first Extraordinary Session), as amended by California State Assembly Bill No. 1484  
11 (together, the "Dissolution Law"), the Former Agency dissolved as a matter of law on February  
12 1, 2012; and

13 WHEREAS, On October 2, 2012, the San Francisco Board of Supervisors, acting as  
14 legislative body of the newly established Office of Community Investment and Infrastructure  
15 ("OCII") as the successor to the Former Agency, passed Ordinance 215-12, which outlined the  
16 rights and responsibilities of OCII as the Agency's successor agency, including but not limited  
17 to certain retained existing enforceable obligations for the development of affordable housing;  
18 and

19 WHEREAS, Pursuant to Ordinance 215-12 and Dissolution Law, OCII became the fee  
20 owner of the Property as successor to the Former Agency; and

21 WHEREAS, On May 6, 2014, the Commission on Community Investment and  
22 Infrastructure approved Resolution 31-2014, authorizing OCII's Executive Director to transfer  
23 the Property to the City, under the jurisdiction of the Mayor's Office of Housing and Community  
24 Development ("MOHCD"), as a housing asset pursuant to Dissolution Law; and

25 WHEREAS, On June 9, 2014, the OCII Oversight Board approved Resolution 5-2014,

1 authorizing the Executive Director to transfer the Property to the City, under MOHCD's  
2 jurisdiction, as a housing asset pursuant to Dissolution Law; and

3 WHEREAS, OCII now desires to convey the Property to the City, under MOHCD's  
4 jurisdiction, at no cost in accordance with Dissolution Law (the "Conveyance"), pursuant to a  
5 quitclaim deed (the "Deed") in substantially the form filed with the Clerk of the Board of  
6 Supervisors in File No. \_\_\_\_\_; and

7 WHEREAS, Upon conveyance of the Property to the City, MOHCD and Mercy intend to  
8 enter into a long-term ground lease allowing Mercy to lease the Property and develop the  
9 Project (the "Lease"), in substantially the form of the Lease filed with the Clerk of the Board of  
10 Supervisors in File No. 140925; and

11 WHEREAS, The Lease includes: (i) a term of 75 years, with an extension option of 24  
12 years; (ii) annual base rent in the amount of One Dollar (\$1.00); and (iii) the Occupancy  
13 Restrictions; and

14 WHEREAS, On August 1, 2013, the Planning Commission certified the Final  
15 Environmental Impact Report ("FEIR") and adopted CEQA findings for the proposed Project in  
16 its Motion No. 18937, which is on file with the Clerk of the Board in File No. 140925. The FEIR  
17 describes the proposed Project, assesses the potential environmental impacts of the Project,  
18 and identifies mitigation measures to preclude significant impacts or reduce such impacts to  
19 less than significant levels; and

20 WHEREAS, On August 1, 2013, the Planning Commission also approved a Conditional  
21 Use Application and the Mitigation Monitoring Program that attaches the mitigation measures  
22 contained in the FEIR in its Motion No. 18938, which is on file with the Clerk of the Board in  
23 File No. 140925; and

24 WHEREAS, The Planning Department found that the Project and Lease are consistent  
25 with the City's General Plan, and with the eight priority policies of Planning Code, Section

1 101.1 for the reasons set forth in the July 28, 2014 letter from the Department of City Planning,  
2 which is on file with the Clerk of the Board in File No. 140925; now, therefore, be it

3 RESOLVED, That the Board of Supervisors hereby finds that the Project and Lease are  
4 consistent with the General Plan, and with the eight priority policies of Planning Code Section  
5 101.1 for the same reasons set forth in the letter of the Department of City Planning, dated July  
6 28, 2014, and hereby incorporates such findings by reference as though fully set forth in this  
7 Resolution; and, be it

8 FURTHER RESOLVED, That the Board hereby finds that the Project and Lease to  
9 allow for the Project are in compliance with CEQA for the same reasons as set forth in  
10 Commission Motions 18937 and 18938; and, be it

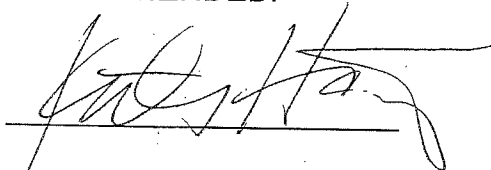
11 FUTHER RESOLVED, That in accordance with the recommendations of the Director of  
12 Property and the Director of MOHCD, the Board of Supervisors hereby approves and  
13 authorizes the Director of Property (or his designee), along with the Director of MOHCD, to  
14 accept the Deed and to execute and deliver the Lease on behalf of the City, and to execute  
15 any such other documents that are necessary or advisable to complete the transaction  
16 contemplated by the Deed and Lease and to effectuate the purpose and intent of this  
17 Resolution; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
19 Property (or his designee) and the Director of MOHCD, in consultation with the City Attorney,  
20 to enter into any additions, amendments or other modifications to the Lease (including in each  
21 instance, without limitation, the attachment of exhibits) that the Director of Property and  
22 Director of MOHCD determine are in the best interests of the City, do not decrease the  
23 revenues of the City in connection with the Property, or otherwise materially increase the  
24 obligations or liabilities of the City, and are in compliance with all applicable laws, including the  
25 City's Charter; and, be it

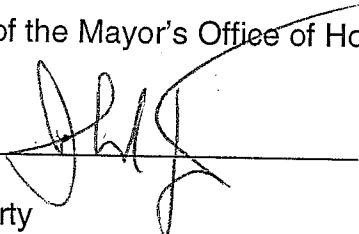
1 FURTHER RESOLVED, That all actions authorized and directed by this Resolution and  
2 heretofore taken are hereby ratified, approved and confirmed by this Board of Supervisors;  
3 and, be it

4 FURTHER RESOLVED, That within thirty (30) days of the Lease being fully executed  
5 by all parties, the Director of MOHCD shall provide the final Lease to the Clerk of the Board for  
6 inclusion into the official file.  
7  
8  
9

10 RECOMMENDED:

11   
12 \_\_\_\_\_

13 Kate Hartley  
14 Deputy Director of the Mayor's Office of Housing and Community Development

15   
16 \_\_\_\_\_  
17 John Updike  
18 Director of Property  
19  
20  
21  
22  
23  
24  
25

Mayor's Office of Housing and Community Development  
City and County of San Francisco



Edwin M. Lee  
Mayor

Olson Lee  
Director

August 19, 2014

Honorable Jane Kim  
City and County of San Francisco  
Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
21 SEP -2 PM 1:51  
OL

RE: Resolution Recognizing and Accepting the Conveyance of the Asset from OCII to MOHCD & Approving and Authorizing MOHCD to enter into a long term ground lease with Mercy Housing California 51, a California Limited Partnership, for the development and operation of affordable housing at Bill Sorro Community located at 1009 Howard Street

Dear Supervisor Kim,

Thank you for agreeing to introduce this resolution recognizing and accepting the conveyance of the property from the Office of Community Investment and Infrastructure ("OCII") to the Mayor's Office of Housing and Community Development ("MOHCD") as Successor Housing Agency to the Redevelopment Agency and for MOHCD to enter into a long term ground lease with the project sponsor for Bill Sorro Community, located at 1009 Howard Street at corner of Sixth and Howard, the site of the Hugo Hotel. The development will be a 67 unit affordable housing project sponsored by a Mercy Housing California 51, a California Limited Partnership. This resolution authorizes me, as Director of this office, to enter into this agreement with the Mercy Housing California 51.

The Mayor's Office of Housing and Community Development respectfully requests your support in introducing and sponsoring the resolution (attached) along with the resolution authorizing the Bond Issuance, at the Board of Supervisors on Tuesday September 2, 2014, which would accept the conveyance of the property and authorize the City to enter into a long term lease with the sponsor for Bill Sorro Community. Our hope is to have both resolutions calendared for Budget and Finance Committee on Wednesday September 17, 2014, and then returned to the full BoS on Tuesday September 23, 2014 so they can be considered together. The project anticipates closing on its financing in mid-October 2014 and demolition and construction will begin shortly thereafter.

The proposed project will involve the new construction of a 9-story, 67-unit, multifamily rental development comprised of studio, 1, 2, and 3-bedroom units with a ground floor courtyard, rooftop terrace, social services space, and ground floor commercial space. The project site is located in San Francisco's Sixth Street corridor at the corner of Howard and Sixth Street. 52 of the units will be affordable to low income households making no more than 50% AMI, while 14 of the units will be for Developmentally Disabled Adults under HUD's section 811 program. The HUD 811 units will be targeted to households making no more than 30% AMI. There will be one unit reserved for on-site property management.

The attached resolution has been approved as-to-form by Deputy City Attorney Evan Gross. I have enclosed a brief description of the project for your review.

If you have any questions about the resolution or the project, please contact Kevin Kitchingham at 701-5523. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Olson Lee". The signature is fluid and cursive, with the first name "Olson" and the last name "Lee" clearly distinguishable.

Olson Lee  
Director



TABLE OF CONTENTS

1		3
2	<u>ARTICLE 1: DEFINITIONS</u>	7
3	<u>ARTICLE 2: TERM</u>	9
4	<u>ARTICLE 3: FINANCING</u>	9
5	<u>ARTICLE 4: RENT</u>	11
6	<u>ARTICLE 5: CITY COVENANTS</u>	11
7	<u>ARTICLE 6: TENANT COVENANTS</u>	15
8	<u>ARTICLE 7: ANNUAL INCOME COMPUTATION AND CERTIFICATION</u>	16
9	<u>ARTICLE 8: CONDITION OF SITE - "AS IS"</u>	16
10	<u>ARTICLE 9: IMPROVEMENTS AND PERMITTED USES</u>	18
11	<u>ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS</u>	23
12	<u>ARTICLE 11: COMPLETION OF IMPROVEMENTS</u>	26
13	<u>ARTICLE 12: CHANGES TO THE IMPROVEMENTS</u>	26
14	<u>ARTICLE 13: TITLE TO IMPROVEMENTS</u>	28
15	<u>ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE</u>	29
16	<u>ARTICLE 15: TAXES</u>	29
17	<u>ARTICLE 16: UTILITIES</u>	29
18	<u>ARTICLE 17: MAINTENANCE</u>	31
19	<u>ARTICLE 18: LIENS</u>	31
20	<u>ARTICLE 19: GENERAL REMEDIES</u>	35
21	<u>ARTICLE 20: DAMAGE AND DESTRUCTION</u>	38
22	<u>ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; HAZARDOUS MATERIALS;</u>	39
23	<u>INDEMNIFICATION</u>	47
24	<u>ARTICLE 22: INSURANCE</u>	48
25	<u>ARTICLE 23: COMPLIANCE WITH LEGAL REQUIREMENTS</u>	50
26	<u>ARTICLE 24: ENTRY</u>	53
27	<u>ARTICLE 25: MORTGAGE FINANCING</u>	61
28	<u>ARTICLE 26: PROTECTION OF LENDER</u>	63
29	<u>ARTICLE 27: CONDEMNATION AND TAKINGS</u>	63
30	<u>ARTICLE 28: ESTOPPEL CERTIFICATE</u>	63
31	<u>ARTICLE 29: QUITCLAIM</u>	64
32	<u>ARTICLE 30: EQUAL OPPORTUNITY</u>	64
33	<u>ARTICLE 31: CERTIFICATE OF PREFERENCE PROGRAM</u>	65
34	<u>ARTICLE 32: LABOR STANDARDS PROVISIONS</u>	65
35	<u>ARTICLE 33: CONFLICT OF INTEREST</u>	65
36	<u>ARTICLE 34: NO PERSONAL LIABILITY</u>	65
37	<u>ARTICLE 35: ENERGY CONSERVATION</u>	65
38	<u>ARTICLE 36: WAIVER</u>	66
39	<u>ARTICLE 37: TENANT RECORDS</u>	66
40	<u>ARTICLE 38: NOTICES AND CONSENTS</u>	68
41	<u>ARTICLE 39: HEADINGS</u>	68
42	<u>ARTICLE 40: SUCCESSORS AND ASSIGNS</u>	

1	<b><u>ARTICLE 41: TIME</u></b>	68
2	<b><u>ARTICLE 42: PARTIAL INVALIDITY</u></b>	68
3	<b><u>ARTICLE 43: APPLICABLE LAW</u></b>	69
4	<b><u>ARTICLE 44: ATTORNEY'S FEES</u></b>	69
5	<b><u>ARTICLE 45: EXECUTION IN COUNTERPARTS</u></b>	69
6	<b><u>ARTICLE 46: RECORDATION OF MEMORANDUM OF GROUND LEASE</u></b>	69
7	<b><u>ARTICLE 47: TRANSFER OF PARTNERSHIP INTERESTS IN TENANT</u></b>	69
8	<b><u>ARTICLE 48: CITY PROVISIONS</u></b>	70
9	<b><u>ARTICLE 49: COMPLETE AGREEMENT</u></b>	83
10	<b><u>ARTICLE 50: ATTACHMENTS</u></b>	83

Attachments to Ground Lease

1. Legal Description of Site
2. Schedule of Performance
3. City Consent of Leasehold Mortgage
4. Certificate of Preference Policy
5. Memorandum of Ground Lease
6. Form of Tenant Income Certification
7. Section 811 Addendum

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

GROUND LEASE

This ground lease ("Ground Lease") is dated as of, \_\_\_\_\_ 2014, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City" or "Landlord"), represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development ("MOHCD"), and MERCY HOUSING CALIFORNIA 51, A CALIFORNIA LIMITED PARTNERSHIP, as tenant (the "Tenant").

RECITALS

A. The City is the fee owner of the land described in Attachment 1 attached hereto and the existing improvements located thereon ("Site"). The Site is held under MOHCD's jurisdiction.

B. The Site was previously owned in fee by the former San Francisco Redevelopment Agency (the "Agency"). Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session), as amended by California State Assembly Bill No. 1484 (together the "Dissolution Law") the Agency dissolved as a matter of law on February 1, 2012. On October 2, 2012 the San Francisco Board of Supervisors, acting as legislative body of the newly established Office of Community Investment and Infrastructure ("OCII") as the successor to the Agency, passed Ordinance 215-12, which outlined the rights and responsibilities of OCII as the Agency's successor agency, including but not limited to certain retained existing enforceable obligations for the development of affordable housing.

Accordingly, under Ordinance 215-12 and Dissolution Law, OCII became the fee owner of the Site as successor to the Agency.

1 C. On May 6 2014, the OCII Commission unanimously approved resolution  
2 number 31-2014, authorizing the transfer of ownership of the Site as a housing asset to MOHCD  
3 pursuant to Dissolution Law.  
4

5 D. On June 9, 2014, the OCII Oversight Board unanimously passed resolution  
6 number 5-2014 authorizing the transfer of ownership of the Site as a housing asset to MOHCD  
7 pursuant to Dissolution Law.

8 E. On \_\_\_\_\_, 2014, the San Francisco Board of Supervisors and Mayor  
9 approved Resolution No. \_\_\_\_\_, authorizing the City to accept fee ownership of the Site from  
10 OCII. In accordance with such authorizations, OCII conveyed its fee ownership of the Site to the  
11 City pursuant to a quitclaim deed on \_\_\_\_\_, 2014.

12 F. The City now desires to lease the Site to Tenant to demolish the existing  
13 improvements and construct a new building that will contain 66 very low-income rental housing  
14 units (plus one manager's unit), including 14 HUD 811 units reserved for developmentally  
15 disabled, with 2,550 square feet of ground floor commercial, which will be known as Bill Sorro  
16 Community (the "Project"). It is the Tenant's intent to serve the needs of the developmentally  
17 disabled adults and very low income families of the community by developing the Project to  
18 provide housing for 14 households containing very low income developmentally disabled adults  
19 and to charge annual rent for all units not to exceed thirty percent (30%) of fifty percent (50%) of  
20 Median Income. Referrals for these HUD 811 units will come from the ARC of San Francisco.

21 G. The City believes that the fulfillment of the terms and conditions of this Ground  
22 Lease are in the vital and best interests of the City and the health, safety, morals and welfare of its  
23 residents, and in full accord with the public purposes and provisions of applicable State and  
24 Federal laws and requirements.

25  
26  
27 **NOW THEREFORE**, in consideration of the mutual obligations of the parties hereto, the  
28 City hereby leases to Tenant, and Tenant hereby leases from the City, the Site, for the Term (as

1 defined in Article 2), and subject to the terms, covenants, agreements and conditions hereinafter  
2 set forth, to each and all of which the City and Tenant hereby mutually agree.

3 **ARTICLE 1: DEFINITIONS**

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

6 **1.01 Agreement Date** means the date the City records a Memorandum of Ground  
7 Lease against the Site, but in no event shall the date be prior to the approval of the Ground Lease  
8 by the City's Board of Supervisors and Mayor.

9 **1.02 Area Median Income** (or "AMI") means area median income as determined by  
10 the United States Department of Housing and Urban Development for the San Francisco area,  
11 adjusted solely for household size, but not high housing cost area.

12 **1.03 Effective Date** means the close of escrow date for all financing required to  
13 construct the Project (excluding the HUD 811 financing and the TOD loan).

14 **1.04 First Lease Payment Year** means the year in which construction activities are  
15 completed on the Project, as evidenced by a NOC (as defined in Section 10.14 of this Ground  
16 Lease).

17 **1.05 First Mortgage Lender** means any lender and its successors, assigns and  
18 participants or other entity holding the first deed of trust on the Leasehold Estate.

19 **1.06 Ground Lease** means this Ground Lease of the Site to the Tenant from the City, as  
20 amended from time to time.

21 **1.07 HUD** means the U.S. Department of Housing and Urban Development.

22 **1.08 Improvements** means all physical construction, including all structures, fixtures

1 and other improvements to be constructed on the Site.

2           **1.09 Law** means all statutes, laws, ordinances, regulations, orders, writs, judgments,  
3 injunctions, decrees or awards of the United States or any state, county, municipality or  
4 governmental agency.

5           **1.10 Lease Year** means each calendar year during the term hereof, beginning on  
6 January 1 and ending on December 31, provided that the "First Lease Year" shall commence on  
7 the Effective Date and continue through December 31st of that same calendar year. Furthermore,  
8 the "Last Lease Year" shall end upon the expiration of the Term hereof.

9           **1.11 Leasehold Estate** means the estate held by the Tenant pursuant to and created by  
10 this Ground Lease.

11           **1.12 Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of  
12 credit or other security instrument, and any assignment of the rents, issues and profits from the  
13 Site, or any portion thereof, which constitute a lien on the Leasehold Estate created by this  
14 Ground Lease and will be approved in writing by the City.

15           **1.13 Lender** means any entity holding a Leasehold Mortgage.

16           **1.14 Loan Documents** means those certain loan agreements, notes, deeds of trust and  
17 declarations and any other documents executed and delivered in connection with the construction  
18 and permanent financing for the Project.

19           **1.15 MOHCD** means the Mayor's Office of Housing and Community Development for  
20 the City.

21           **1.16 Occupant** means any person or entity authorized by Tenant to occupy a residential  
22 unit on the Site, or any portion thereof.

1           **1.17 Permitted Limited Partner** means MUFG Union Bank N.A. and its successors  
2 and assigns.

3           **1.18 Premises** means the Site together with any Improvements thereon.

4           **1.19 Project** means the demolition of the existing Improvements and construction of a  
5 new building consisting of 66 very low-income rental housing units (plus one manager's unit),  
6 including 14 HUD 811 units reserved for developmentally disabled, with 2,550 square feet of  
7 ground floor commercial, which will be known as Bill Sorro Community. If indicated by context,  
8 Project means the leasehold interest in the Site and the fee interest in the Improvements on the  
9 Site.

10           **1.20 Project Expenses** means all charges incurred by Tenant in the operation of the  
11 Project including but not limited to: (a) lease payments, utilities, real estate and/or possessory  
12 interest taxes, assessments, and liability, fire and other hazard insurance premiums; (b) salaries,  
13 wages and other compensation due and payable to the employees or agents of Tenant who  
14 maintain, administer, operate or provide services in connection with the Project, including all  
15 withholding taxes, insurance premiums, Social Security payments and other payroll taxes or  
16 payments required for such employees; (c) payments of required interest, principal or annual  
17 servicing fees, if any, on any construction or permanent financing secured by the Project; (d) all  
18 other expenses incurred by Tenant to cover routine operating and services provision costs of the  
19 Project, including maintenance and repair and the reasonable fee of any managing agent; (e) any  
20 extraordinary expenses as approved in advance by the City; and (f) deposits to reserves accounts  
21 required to be established under the Loan Documents.

22           **1.21 Project Income** means all revenue, income receipts, and other consideration

1 actually received from the operation of leasing the Improvements and Project, including non-  
2 residential and/or commercial uses of the Site. Project Income shall include but not be limited to:  
3 all rents, fees and charges paid by tenants or users of any portion of the Site; Section 8 or other  
4 rental subsidy payments received for the dwelling units; supportive services funding, if  
5 applicable; commercial lease income; deposits forfeited by tenants; all cancellation fees, price  
6 index adjustments and any other rental adjustments to leases or rental agreements; proceeds from  
7 vending and laundry room machines; and the proceeds of business interruption or similar  
8 insurance. Project Income shall not include tenants' security deposits, loan proceeds, capital  
9 contributions or similar advances.

10 **1.22 Site** means the real property as more particularly described in the Site Legal  
11 Description, Attachment 1.

12 **1.23 Subsequent Owner** means any successor (including a Lender or an affiliate or  
13 assignee of a Lender as applicable) to the Tenant's interest in the Leasehold Estate and the  
14 Improvements who acquires such interest as a result of a foreclosure, deed in lieu of foreclosure,  
15 or transfer from a Lender, its affiliate, and any successors to any such person or entity.

16 **1.24 Surplus Cash** means the excess of Project Income over Project Expenses. All  
17 permitted uses and distributions of Surplus Cash shall be governed by Section 6.02(g) of this  
18 Ground Lease.

19 **1.25 Tenant** means Mercy Housing California 51, A California Limited Partnership and  
20 its successors and assigns (or a Subsequent Owner, where appropriate).

21 **1.26 Very Low-Income Households** means (a) a tenant household with combined  
22 initial income that does not exceed fifty percent (50%) of Area Median Income, for a term of 55



1 years from the date on which a certificate of occupancy is issued for the Project, and (b) a tenant  
2 household with combined initial income that does not exceed seventy percent (70%) of Area  
3 Median Income for any period of the Term (or extended term) of this Ground Lease thereafter, as  
4 determined by HUD for the San Francisco area, adjusted solely for actual household size, but not  
5 high housing cost area.

6 **1.27** Whenever an Attachment is referenced under this Ground Lease, it means an  
7 attachment to this Ground Lease unless otherwise specifically identified. Whenever a section,  
8 article or paragraph is referenced, it is a reference to this Ground Lease unless otherwise  
9 specifically referenced.

10 **ARTICLE 2: TERM**

11 (a) Initial Term. The term of this Ground Lease shall commence upon the Agreement  
12 Date and shall end seventy five (75) years from that date ("Term"), unless extended pursuant to  
13 section (b) below or earlier terminated pursuant to the terms hereof.

14 (b) Option for Extension. Provided that the Tenant is not in default under the terms of  
15 this Ground Lease and the Loan Documents, beyond any notice, grace or cure period, either at the  
16 time of giving of an Extension Notice (as defined below), as described in subparagraph (c) below,  
17 or on the last day of the Term (the "Termination Date"), the Term may be extended at the option

18 of the Tenant for one twenty four (24) year period as provided below. If the Term is extended  
19 pursuant to this section, all references in this Ground Lease to the "Term" shall mean the Term as  
20 extended by this extension period.

21 (c) Notice of Extension. Tenant shall have one (1) option to extend the term of this  
22 Ground Lease for a period of twenty four (24) years from the Termination Date. Not later than

1 one hundred eighty (180) days prior to the Termination Date, the Tenant may notify the City in  
2 writing that it wishes to exercise its option to extend the term of this Ground Lease (an "Extension  
3 Notice"). In the event that Tenant fails to deliver timely the Exercise Notice, City shall deliver to  
4 Tenant written notice of Tenant's failure to deliver timely the Exercise Notice (the "Reminder  
5 Extension Notice") and Tenant shall have an additional one hundred eighty (180) days after  
6 receipt of the Reminder Extension Notice to exercise the option to extend the term of this Ground  
7 Lease. Upon Tenant's exercise of this option, the Initial Term shall be extended for twenty four  
8 (24) years from the Termination Date for a total Ground Lease term of not to exceed ninety-nine  
9 (99) years.

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

12 (e) Right of First Refusal. If during the Term or extended term of this Ground Lease,  
13 the City desires to sell its interest in the Site, the Tenant will have the right of first refusal to  
14 negotiate for the purchase of the Site as set forth in Section 14.02 provided that the Tenant agrees  
15 to maintain the Site as a low and very low income housing development for fifty-five (55) years  
16 from the date of purchase.

17 (f) Holding Over. Any holding over after expiration of the Term or, if applicable,  
18 extended term without the City's written consent will constitute a default by Tenant and entitle  
19 the City to exercise any or all of its remedies as provided in this Ground Lease, even if the City  
20 elects to accept one or more payments of Annual Rent.

21 (g) Early Termination for Failure to Close Financing. Notwithstanding anything to the  
22 contrary contained herein, in the event that the close of escrow for all financing required to

1 construct the Project (excluding the HUD 811 financing) does not occur by December 31, 2014  
2 (the "Outside Effective Date"), the Term shall expire on the Outside Effective Date.

3 **ARTICLE 3: FINANCING**

4 Tenant shall submit to the City in accordance with the dates specified in the Schedule of  
5 Performance, Attachment 2, for approval by the City, evidence satisfactory to the City that Tenant  
6 has sufficient equity capital and commitments for construction and permanent financing, and/or  
7 such other evidence of capacity to proceed with the construction of the Improvements in  
8 accordance with this Ground Lease, as is acceptable to the City. City hereby acknowledges that  
9 as of the Effective Date, Tenant has satisfied this requirement.

10 **ARTICLE 4: RENT**

11 **4.01 Annual Rent**

12 (a) Tenant shall pay to the City Four Hundred Sixty Thousand Dollars (\$460,000) (the  
13 "Annual Rent") per year for each year of the Term of this Ground Lease, which is equal to ten  
14 percent (10%) of the appraised value of the Site as of the Effective Date. Annual Rent consists of  
15 Base Rent and Residual Rent, as defined in Section 4.02 below, without offset of any kind (except  
16 as otherwise permitted by this Lease) and without necessity of demand, notice or invoice. Annual  
17 Rent shall be re-determined on the fifteenth (15th) anniversary of the date of the First Lease  
18 Payment Year and every fifteen (15) years thereafter, and shall be equal to ten percent (10%) of  
19 the appraised value of the Site as determined by an MAI appraiser selected by and at the sole cost  
20 of the City.

21 (b) If the Tenant elects to extend the term of this Ground Lease pursuant to Article 2  
22 above, Annual Rent (along with any potential future adjustments) during any such extended term

1 shall be set by mutual agreement of the parties, taking into account the affordable housing  
2 restrictions contained in Section 9.02, project debt (including any surplus cash debt obligations)  
3 and the annual income expected to be generated by the Project; provided however that Annual  
4 Rent during the extended term shall in no event be less than the Annual Rent set forth in 4.01(a)  
5 above. If the parties cannot agree on Annual Rent during any extended term, either party may  
6 invoke a neutral third-party process and shall agree on a neutral third-party appraiser to set the  
7 Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving  
8 similar rent determination disputes in San Francisco taking into account the affordable housing  
9 restrictions contained in Section 9.02 Project debt (including any surplus cash debt obligations)  
10 and the annual income expected to be generated by the Project or, in the event that there is no  
11 then-prevailing practice, in accordance with the rules of the American Arbitration Association.  
12 Provided, however, that after the neutral third party process, Tenant, in its sole discretion may  
13 rescind the Extension Notice if it does not wish to extend the Term of this Ground Lease. The  
14 costs associated with such third-party process shall be paid solely by the City.

15 (c) City hereby acknowledges that if the Project receives an allocation of HUD  
16 Section 811 funding, then the Annual Rent is subject to HUD approval, and may be reduced or  
17 deleted to meet HUD guidelines.

---

18 **4.02 Base Rent**

19 (a) "Base Rent", means, in any given Lease Year, ONE DOLLAR (\$1) per annum;  
20 provided, however, that in the event that the Tenant or any Subsequent Owner fails, after notice  
21 and opportunity to cure, to comply with the provisions of Section 9.02, Base Rent shall be  
22 increased to the full amount of Annual Rent. Base Rent shall be due and payable in arrears on

1 January 31st of each Lease Year, however no Base Rent shall be due until after completion of the  
2 Project. The first Base Rent payment shall be due on the January 31<sup>st</sup> of the calendar year  
3 following the First Lease Payment Year. Additionally, in the event that a Subsequent Owner  
4 elects pursuant to Section 26.06(ii) to operate the Project without being subject to Section 9.02 or  
5 any Subsequent Owner elects, pursuant to Section 26.06(ii), to operate the Project without  
6 compliance with such provisions, Annual Rent shall be adjusted as provided in Section 26.07.

7 (b) If the Project does not have sufficient Project Income to pay Base Rent and the  
8 City has received written notice from Tenant regarding its inability to pay Base Rent from Project  
9 Income, the unpaid amount shall be deferred and all such deferred amounts shall accrue without  
10 interest until paid (“**Base Rent Accrual**”). The Base Rent Accrual shall be due and payable each  
11 year from and to the extent Surplus Cash is available to make such payments and, in any event,  
12 upon the earlier of sale of the Project or termination of this Ground Lease.

13 (c) If Tenant has not provided City with written notice that it cannot pay Base Rent  
14 due to insufficient Project Income, the City shall assess a late payment penalty of two percent  
15 (2%) for each month or any part thereof that any Base Rent payment is delinquent. This penalty  
16 shall not apply to Base Rent Accrual that has been previously approved by the City pursuant to  
17 Section 4.02(b). The Tenant may request in writing that the City waive such penalties by

---

18 describing the reasons for Tenant’s failure to pay Base Rent and Tenant’s proposed actions to  
19 insure that Base Rent will be paid in the future. The City may, in its sole discretion, waive in  
20 writing all or a portion of such penalties if it finds that Tenant’s failure to pay Base Rent was  
21 beyond Tenant’s control and that Tenant is diligently pursuing reasonable solutions to such failure  
22 to pay.

1           **4.03   Residual Rent**

2           “Residual Rent” means, in any given Lease Year, FOUR HUNDRED FIFTY  
3   NINE THOUSAND NINE HUNDRED NINETY NINE DOLLARS (\$459,999), subject to any  
4   periodic adjustments pursuant to Section 4.01(a). Residual Rent shall be due in arrears on May  
5   15th following each Lease Year. Except as otherwise provided in Section 26.07(a), Residual Rent  
6   shall be payable only to the extent of Surplus Cash as provided in Section 6.02(g) below, and any  
7   unpaid Residual Rent shall not accrue. However, in the event that Surplus Cash is insufficient to  
8   pay the full amount of the Residual Rent, Tenant shall certify to the City in writing by May 15  
9   that available Surplus Cash is insufficient to pay Residual Rent and Tenant shall provide to City  
10   any supporting documentation reasonably requested by City to allow City to verify the  
11   insufficiency.

12           **4.04   Triple Net Lease**

13           This Ground Lease is a triple net lease and the Tenant shall be responsible to pay all costs,  
14   charges, taxes, impositions and other obligations related thereto accruing after the Agreement  
15   Date. If the City pays any such amounts, whether to cure a default or otherwise protect its  
16   interests hereunder, the City will be entitled to be reimbursed by Tenant the full amount of such  
17   payments as additional rent within thirty (30) days of written demand by City. Failure to timely  
18   pay the additional rent shall be an event of default.

19           **ARTICLE 5: CITY COVENANTS**

20           The City is duly created, validly existing and in good standing under the Law, and has full  
21   right, power and authority to enter into and perform its obligations under this Ground Lease. City  
22   covenants and warrants that the Tenant and its tenants shall have, hold and enjoy, during the lease

1 term, peaceful, quiet and undisputed possession of the Site leased without hindrance or  
2 molestation by or from anyone so long as the Tenant is not in default under this Ground Lease.

3 **ARTICLE 6: TENANT COVENANTS**

4 Tenant covenants and agrees for itself and its successors and assigns to or of the Site, or  
5 any part thereof, that:

6 **6.01 Limited Partnership Authority**

7 Tenant is a California limited partnership and has full rights, power and authority to enter  
8 into and perform its obligations under this Ground Lease.

9 **6.02 Use of Site and Rents**

10 During the Term of this Ground Lease, Tenant and such successors and assigns shall  
11 comply with the following requirements:

12 **6.02(a) Permitted Uses**

13 Except as otherwise provided in Sections 26.06 and 26.07 of this Ground Lease,  
14 Tenant shall devote the Site to, exclusively and in accordance with, the uses specified in this  
15 Ground Lease, as specified in Article 9 hereof, which are the only uses permitted by this Ground  
16 Lease.

17 **6.02(b) Non-Discrimination**

18 Tenant shall not discriminate against or segregate any person or group of persons  
19 on account of race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or  
20 domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the  
21 sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the  
22 Improvements, or any part thereof, nor shall Tenant itself or any person claiming under or through

1 it establish or permit any such practice or practices of discrimination or segregation with  
2 reference to the selection, location, number, use or occupancy, of Occupants, subtenants or  
3 vendees on the Site or Improvements, or any part thereof, except to the extent permitted by law or  
4 required by funding source. Tenant shall not discriminate against tenants with certificates or  
5 vouchers under the Section 8 program or any successor rent subsidy program.

6 **6.02(c) Non-Discriminatory Advertising**

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

10 **6.02(d) Access for Disabled Persons**

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

14 **6.02(e) Equal Opportunity Marketing Plan**

15 Tenant shall submit a Fair Housing Marketing Plan to be approved by the City  
16 which approval shall not be unreasonably withheld, conditioned or delayed. Any Fair Housing  
17 Marketing Plan must follow the City's marketing requirements for such plans and, if the Project  
18 receives an allocation of HUD Section 811 funding, shall be subject to HUD approval.

19 **6.02(f) Lead Based Paint**

20 Tenant agrees to comply with the regulations set forth in 24 CFR Part 35 and all  
21 applicable rules and orders issued thereunder which prohibit the use of lead-based paint in certain



1 residential structures undergoing federally assisted construction and require the elimination of  
2 lead-based paint hazards.

3 **6.02(g) Permitted Uses of Surplus Cash**

4 All annual Project Income, prior to the calculation of Surplus Cash, shall be used  
5 to pay Project Expenses. If the Tenant is in compliance with all applicable requirements and  
6 agreements under this Ground Lease, Tenant shall then use any Surplus Cash to make the  
7 following payments:

- 8 i. First to Base Rent Accrual payments, if any;
- 9 ii. Second, to replenish the operating reserve account, if necessary, up to the  
10 amount required by Lenders;
- 11 iii. Third, to a asset management fee of \$19,060 increasing at an annual rate of  
12 up to three and a half percent (3.5%) or the amount allowed by California  
13 Department of Housing and Community Development;
- 14 iv. Fourth, to an asset management fee to the limited partner of Tenant in the  
15 annual amount of \$5,000 , increasing at an annual rate of up to three percent  
16 (3.0%), or the amount allowed by California Department of Housing and  
17 Community Development;
- 
- 18 v. Fifth, to a partnership management fee of \$19,060 increasing at an annual  
19 rate of up to three and a half percent (3.5%) or the amount allowed by  
20 California Department of Housing and Community Development;
- 21 vi. Then, one-third (1/3) of remaining Surplus Cash in an amount not to exceed  
22 \$500 per unit per year may be retained by Tenant and may be used by Tenant

1 to pay distributions or other payments in accordance with Tenant's  
2 partnership agreement; provided however that, except for that portion of the  
3 funds allocated to Tenant's Permitted Limited Partner, all of the funds  
4 distributed under this subsection (vi) must be used either for new construction  
5 in San Francisco or for activities in San Francisco that would be eligible uses  
6 of "Project Income" under program regulations for the federal Community  
7 Development Grant Block Program;

8 vii. The remaining two-thirds (2/3) of Surplus Cash, together with any remaining  
9 Surplus Cash after payment of the Tenant's allocation above, shall be paid  
10 proportionately to: (i) the California Department of Housing and Community  
11 Development; and (ii) the City, each in accordance with their investment in  
12 the Project (including the City's contribution to acquire the Site). The City's  
13 portion of Surplus Cash will be applied first to repayment of all City loans,  
14 and if any Surplus Cash remains, to Residual Rent.

### 15 **6.03 City Deemed Beneficiary of Covenants**

16 In amplification, and not in restriction, of the provisions of the preceding subsections, it is  
17 intended and agreed that the City shall be deemed beneficiary of the agreements and covenants  
18 provided in this Article 6 for and in its own right and also for the purposes of protecting the  
19 interests of the community and other parties, public or private, in whose favor or for whose  
20 benefit such agreements and covenants have been provided. Such agreements and covenants shall  
21 run in favor of the City for the entire period during which such agreements and covenants shall be  
22 in force and effect, without regard to whether the City has at any time been, remains, or is an

1 owner of any land or interest therein to, or in favor of, which such agreements and covenants  
2 relate. The City shall have the right, in the event of any breach of any such agreements or  
3 covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights  
4 and remedies and to maintain any actions at law or suits in equity or other proper proceedings to  
5 enforce the curing of such breach of covenants, to which it or any other beneficiaries of such  
6 agreements or covenants may be entitled.

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

8 Forty-five (45) days after recordation of a NOC (as defined in Section 10.14) by the  
9 Tenant for the Improvements, and not later than December 31<sup>st</sup> of each year thereafter, Tenant  
10 will furnish to the City a list of the persons who are Occupants of the Improvements, the specific  
11 unit which each person occupies, the household income of the Occupants of each unit, the  
12 household size and the rent being charged to the Occupants of each unit along with an income  
13 certification, in the form set forth in Attachment 6, for each Occupant. In addition, each  
14 Occupant must be required to provide any other information, documents or certifications deemed  
15 necessary by the City to substantiate the Occupant's income. If any state or federal agency  
16 requires an income certification for Occupants of the Improvements containing the above-  
17 referenced information, the City agrees to accept such certification in lieu of Attachment 6 as  
18 meeting the requirements of this Ground Lease. In addition to such initial and annual list and  
19 certification, Tenant agrees to provide the same information and certification to the City regarding  
20 each Occupant of the Improvements not later than twenty (20) business days after such Occupant  
21 commences occupancy.

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

1 Neither the City, nor any employee, agent or representative of the City has made any  
2 representation, warranty or covenant, expressed or implied, with respect to the Site, its physical  
3 condition, the condition of any improvements, any environmental laws or regulations, or any  
4 other matter, affecting the use, value, occupancy or enjoyment of the Site other than as set forth  
5 explicitly in this Ground Lease, and the Tenant understands and agrees that the City is making no  
6 such representation, warranty or covenant, expressed or implied; it being expressly understood  
7 that the Site is being leased in an "AS IS" condition with respect to all matters.

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

9 **9.01 Schedule of Performance**

10 Tenant agrees to undertake and complete all physical construction on the Site, if any, as  
11 approved by the City, in accordance with the Schedule of Performance, Attachment 2

12 **9.02 Permitted Uses and Occupancy Restrictions**

13 The permitted uses of the Project are limited to sixty six (66) units of affordable rental  
14 housing plus one manager's unit (collectively, the "Residential Units"), common areas and two  
15 ground floor commercial spaces. Upon the completion of construction, one hundred percent  
16 (100%) of the Residential Units, with the exception of the manager's unit, in the Project shall be  
17 occupied or held vacant and available for rental by Very Low Income-Households. In addition,  
18 fourteen (14) of the Residential Units must be set aside for households with at least one disabled  
19 adult, as defined by the HUD 811 program. Residential Units shall be occupied and rented in  
20 accordance with all applicable restrictions imposed on the Project by Lenders for so long as such  
21 restrictions are required by the applicable Lender.

22 **ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS**

1                   **10.01 General Requirements and Rights of City**

2                   All construction documents, including but not limited to preliminary and final plans and  
3 specifications for the construction of the Improvements by Tenant (collectively the “Construction  
4 Documents”) shall be prepared by a person registered in and by the State of California to practice  
5 architecture and shall be in conformity with this Ground Lease, including any limitations  
6 established in the City’s reasonable approval of the schematic drawings, if any, preliminary  
7 construction documents, and final construction documents for the Premises, and all applicable  
8 Federal, State and local laws and regulations. The architect shall use, as necessary, members of  
9 associated design professions, including engineers and landscape architects.

10                   **10.02 City Approvals and Limitation Thereof**

11                   The Construction Documents must be approved by the City in the manner set forth  
12 below:

13                   **10.02(a) Compliance with Ground Lease**

14                   The City’s approval with respect to the Construction Documents is limited to  
15 determination of their compliance with this Ground Lease. The Construction Documents shall be  
16 subject to general architectural review and guidance by City as part of this review and approval  
17 process.

---

18                   **10.02(b) MOHCD Does Not Approve Compliance with Construction**

19                   **Requirements**

20                   The City’s approval is not directed to engineering or structural matters or  
21 compliance with building codes and regulations, the Americans with Disabilities Act, or any other  
22 applicable State or Federal law relating to construction standards or requirements.

1                   **10.02(c)       City Determination Final and Conclusive**

2                   The City's determination respecting the compliance of the Construction  
3 Documents with this Ground Lease shall be final and conclusive (except that it makes no  
4 determination and has no responsibility for the matters set forth in Section 10.02(b), above).

5  
6                   **10.03   Construction to be in Compliance with Construction Documents and Law**

7                   **10.03(a)       Compliance with City Approved Documents**

8                   The construction shall be in compliance with the City-approved Construction  
9 Documents.

10                   **10.03(b)       Compliance with Local, State and Federal Law**

11                   The construction shall be in strict compliance with all applicable local, State and  
12 Federal laws and regulations.

13                   **10.04   Approval of Construction Documents by City**

14                   Tenant shall submit and City shall approve or disapprove the Construction Documents  
15 referred to in this Ground Lease within the times established in the Schedule of Performance.  
16 Failure by City either to approve or disapprove within the times established in the Schedule of  
17 Performance shall entitle Tenant to a day for day extension of time for completion of any  
18 activities delayed as a direct result of City's failure to timely approve or disapprove the  
19 Construction Documents. City hereby acknowledges that as of the Effective Date, City has  
20 approved the Construction Documents.

21                   **10.05   Disapproval of Construction Documents by City**

22                   If the City disapproves the Construction Documents in whole or in part as not being in

1 compliance with this Ground Lease, Tenant shall submit new or corrected plans which are in  
2 compliance within thirty (30) days after written notification to it of disapproval, and the provision  
3 of this section relating to approval, disapproval and re-submission of corrected Construction  
4 Documents shall continue to apply until the Construction Documents have been approved by the  
5 City; provided, however, that in any event Tenant must submit satisfactory Construction  
6 Documents (i.e., approved by City) no later than the date specified therefor in the Schedule of  
7 Performance.

8 **10.06 Intentionally Omitted**

9 **10.07 Issuance of Building Permits**

10 Tenant shall have the sole responsibility for obtaining all necessary building  
11 permits and shall make application for such permits directly to the City's Department of Building  
12 Inspection. The City understands and agrees that Tenant may use the Fast Track method of  
13 permit approval for construction of the Improvements.

14 **10.08 Performance and Payment Bonds**

15 Prior to commencement of construction of the Improvements, Tenant shall deliver to City  
16 performance and payment bonds, each for the full value of the cost of construction of the  
17 Improvements, which bonds shall name the City as co-obligee, or such other completion security  
18 which is acceptable to the City. The payment and performance bonds may be obtained by  
19 Tenants' general contractor and name Tenant and City as co-obligees.

20 **10.09 City Approval of Changes after Commencement of Construction**

21 Once construction has commenced, the only Construction Document matters subject to  
22 further review by the City will be requests for any material changes in the Construction

1 Documents which affect matters previously approved by the City. Permission to make such  
2 changes shall be requested by Tenant in writing directed to MOHCD, Attention: Senior Project  
3 Manager/Construction Supervisor or his or her designee. MOHCD shall reply in writing giving  
4 approval or disapproval of the changes within ten (10) business days after receiving such request.  
5 If the request is disapproved, the reply must specify the reasons for the disapproval. The failure  
6 of the City to respond within the 10-day period shall be deemed an approval by the City.

#### 7 **10.10 Times for Construction**

8 Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any  
9 part thereof, that Tenant and such successors and assigns shall promptly begin and diligently  
10 prosecute to completion the construction of the Improvements upon the Site, and that such  
11 construction shall in any event commence and thereafter diligently continue and shall be  
12 completed no later than the dates specified in the Schedule of Performance, subject to force  
13 majeure, unless such dates are extended by the City.

#### 14 **10.11 Force Majeure**

15 For the purposes of any of the provisions of this Ground Lease, and notwithstanding  
16 anything to the contrary, neither the City nor Tenant, as the case may be, shall be considered in  
17 breach or default of its obligations, nor shall there be deemed a failure to satisfy any conditions  
18 with respect to the beginning and completion of construction of the Improvements, or progress in  
19 respect thereto, in the event of enforced delay in the performance of such obligations or  
20 satisfaction of such conditions, due to unforeseeable causes beyond its control and without its  
21 fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the  
22 Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes,



1 freight embargoes, general scarcity of materials and unusually severe weather or delays of  
2 subcontractors due to such causes; it being the purposes and intent of this provision that in the  
3 event of the occurrence of any such enforced delay, the time or times for the satisfaction of  
4 conditions to this Ground Lease including those with respect to construction of the Improvements,  
5 shall be extended for the period of the enforced delay; provided, however, that the party seeking  
6 the benefit of the provisions of this paragraph shall have notified the other party thereof in writing  
7 of the cause or causes thereof within thirty (30) days after the beginning of any such enforced  
8 delay and requested an extension for the period of the enforced delay; and, provided further, that  
9 this paragraph shall not apply to, and nothing contained in this paragraph shall extend or shall be  
10 construed to extend, the time of performance of any of Tenant's obligations to be performed prior  
11 to the commencement of construction, nor shall the failure to timely perform pre-commencement  
12 of construction obligations extend or be construed to extend Tenant's obligations to commence,  
13 prosecute and complete construction of the Improvements in the manner and at the times  
14 specified in this Ground Lease.

#### 15 **10.12 Reports**

16 Commencing when construction of the Improvements commences and continuing  
17 until completion of construction of the Improvements, Tenant shall make a report in writing to the  
18 City every month, in such detail as may reasonably be required by the City, as to the actual  
19 progress of the Tenant with respect to such construction. The MOH Monthly Project Update  
20 required under the MOH Loan Documents shall satisfy this requirement.

#### 21 **10.13 Access to Site**

22 Commencing as of the Effective Date, Tenant shall permit access to the Site to the City

1 whenever and to the extent necessary to carry out the purposes of the provisions of this Ground  
2 Lease, at reasonable times and upon reasonable advance notice.

3 **10.14 Notice of Completion**

4 Promptly upon completion of the construction of the Improvements in accordance with the  
5 provisions of this Ground Lease, Tenant shall file a Notice of Completion (“NOC”), which shall  
6 be recorded in the San Francisco Recorder’s Office.

7 **10.15 Completion of Improvements by New Developer**

8 In the event Lender or a successor thereto forecloses, obtains a deed in lieu of  
9 foreclosure or otherwise realizes upon the Premises and undertakes construction of the  
10 Improvements (“New Developer”) (A) such New Developer shall not be bound by the provisions  
11 of the Schedule of Performance with respect to any deadlines for the completion of the  
12 Improvements but shall only be required to complete the Improvements with due diligence and in  
13 conformance with a new Schedule of Performance as agreed upon by the New Developer and the  
14 City, (B) such New Developer shall only be required to complete the Improvements in accordance  
15 with all applicable building codes and ordinances, and the approved Construction Documents  
16 with such changes that are mutually agreed upon by the City and the New Developer pursuant to  
17 Subsection (C) hereof; and (C) City and New Developer shall negotiate in good faith such  
18 reasonable amendments and reasonable modifications to Section 10 of this Ground Lease as the  
19 parties mutually determine to be reasonably necessary based upon the financial and construction  
20 conditions then existing.

21 **ARTICLE 11: COMPLETION OF IMPROVEMENTS**

22 **11.01 Certificate of Completion – Issuance**

1 Promptly after completion of the construction of the Improvements in accordance with the  
2 provisions of this Ground Lease, and upon the request of Tenant, the City will furnish Tenant  
3 with an appropriate instrument so certifying (the "Certificate of Completion"). Such certification  
4 by the City shall be a conclusive determination of satisfaction and termination of the agreements  
5 and covenants of this Ground Lease with respect to the obligation of Tenant, and its successors  
6 and assigns, to construct the Improvements in accordance with City approved Construction  
7 Documents and the dates for the beginning and completion thereof; provided, however, that such  
8 determination shall only be withheld because of failure to carry out specific requirements of this  
9 Ground Lease; provided further, that such certification and such determination shall not constitute  
10 evidence of compliance with or satisfaction of any obligation of Tenant to any Lender, or any  
11 insurer of a mortgage, securing money loaned to finance the construction or any part thereof;  
12 provided further, that City issuance of any Certificate of Completion does not relieve Tenant or  
13 any other person or entity from any and all City requirements or conditions to occupancy of the  
14 Improvements, which requirements or conditions must be complied with separately.

15 City may elect to issue to Tenant a Certificate of Completion if no events of default by  
16 Tenant are then existing under this Agreement and Tenant has completed the Improvements in  
17 accordance with this Agreement, except for: (1) punch list items; (2) landscaping and other  
18 outside areas of the Improvements; and (3) other items that do not adversely affect or impair  
19 Tenant's use and occupancy of the Improvements for the purposes contemplated by this  
20 Agreement and that do not preclude the City's issuance of a certificate of occupancy or other  
21 certificate or authorization of Tenant's use and occupancy of the Improvements. However, City  
22 will not be obligated to issue a Certificate of Completion in these circumstances unless and until

1 Tenant has provided to the City, at the City's request, a bond, letter of credit, certificate of  
2 deposit, or other security reasonably acceptable to the City in an amount equal to 110% of the  
3 estimated cost of completing the items described in clauses (1) through (3) above, as reasonably  
4 determined by the City.

#### 5 **11.02 Certifications to be Recordable**

6 All certifications provided for in this section shall be in such form as will enable them to  
7 be recorded with the Recorder of the City.

#### 8 **11.03 Certification of Completion - Non-Issuance Reasons**

9 If MOHCD shall refuse or fail to provide any certification in accordance with the  
10 provisions of Section 11.01, the City shall provide Tenant with a written statement, within fifteen  
11 (15) days after written request by Tenant, indicating in adequate detail in what respects Tenant  
12 has failed to complete the construction of the Improvements in accordance with the provisions of  
13 this Ground Lease or is otherwise in default hereunder and what measures or acts will be  
14 necessary, in the opinion of the City, for Tenant to take or perform in order to obtain such  
15 certification.

### 16 **ARTICLE 12: CHANGES TO THE IMPROVEMENTS**

#### 17 **12.01 Post Completion Changes**

18 The City has a particular interest in the Project and in the nature and extent of the  
19 permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the  
20 following particular controls on the Site and on the Improvements: during the term of this  
21 Ground Lease, neither Tenant, nor any voluntary or involuntary successor or assign, shall make or  
22 permit any Change in the Improvements (as defined in Section 12.02), unless the express prior

1 written consent for any change shall have been requested in writing from the City and obtained,  
2 and, if obtained, upon such terms and conditions as the City may reasonably require. The City  
3 agrees not to withhold or delay its response to such a request unreasonably.

#### 4 **12.02 Definition of Change**

5 'Change' as used in this Article means any alteration, modification, addition and/or  
6 substitution of or to the Site, the Improvements, and/or the density of development which differs  
7 materially from that which existed upon the completion of construction of the Improvements in  
8 accordance with this Ground Lease, and shall include without limitation the exterior design and  
9 exterior materials. For purposes of the foregoing, exterior shall mean and include the roof of the  
10 Improvements. Changes shall not include repairs, maintenance and interior alterations in the  
11 normal course of operation of the Project, tenant improvements made by tenants to the  
12 commercial space pursuant to commercial leases, or as may be required in an emergency to  
13 protect the safety and well-being of the Project's Occupants.

#### 14 **12.03 Enforcement**

15 Subject to Article 19 hereof, City shall have any and all remedies in law or equity  
16 (including without limitation restraining orders, injunctions and/or specific performance), judicial  
17 or administrative, to enforce the provisions of this Article 12, including without limitation any  
18 threatened breach thereof or any actual breach or violation thereof.

### 19 **ARTICLE 13: TITLE TO IMPROVEMENTS**

20 City acknowledges that fee title to the Improvements is vested in Tenant. City and Tenant  
21 hereby agree that fee title to the Improvements shall remain vested in Tenant during the Term,  
22 subject to Section 14.01 below; provided however that, subject to the rights of any Lenders and as

1 further consideration for the City entering into this Ground Lease, at the expiration or earlier  
2 termination of this Ground Lease, fee title to all the Improvements shall vest in the City without  
3 further action of any party, without any obligation by the City to pay any compensation therefor  
4 to Tenant, and without the necessity of a deed from Tenant to the City. Notwithstanding the  
5 forgoing, if requested by City, upon expiration or sooner termination of this Ground Lease,  
6 Tenant shall execute, acknowledge, and deliver to the City a good and sufficient grant deed with  
7 respect to Tenant's fee interest in the Improvements.

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

9 **14.01 Assignment, Sublease or Other Conveyance by Tenant**

10 Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or  
11 any part of its interest in this Ground Lease or in the Improvements or any portion thereof, other  
12 than to Lender(s), or allow any person or entity to occupy or use all or any part of the Site, other  
13 than leases to residential tenants in the ordinary course of business nor may it contract or agree to  
14 do any of the same, without the prior written approval of the City, which approval shall not be  
15 unreasonably withheld or delayed. Notwithstanding anything contained herein to the contrary,  
16 Tenant may sell, assign, convey, sublease or transfer any or all of its interests in and to this  
17 Ground Lease to Mercy Housing California ("MHC"), or to an affiliate or successor of MHC, and  
18 may change, assign, acquire, or liquidate partnership interests in Tenant, as permitted under  
19 Article 47 of this Ground Lease. The City reserves the right to review and approve any  
20 commercial leases for the Site, which approval shall not be unreasonably withheld, conditioned or  
21 delayed.

22 **14.02 Assignment, Sublease or Other Conveyance by City**

1           The parties acknowledge that any sale, assignment, transfer or conveyance of all or any  
2 part of the City's interest in the Site, the Improvements, or this Ground Lease, is subject to this  
3 Ground Lease. The City will require that any purchaser, assignee or transferee expressly assume  
4 all of the obligations of the City under this Ground Lease by a written instrument recordable in  
5 the Official Records of the City. This Ground Lease shall not be affected by any such sale, and  
6 Tenant shall attorn to any such purchaser or assignee. In the event that the City intends to sell all  
7 or any part of the Site, the City shall notify Tenant of the proposed terms of such sale not later  
8 than ninety (90) days before the anticipated close of escrow. Tenant shall have sixty (60) days  
9 from the giving of such notice to exercise a right of first refusal to purchase the Site on the same  
10 terms and conditions of such proposed sale, provided that any sale of City's interest in the Site  
11 shall be subject to the prior approval of the City's Board of Supervisors and Mayor.

12       **ARTICLE 15: TAXES**

13           Tenant agrees to pay, or cause to be paid, when due to the proper authority, any and all  
14 valid taxes, assessments and similar charges on the Site which become effective after the  
15 Effective Date of this Ground Lease, including all taxes levied or assessed on the possession, use  
16 or occupancy, as distinguished from the ownership, of the Site. Tenant shall not permit any such  
17 taxes, charges or other assessments to become a defaulted lien on the Site or the Improvements  
18 thereon; provided, however, that in the event any such tax, assessment or similar charge is  
19 payable in installments, Tenant may make, or cause to be made, payment in installments; and,  
20 provided further, that Tenant may contest the legal validity or the amount of any tax, assessment  
21 or similar charge, through such proceedings as Tenant considers necessary or appropriate, and  
22 Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested

1 by Tenant in good faith and without expense to the City. In the event of any such contest, Tenant  
2 shall protect, defend and indemnify the City against all loss, cost, expense or damage resulting  
3 there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay,  
4 discharge, or cause to be paid or discharged, such tax, assessment or other similar charge. The  
5 City shall furnish such information as Tenant shall reasonably request in connection with any  
6 such contest provided that such information is in the City's possession, control or is otherwise  
7 available to the public. City hereby consents to and shall reasonably cooperate and assist with  
8 Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on  
9 the Site, the Improvements or on Tenant's interest therein. Tenant shall have no obligation under  
10 this Section prior to the Effective Date, including but not limited to any taxes, assessments or  
11 other charges levied against the Property which are incurred prior to the Effective Date.

12 **ARTICLE 16: UTILITIES**

13 From and after the Effective Date, Tenant shall procure water and sewer service from the  
14 City and electricity, telephone, natural gas and any other utility service from the City or utility  
15 companies providing such services, and shall pay all connection and use charges imposed in  
16 connection with such services. From and after the Effective Date, as between the City and  
17 Tenant, Tenant shall be responsible for the installation and maintenance of all facilities required  
18 in connection with such utility services to the extent not installed or maintained by the City or the  
19 utility providing such service.

20 **ARTICLE 17: MAINTENANCE**

21 From and after the Effective Date, Tenant, at all times during the term hereof, shall  
22 maintain or cause to be maintained the Premises in good condition and repair to the reasonable



1 satisfaction of the City, including the exterior, interior, substructure and foundation of the  
2 Improvements and all fixtures, equipment and landscaping from time to time located on the Site  
3 or any part thereof. From and after the Effective Date, the City shall not be obligated to make any  
4 repairs, replacements or renewals of any kind, nature or description whatsoever to the Site or any  
5 buildings or improvements now or hereafter located thereon.

#### 6 **ARTICLE 18: LIENS**

7 Tenant shall use its best efforts to keep the Site free from any liens arising out of any work  
8 performed or materials furnished by itself or its subtenants. In the event that Tenant shall not  
9 cause the same to be released of record or bonded around within twenty (20) days following  
10 written notice from the City of the imposition of any such lien, the City shall have, in addition to  
11 all other remedies provided herein and by law, the right but not the obligation to cause the same to  
12 be released by such means as it shall deem proper, including payment of the claim giving rise to  
13 such lien. All sums paid by the City for such purpose, and all reasonable expenses incurred by it  
14 in connection therewith, shall be payable to the City by Tenant on demand; provided, however,  
15 Tenant shall have the right, upon posting of an adequate bond or other security, to contest any  
16 such lien, and the City shall not seek to satisfy or discharge any such lien unless Tenant has failed  
17 so to do within ten (10) days after the final determination of the validity thereof. In the event of  
18 any such contest, Tenant shall protect, defend, and indemnify the City against all loss, cost,  
19 expense or damage resulting therefrom. The provisions of this Section shall not apply prior to the  
20 Effective Date or to any liens arising prior to the Effective Date.

#### 21 **ARTICLE 19: GENERAL REMEDIES**

##### 22 **19.01 Application of Remedies**

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

3 **19.02 Notice and Cure Rights for Tenant and Permitted Limited Partner**

4 (a) The City may not exercise its remedies under this Ground Lease for a  
5 default by the Tenant unless and until: (i) the City has given written notice of any such default, in  
6 accordance with the notice provisions of Article 38, to Tenant and Permitted Limited Partners  
7 who have requested notice as set forth below, and (ii) such default has not been cured within sixty  
8 (60) days or such longer period as may be set forth herein, following the giving of such notice or,  
9 if such default cannot be cured within such 60-day period, such longer period as is reasonably  
10 necessary to cure such default, provided that such cure has been commenced within such 60-day  
11 period and is being prosecuted diligently to completion. If a Permitted Limited Partner cannot  
12 cure a default due to an automatic stay in Bankruptcy court because the general partner of the  
13 Tenant is in bankruptcy, any cure period will be tolled during the pendency of such automatic  
14 stay.

15 (b) The City will not exercise its remedy to terminate this Ground Lease if a  
16 Permitted Limited Partner is attempting to cure the default and such cure requires removal of the  
17 managing general partner, so long as the Permitted Limited Partner is proceeding diligently to  
18 remove the managing general partner in order to effect a cure of such default.

19 (c) Unless otherwise provided for herein, any limited partner wishing to become a  
20 Permitted Limited Partner other than any Permitted Limited Partner identified in Section 38 must  
21 provide five (5) days written notice to the City in accordance with the notice provisions of this  
22 Ground Lease, setting forth a notice address and providing a copy of such notice to the Tenant

1 and all of the Tenant's partners. Such limited partner will become a Permitted Limited Partner  
2 upon the expiration of the five-day period. A limited partner will not be afforded the protections  
3 of this section with respect to any default occurring prior to the time such limited partner becomes  
4 a Permitted Limited Partner.

### 5 **19.03 Breach by City**

6 If Tenant believes a material breach by the City of this Ground Lease has occurred, Tenant  
7 shall first notify the City in writing of the purported breach, giving the City sixty (60) days from  
8 receipt of such notice to cure such breach. In the event City does not then cure or, if the breach is  
9 not reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60)  
10 days and thereafter diligently prosecute such cure to completion, then Tenant shall be afforded all  
11 of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in  
12 writing this entire Ground Lease with the written consent of each Lender; (ii) prosecuting an  
13 action for damages; (iii) seeking specific performance of this Ground Lease; or (iv) any other  
14 remedy available at law or equity.

### 15 **19.04 Breach by Tenant**

#### 16 **19.04(a) Default by Tenant**

17 Subject to the notice and cure rights under Section 19.02, the following events  
18 each constitute a basis for the City to take action against Tenant:

19 (1) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions  
20 set forth in Section 9.02;

21 (2) Tenant voluntarily or involuntarily assigns, transfers or attempts to transfer  
22 or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements, except as

1 permitted by this Ground Lease or otherwise with the approval of the City;

2 (3) From and after the Effective Date, Tenant, or its successor in interest, shall  
3 fail to pay real estate taxes or assessments on the Premises or any part thereof when due, or shall  
4 place thereon any encumbrance or lien unauthorized by this Ground Lease, or shall suffer any  
5 levy or attachment to be made, or any material supplier's or mechanic's lien or any other  
6 unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been  
7 paid, or the encumbrance or lien removed or discharged within the time period provided in Article  
8 18; provided, however, that Tenant shall have the right to contest any tax or assessment pursuant  
9 to Article 15 and Article 18 and, upon the posting of an adequate bond or other security, to  
10 contest any such lien or encumbrance. In the event of any such contest, Tenant shall protect,  
11 indemnify and hold City harmless against all losses and damages, including reasonable attorneys'  
12 fees and costs resulting therefrom;

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

20 (5) Tenant breaches any other material provision of this Ground Lease;

21 (6) Tenant fails to pay any portion of Annual Rent when due in accordance  
22 with the terms and provisions of this Ground Lease.

1                   **19.04(b)      Notification and City Remedies**

2                   Upon the happening of any of the events described in Section 19.04(a) above, and  
3 prior to exercising any remedies, the City shall notify Tenant, the Permitted Limited Partners, and  
4 each Lender in writing of the Tenant's purported breach, failure or act in accordance with the  
5 notice provisions of Article 38, giving Tenant sixty (60) days from receipt of such notice to cure  
6 such breach, failure or act. In the event Tenant does not cure or, if the breach, failure or act is not  
7 reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60)  
8 days and thereafter diligently prosecute such cure to completion, then, subject to the rights of any  
9 Lender and subject to Section 19.02 and Article 26, the City thereafter shall be afforded all of its  
10 rights at law or in equity, including any or all of the following remedies: (1) terminating in  
11 writing this Ground Lease; (2) prosecuting an action for damages; (3) seeking specific  
12 performance of this Ground Lease; or (4) in the case of default under Section 19.04(a)(1),  
13 increasing the Base Rent to the full amount of the Annual Rent.

14                   Notwithstanding the foregoing, during the 15-year tax credit compliance period,  
15 City may only terminate this Ground Lease for a default by Tenant under Section 19.04(a)(6)  
16 above.

17                   **ARTICLE 20: DAMAGE AND DESTRUCTION**

18                   **20.01 Insured Casualty**

19                   From and after the Effective Date, if the Improvements or any part thereof are damaged or  
20 destroyed by any cause covered by any policy of insurance required to be maintained by Tenant  
21 hereunder, Tenant shall promptly commence and diligently complete the restoration of the  
22 Improvements as nearly as possible to the condition thereof prior to such damage or destruction;

1 provided, however, that if more than fifty percent (50%) of the Improvements are destroyed or are  
2 so damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety  
3 percent (90%) of the funds necessary to accomplish the restoration, Tenant, with the written  
4 consent of Lender, may terminate this Ground Lease within thirty (30) days after the later of (i)  
5 the date of such damage or destruction, or (ii) the date on which Tenant is notified of the amount  
6 of insurance proceeds available for restoration. In the event Tenant is required or elects to restore  
7 the Improvements, all proceeds of any policy of insurance required to be maintained by Tenant  
8 under this Ground Lease shall, subject to any applicable rights of Lenders, be used by Tenant for  
9 that purpose and Tenant shall make up from its own funds or obtain additional financing as  
10 reasonably approved by the City any deficiency between the amount of insurance proceeds  
11 available for the work of restoration and the actual cost thereof. In the event Tenant elects to  
12 terminate this Ground Lease pursuant to its right to do so under this Section 20.01, or elects not to  
13 restore the Improvements, the insurance proceeds shall be divided in the order set forth in Section  
14 20.03.

#### 15 **20.02 Uninsured Casualty**

16 From and after the Effective Date, if (i) more than 50% of the Improvements are damaged  
17 or destroyed and ten percent (10%) or more of the cost of restoration is not within the scope of the  
18 insurance coverage; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the  
19 Improvements cannot be completed or operated on an economically feasible basis; and (iii) there  
20 is not available to Tenant any feasible source of third party financing for restoration reasonably  
21 acceptable to Tenant; then Tenant may, with the written consent of each Lender, other than the  
22 City, terminate this Ground Lease upon ninety (90) days written notice to the City. If it appears

1 that the provisions of this Section 20.02 may apply to a particular event of damage or destruction,  
2 Tenant shall notify the City promptly and not consent to any settlement or adjustment of an  
3 insurance award without the City's written approval, which approval shall not be unreasonably  
4 withheld or delayed. In the event that Tenant terminates this Ground Lease pursuant to this  
5 Section 20.02, all insurance proceeds and damages payable by reason of the casualty shall be  
6 divided among City, Tenant and Lenders in accordance with the provisions of Section 20.03. If  
7 Tenant does not have the right, or elects not to exercise the right, to terminate this Ground Lease  
8 as a result of an uninsured casualty, Tenant shall promptly commence and diligently complete the  
9 restoration of the Improvements as nearly as possible to their condition prior to such damage or  
10 destruction in accordance with the provisions of Section 20.01 and shall, subject to any applicable  
11 rights of Lenders, be entitled to all available insurance proceeds.

### 12 **20.03 Distribution of the Insurance Proceeds**

13 In the event of an election by Tenant to terminate and surrender as provided in either  
14 Sections 20.01 or 20.02, the priority and manner for distribution of the proceeds of any insurance  
15 policy required to be maintained by Tenant hereunder shall be as follows:

16 (a) First to the Lenders, in order of their priority, to control, disburse or apply to any  
17 outstanding loan amounts in accordance with the terms their respective Leasehold Mortgages;

18 (b) Second, to pay for the cost of removal of all debris from the Site or adjacent and  
19 underlying property, and for the cost of any work or service required by any statute, law,  
20 ordinance, rule, regulation or order of any federal, state or local government, or any agency or  
21 official thereof, for the protection of persons or property from any risk, or for the abatement of  
22 any nuisance, created by or arising from the casualty or the damage or destruction caused thereby;

1 (c) Third, to compensate City for any diminution in the value (as of the date of the  
2 damage or destruction) of the Site as a raw development site caused by or arising from the  
3 damage or destruction; and

4 (d) The remainder to Tenant.

5 **20.04 Clean Up of Housing Site**

6 In the event the Tenant terminates this Ground Lease pursuant to the provisions of  
7 Sections 20.01 or 20.02 and the proceeds of any insurance policy are insufficient to pay the clean-  
8 up and other costs described in Article 20.03(b), Tenant shall have the obligation to pay the  
9 portion of such costs not covered by the insurance proceeds.

10 **ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; HAZARDOUS MATERIALS;**

11 **INDEMNIFICATION**

12 **21.01 Damage to Person or Property - General Indemnification**

13 City shall not in any event whatsoever be liable for any injury or damage to any person  
14 happening on or about the Site, for any injury or damage to the Premises, or to any property of  
15 Tenant, or to any property of any other person, entity or association on or about the Site, unless  
16 arising from any gross negligence or willful misconduct of the City or any of its commissioners,  
17 officers, agents or employees. Tenant shall defend, hold harmless and indemnify the City and its  
18 respective commissioners, officers, agents, and employees, of and from all claims, loss, damage,  
19 injury, actions, causes of action and liability of every kind, nature and description directly or  
20 indirectly arising from its tenancy, its use of the Site, including adjoining sidewalks and streets,  
21 and any of its operations activities thereon or connected thereto; provided, however, that this  
22 Article 21 shall not be deemed or construed to and shall not impose an obligation to indemnify



1 and save harmless the City or any of its commissioners, officers, agents or employees from any  
2 claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way  
3 related to or connected with any willful misconduct or gross negligence of the City, any of its  
4 commissioners, officers, agents, employees or by the person or entity seeking such indemnity.

5 **21.02 Hazardous Materials – Indemnification**

6 (a) From and after the Effective Date, Tenant shall indemnify, defend, and hold the  
7 City, and its commissioners, officers, agents and employees (individually, an "Indemnified Party"  
8 and collectively, the "Indemnified Parties") harmless from and against any and all losses, costs,  
9 claims, damages, liabilities, and causes of action of any nature whatsoever (including, without  
10 limitation, the reasonable fees and disbursements of counsel and engineering consultants)  
11 incurred by or asserted against any Indemnified Party in connection with, arising out of, in  
12 response to, or in any manner relating to violation of any Environmental Law, or any Release  
13 threatened Release and any condition of pollution, contamination or Hazardous Substance-related  
14 nuisance on, under or from the Site.

15 (b) For purposes of this Section 21.02, the following definitions shall apply:

16 (i) "Hazardous Substance" shall have the meaning set forth in the  
17 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended  
18 as of the date of this Agreement, 42 U.S.C. 9601(14), and in addition shall include, without  
19 limitation, petroleum (including crude oil or any fraction thereof) and petroleum products,  
20 asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing  
21 materials, all hazardous substances identified in the California Health & Safety Code 25316 and  
22 25281(d), all chemicals listed pursuant to the California Health & Safety Code 25249.8, and any

1 substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant  
2 under Environmental Law. The foregoing definition shall not include substances which occur  
3 naturally on the Site or commercially reasonable amounts of hazardous materials used in the  
4 ordinary course of construction and operation of a mixed use development.

5 (ii) "Environmental Law" shall include all federal, state and local laws,  
6 regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air  
7 emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or  
8 storage, and employee or community right-to-know requirements related to the work being  
9 performed under this Agreement.

10 (iii) "Release" shall mean any spillage, leaking, pumping, pouring, emitting,  
11 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment,  
12 including the abandonment or discharging of barrels, containers, and other closed receptacles  
13 containing any Hazardous Substance.

## 14 **ARTICLE 22: INSURANCE**

### 15 **22.01 Insurance**

16 The Tenant shall maintain insurance meeting the requirements of this Article.

#### 17 **22.01(a) Insurance Requirements for Tenant**

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

1                   **22.01(b)       Minimum Scope of Insurance**

2                   Coverage shall be at least as broad as:

3                   (1)       Insurance Services Office Commercial General Liability coverage (form  
4 CG 00 01 - "Occurrence") or other form approved by the City's Risk Manager.

5                   (2)       Insurance Services Office Automobile Liability coverage, code 1 (form CA  
6 00 01 - "Any Auto") or other form approved by the City's Risk Manager.

7                   (3)       Workers' Compensation insurance as required by the State of California  
8 and Employer's Liability insurance.

9                   (4)       Professional Liability Insurance: Tenant shall require that all architects,  
10 engineers, and surveyors for the Project have liability insurance covering all negligent acts, errors  
11 and omissions. Tenant shall provide the City with copies of consultants' insurance certificates  
12 showing such coverage.

13                   (5)       Insurance Services Office Property Insurance coverage (form CP 10 30 60  
14 95 - "Causes of Loss - Special Form") or other form approved by the City's Risk Manager.

15                   (6)       Crime Policy or Fidelity Bond covering the Tenant's officers and  
16 employees against dishonesty with respect to the use of City funds.

17                   **22.01(c)       Minimum Limits of Insurance**

18                   Tenant shall maintain limits no less than:

19                   (1)       General Liability: Commercial General Liability insurance with no less  
20 than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million  
21 Dollars (\$2,000,000) annual aggregate limit for bodily injury and property damage, including  
22 coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability;  
23 owners' and contractors' protective liability; products and completed operations; broad form

1 property damage; and explosion, collapse and underground (XCU) coverage during any period in  
2 which Tenant is conducting any activity on, alteration or improvement to the Site with risk of  
3 explosion, collapse, or underground hazards.

4 (2) Automobile Liability: Business Automobile Liability insurance with no  
5 less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury  
6 and property damage, including owned, hired and non-owned auto coverage, as applicable.

7 (3) Workers' Compensation and Employers Liability: Workers'  
8 Compensation, in statutory amounts, with Employers' Liability limits not less than One Million  
9 Dollars (\$1,000,000) each accident, injury, or illness.

10 (4) Professional Liability: Professional Liability insurance of no less than One  
11 Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate  
12 limit covering all negligent acts, errors and omissions of Tenant's architects, engineers and  
13 surveyors. If the Professional Liability Insurance provided by the architects, engineers, or  
14 surveyors is "claims made" coverage, Tenant shall assure that these minimum limits are  
15 maintained for no less than three (3) years beyond completion of the construction or remodeling.

16 (5) Crime Policy or Fidelity Bond: Crime Policy or Fidelity Bond of no less  
17 than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five  
18 Thousand Dollars (\$5,000) each loss.

19 (6) Pollution Liability and/or Asbestos Pollution Liability: Pollution Liability  
20 and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less  
21 than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year,  
22 this coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may

1 be provided by the Tenant's contractor, provided that the policy must be "claims made" coverage  
2 and Tenant must require Tenant's contractor to maintain these minimum limits for no less than  
3 three (3) years beyond completion of the Project.

4 (7) Property Insurance:

5 (a) Prior to construction:

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

14 (b) During the course of construction:

15 (i) Builder's risk insurance, special form coverage, excluding earthquake  
16 and flood, for one hundred percent (100%) of the replacement value of all completed  
17 improvements and City property in the care, custody and control of the Tenant or its contractor,  
18 including coverage in transit and storage off-site; the cost of debris removal and demolition as  
19 may be made reasonably necessary by such covered perils, resulting damage and any applicable  
20 law, ordinance or regulation; start up, testing and machinery breakdown including electrical  
21 arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk

1 policy is issued on a declared-project basis; and with a deductible not to exceed Ten Thousand  
2 Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

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

6 (c) Upon completion of construction:

7 (i) Property insurance, excluding earthquake and flood, in the amount no  
8 less than One Hundred Percent (100%) of the then-current replacement value of all improvements  
9 and City property in the care, custody and control of the Tenant or its contractor. For  
10 rehabilitation/construction projects that are unoccupied by residential or commercial tenants,  
11 Tenant must obtain Property Insurance by the date that the project receives a Certificate of  
12 Substantial Completion. (ii) Boiler and machinery insurance, comprehensive form, covering  
13 damage to, loss or destruction of machinery and equipment located on the Site that is used by  
14 Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an  
15 amount not less than one hundred percent (100%) of the actual replacement value of such  
16 machinery and equipment.

17 **22.01(d) Deductibles and Self-Insured Retentions**

18 Any deductibles or self-insured retentions in excess of \$25,000 must be declared to  
19 and approved by City's Risk Manager. At the option of City's Risk Manager, either: the insurer  
20 shall reduce or eliminate such deductibles or self-insured retentions with respect to the City and  
21 County of San Francisco, and their respective commissioners, members, officers, agents, and  
22 employees; or the Tenant shall procure a financial guarantee satisfactory to the City's Risk

1 Manager guaranteeing payment of losses and related investigations, claim administration and  
2 defense expenses.

3 **22.01(e) Other Insurance Provisions**

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

5 (1) General Liability and Automobile Liability Coverage: The “City and  
6 County of San Francisco and their respective commissioners, members, officers, agents, and  
7 employees” are to be covered as additional insured with respect to: liability arising out of  
8 activities performed by or on behalf of the Tenant related to the Project; products and completed  
9 operations of the Tenant, premises owned, occupied or used by the Tenant related to the Project;  
10 and automobiles owned, leased, hired or borrowed by the Tenant for the operations related to the  
11 Project. The coverage shall contain no special limitations on the scope of protection afforded to  
12 the City and its Commissioners, members, officers, agents or employees.

13 (2) Workers' Compensation and Property Insurance: The insured shall agree  
14 to waive all rights of subrogation against the “City and County of San Francisco, and their  
15 respective commissioners, members, officers, agents, and employees” for any losses in connection  
16 with this Project.

17 (3) Claims-made Coverage: Should any of the required insurance be provided  
18 under a claims-made form, Tenant shall maintain such coverage continuously throughout the term  
19 of this Agreement and, without lapse, for a period of three years beyond the expiration of this  
20 Agreement, to the effect that, should occurrences during the contract term give rise to claims made  
21 after expiration of the Agreement, such claims shall be covered by such claims-made policies.

22 (4) All Coverage: Each insurance policy required by this Article shall:

1 (a) Be endorsed to state that coverage shall not be suspended, voided, canceled  
2 by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written  
3 notice has been given to City, except in the event of suspension for nonpayment of premium, in  
4 which case ten (10) days' notice shall be given.

5  
6 (b) Contain a clause providing that the City and its officers, agents and  
7 employees will not be liable for any required premium.

8 (c) For any claims related to this Ground Lease, the Tenant's insurance  
9 coverage shall be primary insurance with respect to the City and its commissioners, members,  
10 officers, agents, and employees. Any insurance or self-insurance maintained by the City or its  
11 commissioners, members, officers, agents, or employees shall be in excess of the Tenant's  
12 insurance and shall not contribute with it.

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

15 (e) Any failure to comply with reporting provisions of the policies shall not  
16 affect coverage provided to the City and its commissioners, members, officers, agents, or  
17 employees.

18 (f) Approval of Tenant's insurance by the City will not relieve or decrease the  
19 liability of Tenant under this Ground Lease.

20 (g) The City reserves the right to require an increase in insurance coverage in  
21 the event the City determines that conditions show cause for an increase, unless Tenant



1 demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable  
2 and unavailable to Tenant.

3 **22.01(f) Acceptability of Insurers**

4 Insurance is to be placed with insurers with a Best's rating of no less than A-VIII  
5 or as otherwise approved by the City's Risk Manager.

6 **22.01(g) Verification of Coverage**

7 Tenant shall furnish City with certificates of insurance and with original  
8 endorsements effecting coverage required by this clause at the commencement of this Ground  
9 Lease and annually thereafter. The certificates and endorsements for each insurance policy are to  
10 be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the  
11 right to require complete, certified copies of all required insurance policies, including  
12 endorsements demonstrating the coverage required by these specifications at any time.

13 **22.01(h) Contractor, Subcontractors and Consultants Insurance**

14 Tenant shall include all subcontractors and consultants as additional insureds under  
15 its policies or shall furnish separate certificates and endorsements for each. Tenant shall require  
16 the subcontractor(s) to provide all necessary insurance and to name the City and County of San  
17 Francisco, its officers, agents and employees and the Tenant as additional insureds. All coverage  
18 for subcontractors and consultants shall be subject to all of the requirements stated herein unless  
19 otherwise approved by the City's Risk Manager.

20 **ARTICLE 23: COMPLIANCE WITH SITE-RELATED AND LEGAL REQUIREMENTS**

21 **23.01 Compliance with Legal Requirements**

22 From and after the Effective Date, Tenant shall at its cost and expense, promptly comply

1 with all applicable Laws, statutes, ordinances and governmental rules, regulations or requirements  
2 now in force or which may hereafter be in force, with the requirements of the fire department or  
3 other similar body now or hereafter constituted, with any direction or occupancy certificate issued  
4 pursuant to any law by any public officer or officers, insofar as any thereof relates to or affects the  
5 condition, use or occupancy of the Site. In the event Tenant contests any of the foregoing, Tenant  
6 shall not be obligated to comply therewith to the extent that the application of the contested law,  
7 statute, ordinance, rule, regulation or requirement is stayed by the operation of law or  
8 administrative or judicial order and Tenant indemnifies the City against all loss, cost, expense or  
9 damage resulting from noncompliance.

#### 10 **23.02 Regulatory Approvals**

11 Tenant understands and agrees that the City is entering into this Ground Lease in its  
12 capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency  
13 with certain police powers. Tenant understands and agrees that neither entry by the City into this  
14 Ground Lease nor any approvals given by the City under this Ground Lease will be deemed to  
15 imply that Tenant will obtain any required approvals from City departments, boards or  
16 commissions that have jurisdiction over the Premises. By entering into this Ground Lease, the  
17 City is in no way modifying or limiting the obligations of Tenant to develop the Project in  
18 accordance with all Laws, as provided in this Ground Lease.

19 Tenant understands that its construction of the Improvements on the Premises and  
20 development of the Project will require approval, authorization or permit by governmental  
21 agencies with jurisdiction, which may include the City's Planning Commission and/or Zoning  
22 Administrator and the Department of Building Inspection. Tenant must use good faith efforts to

1 obtain and will be solely responsible for obtaining any such approvals required for the Project in  
2 the manner set forth in this Section. Tenant will not seek any regulatory approval without first  
3 obtaining MOHCD's approval, which approval shall not be unreasonably withheld or delayed.  
4 Throughout the permit process for any regulatory approval, Tenant will consult and coordinate  
5 with MOHCD in Tenant's efforts to obtain permits. MOHCD will cooperate reasonably with  
6 Tenant in its efforts to obtain permits; provided, however, Tenant may not agree to the imposition  
7 of conditions or restrictions in connection with its efforts to obtain a permit from any other  
8 regulatory agency if the City is required to be a co-permittee under the permit or the conditions or  
9 restrictions could create any financial or other material obligations on the part of the City whether  
10 on or off of the Premises, unless in each instance MOHCD has approved the conditions  
11 previously in writing and in MOHCD's reasonable discretion. No approval by MOHCD will  
12 limit Tenant's obligation to pay all the costs of complying with conditions under this Section.  
13 Tenant must bear all costs associated with applying for and obtaining any necessary regulatory  
14 approval, as well as any fines, penalties or corrective actions imposed as a result of Tenant's  
15 failure to comply with the terms and conditions of any regulatory approval.

16 With MOHCD's prior written consent, Tenant will have the right to appeal or contest any  
17 condition in any manner permitted by law imposed upon any regulatory approval. In addition to  
18 any other indemnification provisions of this Ground Lease, Tenant must indemnify the City and  
19 its commissioners, officers, agents or employees from and against any and all losses that may  
20 arise in connection with Tenant's failure to obtain or comply with the terms and conditions of any  
21 regulatory approval or with the appeal or contest of any conditions of any regulatory approval,

1 except to the extent damage arises out of the gross negligence or willful misconduct of the City or  
2 its agents.

3 **ARTICLE 24: ENTRY**

4 (a) The City reserves for itself and its authorized representatives the right to enter the  
5 Property at all reasonable times during normal business hours upon not less than forty-eight (48)  
6 hours' written notice to Tenant (except in the event of an emergency), subject to the rights of the  
7 occupants, tenants and others lawfully permitted on the Property, for any of the following  
8 purposes:

9 (i) to inspect the work being performed by Tenant in developing the Project.

10 (ii) to determine whether the Premises is in good condition and to inspect the  
11 Premises (including soil borings or other Hazardous Material Investigations);

12 (iii) to determine whether Tenant is in compliance with its Ground Lease obligations  
13 and to cure or attempt to cure any Tenant default;

14 (iv) to serve, post or keep posted any notices required or allowed under any of the  
15 provisions of this Ground Lease;

16 (v) to do any maintenance or repairs to the Premises that the City has the right or the  
17 obligation, if any, to perform hereunder; and

18 (vi) to show the Premises to any prospective purchasers, brokers, Lenders or public  
19 officials, or, during the last year of the Term of this Lease if notice of extension has not been  
20 delivered during the initial Term, exhibit the Premises to prospective tenants or other occupants,  
21 and to post any reasonable "for sale" or "for lease" signs in connection therewith.

1 (b) In the event of any emergency, as reasonably determined by the City, at its sole option  
2 and without notice, the City may enter the Premises and alter or remove any Improvements or  
3 Tenant's personal property on or about the Premises as reasonably necessary, given the nature of  
4 the emergency. The City will have the right to use any and all means the City considers  
5 appropriate to gain access to any portion of the Premises in an emergency, in which case, the City  
6 will not be responsible for any damage or injury to any property, nor for the replacement of any  
7 property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a  
8 detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or  
9 any portion thereof.

10 (c) The City will not be liable in any manner for any inconvenience, disturbance, loss of  
11 business, nuisance or other damage arising out of the City's entry onto the Premises, except to the  
12 extent damage arises out of the gross negligence or willful misconduct of the City or its agents.  
13 The City will be responsible for any losses resulting from its gross negligence or willful  
14 misconduct and will repair any resulting damage promptly.

15 (d) Tenant will not be entitled to any abatement in Annual Rent if the City exercises any  
16 rights reserved in this Section, subject to subsection (c) above.

17 (e) The City will use its reasonable good faith efforts to conduct any activities on the  
18 Premises allowed under this Section in a manner that, to the extent practicable, will minimize any  
19 disruption to Tenant's use hereunder.

20 **ARTICLE 25: MORTGAGE FINANCING**

21 **25.01 No Encumbrances Except for Development Purposes**

1 Notwithstanding any other provision of this Ground Lease and subject to the prior written  
2 consent of the City in the form attached hereto as Attachment 3, which consent shall not be  
3 unreasonably withheld, conditioned or delayed, Leasehold Mortgages are permitted to be placed  
4 upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing  
5 the acquisition, refinancing of financing used to acquire or rehab the project, design, construction,  
6 renovation or reconstruction of the Improvements and any other expenditures reasonably  
7 necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the  
8 Improvements under this Ground Lease and in connection with the operation of the  
9 Improvements, and costs and expenses incurred or to be incurred by Tenant in furtherance of the  
10 purposes of this Ground Lease. The City, acting solely in its capacity as landlord under this  
11 Ground Lease and not in its capacity as a Project Lender, hereby acknowledges and accepts  
12 MUFG Union Bank N.A., the California Department of Housing and Community Development,  
13 the Federal Home Loan Bank, and the United States Department of Housing and Urban  
14 Development as a Lender, and consents to the Leasehold Mortgage associated with their  
15 respective construction and permanent loan to Tenant for the Project.

16 **25.02 Holder Not Obligated to Construct**

17 The holder of any mortgage, deed of trust or other security interest authorized by Section  
18 25.01 ("Holder" or "Lender"), including the successors or assigns of such Holder, is not obligated  
19 to complete any construction of the Improvements or to guarantee such completion; nor shall any  
20 covenant or any other provision of this Ground Lease be construed so to obligate such Holder.  
21 However, in the event the Holder does undertake to complete or guarantee the completion of the  
22 construction of the Improvements, subject to Section 26.06(ii), nothing in this Ground Lease shall

1 be deemed or construed to permit or authorize any such Holder or its successors or assigns to  
2 devote the Site or any portion thereof to any uses, or to construct any Improvements thereon,  
3 other than those uses or Improvements authorized under Section 9.02 subject to any reasonable  
4 modifications in plans proposed by any Holder or its successors in interest proposed for the  
5 viability of the Project, subject to the approval of City which approval shall not be unreasonably  
6 withheld. To the extent any Holder or its successors in interest wish to change such uses or  
7 construct different improvements, subject to Section 26.06(ii), that Holder or its successors in  
8 interest must obtain the written consent of the City.

9 **25.03 Failure of Holder to Complete Construction**

10 In any case where six months after assumption of obligations pursuant to Section 25.02  
11 above, a Lender, having first exercised its option to complete the construction, has not proceeded  
12 diligently with completion of the construction, the City shall be afforded the rights against such  
13 Holder it would otherwise have against Tenant under this Ground Lease for events or failures  
14 occurring after such assumption; provided, however, if Lender has proceeded diligently with  
15 construction, the Schedule of Performance shall not apply to Lender if such Schedule of  
16 Performance has been replaced by the new Schedule of Performance pursuant to Section 10.15 of  
17 this Agreement, which new Schedule of Performance will apply to Lender.

---

18 **25.04 Default by Tenant and City's Rights**

19 **25.04(a) Right of City to Cure a Default or Breach by Tenant under a**  
20 **Leasehold Mortgage**

21 In the event of a default or breach by Tenant in or of its obligations under any  
22 Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of

1 such default or breach, the City may, at its option, cure such breach or default at any time prior to  
2 one hundred ten (110) days after the date on which the Lender files a notice of default. In such  
3 event, the City shall be entitled to reimbursement from Tenant of all costs and expenses  
4 reasonably incurred by the City in curing the default or breach. The City shall also be entitled to  
5 a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and  
6 disbursements that are not reimbursed by Tenant. Any such lien shall be subject to the lien of any  
7 then existing Leasehold Mortgage authorized by this Ground Lease, including any lien  
8 contemplated because of advances yet to be made. After ninety (90) days following the date of  
9 Lender filing a notice of default and expiration of all applicable cure periods of Tenant under the  
10 terms of the applicable loan documents, the City shall also have the right to assign Tenant's  
11 interest in the Ground Lease to another entity, subject to such Lender's and Permitted Limited  
12 Partner's written consent, but which may be conditioned, among other things, upon the  
13 assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage.

14 **25.04(b) Notice of Default to City**

15 Tenant shall use its best efforts to require Lender to give the City prompt written  
16 notice of any such default or breach and each Leasehold Mortgage shall so provide and shall also  
17 contain the City's right to cure as above set forth.

---

18 **25.05 Cost of Mortgage Loans to be Paid by Tenant**

19 Tenant covenants and affirms that it shall bear all of the costs and expenses in connection  
20 with (i) the preparation and securing of any Leasehold Mortgage, (ii) the delivery of any  
21 instruments and documents and their filing and recording, if required, and (iii) all taxes and  
22 charges payable in connection with any Leasehold Mortgage.



1 **ARTICLE 26: PROTECTION OF LENDER**

2 **26.01 Notification to City**

3 Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the  
4 existence of any of the rights set forth in this Article 26, each Lender shall give written notice to  
5 the City of the Lender's address and of the existence and nature of its Leasehold Mortgage.  
6 Execution of Attachment 3 shall constitute City's acknowledgement of Lender's having given  
7 such notice as is required to obtain the rights and protections of a Lender under this Ground  
8 Lease. The City hereby acknowledges that MUFG Union Bank N.A. has given such notice as  
9 First Mortgage Lender.

10 **26.02 Lender's Rights to Prevent Termination**

11 Each Lender shall have the right, but not the obligation, at any time prior to termination of  
12 this Ground Lease and without payment of any penalty other than the interest on unpaid rent, to  
13 pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to  
14 make any repairs and improvements, to do any other act or thing required of Tenant hereunder,  
15 and to do any act or thing which may be necessary and proper to be done in the performance and  
16 observance of the agreements, covenants and conditions hereof to prevent a termination of this  
17 Ground Lease to the same effect as if the same had been made, done and performed by Tenant  
18 instead of by Lender.

19 **26.03 Lender's Rights When Tenant Defaults**

20 Should any event of default under this Ground Lease occur and be continuing, and not be  
21 cured within the applicable cure period, the City shall not terminate this Ground Lease nor

1 exercise any other remedy hereunder unless it first gives written notice of such event of default to  
2 Lender and

3 (i) If such event of default is a failure to pay a monetary obligation of Tenant (not  
4 including obligations arising from indemnification obligations of Tenant (“Indemnification  
5 Obligations”)), Lender shall have failed to cure such default within sixty (60) days from the date  
6 of written notice from the City to Lender; or

7 (ii) If such event of default is not a failure to pay a monetary obligation of Tenant,  
8 Lender shall have failed, within sixty (60) days of receipt of said written notice, either (a) to  
9 remedy such default; or (b) to obtain title to Tenant's interest in the Site in lieu of foreclosure; or  
10 (c) to commence foreclosure or other appropriate proceedings in the nature thereof (including the  
11 appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in  
12 which case such event of default shall be remedied or deemed remedied in accordance with  
13 Article 26.04 below.

14 All rights of the City to terminate this Ground Lease as the result of the occurrence of any  
15 such event of default shall be subject to, and conditioned upon, the City having first given Lender  
16 written notice of such event of default and Lender having failed to remedy such default or acquire  
17 Tenant's Leasehold Estate created hereby or commence foreclosure or other appropriate  
18 proceedings in the nature thereof as set forth in and within the time specified by this Section  
19 26.03, and upon the Permitted Limited Partners having failed to proceed as permitted under  
20 Sections 19.02(b) or 26.06(iv).

21 **26.04 Default Which Cannot be Remedied by Lender**

1 Any event of default under this Ground Lease which in the nature thereof cannot be  
2 remedied by Lender shall be deemed to be remedied as it pertains to Lender or any Subsequent  
3 Owner if (i) within sixty (60) days after receiving notice from the City setting forth the nature of  
4 such event of default, or prior thereto, Lender shall have acquired Tenant's Leasehold Estate  
5 created hereby or shall have commenced foreclosure or other appropriate proceedings in the  
6 nature thereof, (ii) Lender shall diligently prosecute any such proceedings to completion, (iii)  
7 Lender shall have fully cured any event of default arising from failure to pay or perform any  
8 monetary obligation (other than Indemnification Obligations) in accordance with the terms of this  
9 Ground Lease, and (iv) after gaining possession of the Improvements, Lender shall diligently  
10 proceed to perform all other obligations of Tenant as and when the same are due in accordance  
11 with the terms of this Ground Lease.

12 **26.05 Court Action Preventing Lender's Action**

13 If Lender is prohibited by any process or injunction issued by any court or by reason of  
14 any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving  
15 Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the  
16 nature thereof, the times specified in Sections 26.03 and 26.04 above for commencing or  
17 prosecuting such foreclosure or other proceedings shall be extended for the period of such  
18 prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, the City  
19 agrees to enter into a new ground lease with the Lender on the same terms set forth in this Ground  
20 Lease. For purpose of this Article, if there is more than one Lender, the City will offer the new  
21 lease to each Lender in the order of priority until accepted.

22 **26.06 Lender's Rights to Record, Foreclose and Assign**

1 The City hereby agrees with respect to any Leasehold Mortgage, that:

2 (i) the Lender may cause same to be recorded and enforced, and upon foreclosure, sell  
3 and assign the Leasehold Estate created hereby to an assignee from whom it may accept a  
4 purchase price; subject, however, to Lender's first securing written approval from City, which  
5 approval shall not be unreasonably withheld, and if the Subsequent Owner has elected to maintain  
6 the use restrictions of Article 9, said Subsequent Owner shall be controlled by a California  
7 nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal  
8 Revenue Code such that the Premises receive an exemption from state property taxes as provided  
9 under Section 214 of the California Revenue and Taxation Code (to the extent such exemption is  
10 then generally available). Lender, furthermore, may acquire title to the Leasehold Estate in any  
11 lawful way, and if the Lender shall become the assignee, may sell and assign said Leasehold  
12 Estate subject to City approval, which shall not be unreasonably withheld, and to the City's rights  
13 under Section 25.04;

14 (ii) each Subsequent Owner shall take said Leasehold Estate subject to all of the  
15 provisions of this Ground Lease, and shall, so long as and only so long as it shall be the owner of  
16 such estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of  
17 Tenant under this Ground Lease; provided, however, that, subject to the rent provisions of Section  
18 26.07 below, the Subsequent Owner may operate and maintain the sixty seven (67) Residential  
19 Units without any limitations on the rents charged or the income of the occupants thereof;

20 (iii) the City shall mail or deliver to any Lender which has an outstanding Leasehold  
21 Mortgage a duplicate copy of all notices which the City may from time to time give to Tenant  
22 pursuant to this Ground Lease; and

1 (iv) any Permitted Limited Partners of Tenant shall have the same rights as any Lender  
2 under Sections 26.02, 26.03, and 26.06 (iii), and any reference to a Lender in said section shall be  
3 deemed to include such limited partners; provided, however, that the rights of such limited  
4 partners shall be subordinate to the rights of any Lender.

5 **26.07 Ground Lease Rent after Lender Foreclosure or Assignment**

6 From and after the time that the Subsequent Owner acquires title to the Leasehold Estate,  
7 Annual Rent shall be set as follows:

8 (a) Any accrued Annual Rent at the time of foreclosure shall be forgiven by the City,  
9 and shall not remain an obligation of the Lender, its assignee, or the Subsequent Owner.

10 Subsequent to foreclosure or assignment of the Leasehold Estate to the Lender in lieu of  
11 foreclosure, if the Lender continues to operate the Project subject to the use and occupancy  
12 restrictions of Section 9.02, then Annual Rent otherwise due may, at the option of the Lender, be  
13 deferred until the earlier of the date of the Lender's sale or assignment of the Project to a  
14 Subsequent Owner that does not agree to operate the Project subject to such restrictions or the  
15 date that is sixty (60) days after Lender ceases to operate the Project in accordance with such  
16 restrictions. All deferred Annual Rent shall accrue, with simple interest at six percent (6%) per  
17 annum until paid.

18 (b) If the Subsequent Owner exercises its rights under Section 26.06(ii) to operate the  
19 Project without being subject to Section 9.02, Annual Rent shall be set at the then fair market  
20 rental value taking into account any affordability restrictions agreed to by the Subsequent Owner,  
21 if any, and the Base Rent shall be increased to the new fair market rent pursuant to this Section  
22 26.07(b) and the provisions of Section 6.02(g) shall be suspended; provided, however, that the

1 City shall be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole  
2 discretion and, in such case, the Subsequent Owner will be required to reduce rent charged to  
3 tenants on a dollar for dollar basis, with respect to such aggregate units occupied by Very Low  
4 Income Households as the City and the Subsequent Owner shall agree. The fair market rental  
5 value shall be determined by a jointly-commissioned appraisal (instructions prepared jointly by  
6 the Subsequent Owner and the City, with each party paying one half of the appraiser's fee) that  
7 will include a market land valuation, as well as a market land lease rent level. Absent a market  
8 land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%)  
9 of the then appraised market land value. If the parties cannot agree on the joint appraisal  
10 instructions, either party may invoke a neutral third-party process to set the Annual Rent at fair  
11 market rent in accordance with the then-prevailing practice for resolving similar rent  
12 determination disputes in San Francisco or, in the event that there is no then-prevailing practice,  
13 in accordance with the rules of the American Arbitration Association. Provided, however, that  
14 after the neutral third party process, the Lender, in its sole discretion may rescind its written  
15 notification of intent to not comply with Section 9.02 of this Ground Lease.

16 **26.08 Permitted Uses After Lender Foreclosure**

17 Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent  
18 Owner, the Premises shall be operated in accordance with the uses specified in the building  
19 permit with all addenda, as approved by the City's Department of Building Inspection.

20 **26.09 Preservation of Leasehold Benefits**

21 Until such time as a Lender notifies the City in writing that the obligations of the Tenant  
22 under its loan documents have been satisfied, the City agrees:

1 (a) That the City shall not voluntarily cancel or surrender this Ground Lease, or accept a  
2 voluntary cancellation or surrender of this Ground Lease by Tenant, or materially amend this  
3 Ground Lease to increase the obligations of the Tenant or the rights of the City thereunder,  
4 without the prior written consent of the Lender (which will not be unreasonably withheld or  
5 delayed);

6 (b) That the City shall not enforce against a Lender any waiver or election made by the  
7 Tenant under this Ground Lease without the prior written consent of the Lender (which will not  
8 be unreasonably withheld or delayed);

9 (c) That, if a Lender makes written request for the same within 15 days after Lender  
10 receives written notice of termination of this Ground Lease, the City will enter a new lease with  
11 such Lender commencing on the date of termination of the Ground Lease and ending on the  
12 normal expiration date of the Ground Lease, on substantially the same terms and conditions as the  
13 Ground Lease and subject to the rent provisions set forth in Section 26.07, and with the same  
14 priority as against any subleases or other interests in the Premises; provided that such Lender  
15 cures all unpaid monetary defaults under the Ground Lease, other than Indemnification  
16 Obligations, through the date of such termination;

17 (d) That the City shall provide reasonable prior notice to each Lender of any  
18 proceedings for adjustment or adjudication of any insurance or condemnation claim involving the  
19 Premises and will permit each Lender to participate therein as an interested party.

20 **26.10 No Merger**

1           The Leasehold Estate in the Site pursuant to this Ground Lease shall not merge with the  
2 fee interest in the Site, notwithstanding ownership of the leasehold and the fee by the same  
3 person, without the prior written consent of each Lender.

4           **26.11 City Bankruptcy**

5           (a) If a bankruptcy proceeding is filed by or against the City, the City shall immediately  
6 notify each Lender of such filing and shall deliver a copy of all notices, pleadings, schedules, and  
7 similar materials regarding the bankruptcy proceedings to each Lender.

8           (b) The City acknowledges that (i) the Tenant seeks to construct improvements on the  
9 Premises using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both  
10 the Tenant and the Lenders to sell the Premises free and clear of the leasehold. Therefore, the  
11 City waives its right to sell the City's fee interest in the Premises pursuant to section 363(f) of the  
12 Bankruptcy Code, free and clear of the leasehold interest under this Ground Lease.

13           (c) If a bankruptcy proceeding is filed by or on behalf of the City, the City agrees as  
14 follows: (i) the Tenant shall be presumed to have objected to any attempt by the City to sell the  
15 fee interest free and clear of the leasehold under this Ground Lease; (ii) if Tenant does not so  
16 object, each Lender shall have the right to so object on its own behalf or on behalf of the Tenant;  
17 and (iii) in connection with any such sale, the Tenant shall not be deemed to have received  
18 adequate protection under section 363(e) of the Bankruptcy Code, unless it shall have received  
19 and paid over to each Lender outstanding balance of the obligations under its respective loan.

20           (d) City recognizes that the Lenders are authorized on behalf of the Tenant to vote,  
21 participate in or consent to any bankruptcy, insolvency, receivership or court proceeding  
22 concerning the leasehold interest under this Ground Lease.



1           **26.12 Amendment**

2           From the date of this Ground Lease through the 15-year tax credit compliance period,  
3 neither Article 19, nor Articles 20, 26.02, 26.03, or 26.06 shall be amended without the written  
4 consent of Permitted Limited Partner.

5  
6           **ARTICLE 27: CONDEMNATION AND TAKINGS**

7           **27.01 Parties' Rights and Obligations to be Governed by Agreement**

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

12           **27.02 Total Taking**

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

15           **27.03 Partial Taking**

16           If any portion of the Site is taken by condemnation, this Ground Lease shall remain in  
17 effect, except that Tenant may, with Lender's written consent, which consent shall not be  
18 unreasonably withheld, conditioned or delayed, elect to terminate this Ground Lease if, in  
19 Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable  
20 for Tenant's continued use of the Site. If Tenant elects to terminate this Ground Lease, Tenant  
21 must exercise its right to terminate pursuant to this paragraph by giving notice to the City within  
22 thirty (30) days after the City notifies Tenant of the nature and the extent of the taking. If Tenant



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

#### 8 **27.04 Effect on Rent**

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

#### 13 **27.05 Restoration of Improvements**

14 If there is a partial taking of the Improvements and this Ground Lease remains in full force  
15 and effect pursuant to Section 27.03, Tenant may, subject to the terms of the Leasehold Mortgage,  
16 use the proceeds of the taking to accomplish all necessary restoration to the Improvements.

#### 17 **27.06 Award and Distribution**

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

20 (a) First, to pay the balance due on any outstanding Leasehold Mortgages and other  
21 outstanding or unpaid obligations and/or liabilities, including but not limited to, trade accounts,  
22 taxes, payroll accruals and lease residuals, to the extent provided therein; and

1 (b) Second, to the Tenant in an amount equal to the actual equity invested by the  
2 Tenant.

3 **27.07 Payment to Lenders**

4 In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date  
5 when any compensation resulting from a condemnation or threatened condemnation is to be paid  
6 to Tenant, such award shall be disposed of as provided in the Leasehold Mortgages.

7 **ARTICLE 28: ESTOPPEL CERTIFICATE**

8 The City or Tenant, as the case may be, shall execute, acknowledge and deliver to the  
9 other and/or any Lender or a Permitted Limited Partner, promptly upon request, its certificate  
10 certifying (a) that this Ground Lease is unmodified and in full force and effect (or, if there have  
11 been modifications, that this Ground Lease is in full force and effect, as modified, and stating the  
12 modifications), (b) the dates, if any, to which rent has been paid, (c) whether there are then  
13 existing any charges, offsets or defenses against the enforcement by the City or Tenant to be  
14 performed or observed and, if so, specifying the same, and (d) whether there are then existing any  
15 defaults by Tenant or the City in the performance or observance by Tenant or the City of any  
16 agreement, covenant or condition hereof on the part of Tenant or the City to be performed or  
17 observed and whether any notice has been given to Tenant or the City of any default which has  
18 not been cured and, if so, specifying the same.

19 **ARTICLE 29: QUITCLAIM**

20 Upon expiration or sooner termination of this Ground Lease, Tenant shall surrender the  
21 Site to the City and, at the City's request, shall execute, acknowledge, and deliver to the City a  
22 good and sufficient quitclaim deed with respect to any interest of Tenant in the Site. Title to the

1 Improvements shall be conveyed to the City as provided in Article 13 herein.

2 **ARTICLE 30: EQUAL OPPORTUNITY**

3 In the selection of all contractors and professional consultants for the Project, Tenant must  
4 comply with the City's procurement requirements and procedures as described in the MOHCD  
5 Contracting Manual and with the requirements of Chapter 14B of the San Francisco  
6 Administrative Code ("LBE Ordinance") according to the procedures established by the City's  
7 Human Rights Commission. The Project is subject to the requirements of Section 3 of the Housing  
8 and Community Development Act of 1968 and of the San Francisco Section 3 program. Federal  
9 Section 3 requirements state that contracts and opportunities for job training and employment be  
10 given, to the greatest extent feasible, to local low-income residents. Local residents for this project  
11 are San Francisco residents. In addition, this project will be required to comply with hiring  
12 requirements as incorporated into the local Section 3 program and in conjunction with the City's  
13 low-income hiring requirements pursuant to San Francisco's First Source Hiring Ordinance (San  
14 Francisco Administrative Code Chapter 83). The goals for hiring of Section 3-eligible workers on the  
15 project will be 20% of new hires, moving towards a goal of 20% of total work hours. The Contractor  
16 shall also make a best faith effort to meet these goals.

17 **ARTICLE 31: CERTIFICATE OF PREFERENCE PROGRAM**

18 Tenant agrees to comply with the requirements of the Certificate of Preference Program,  
19 as it may be amended from time to time, and as set forth on Attachment 4.

20 **ARTICLE 32: LABOR STANDARDS PROVISIONS**

21 Although the Parties acknowledge that the development of the Project is a private work of  
22 improvement, Tenant agrees that any person performing labor in the construction of the Project

1 and any Change to the Premises, which Tenant provides under this Ground Lease, shall be paid  
2 not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San  
3 Francisco Administrative Code, shall be subject to the same hours and working conditions, and  
4 shall receive the same benefits as in each case are provided for similar work performed in San  
5 Francisco, California. Tenant shall include in any contract for construction or demolition of the  
6 Project a requirement that all persons performing labor under such contract shall be paid not less  
7 than the highest prevailing rate of wages for the labor so performed. Tenant shall require any  
8 contractor to provide, and shall deliver to City upon request, certified payroll reports with respect  
9 to all persons performing labor in the construction of the Project or any Change to the Premises.

10 **ARTICLE 33: CONFLICT OF INTEREST**

11 No commissioner, official, or employee of the City shall have any personal or financial interest,  
12 direct or indirect, in this Ground Lease, nor shall any such commissioner, official, or employee  
13 participate in any decision relating to this Ground Lease which affects his or her personal interests  
14 or the interests of any corporation, partnership, or association in which he or she is directly or  
15 indirectly interested.

16 **ARTICLE 34: NO PERSONAL LIABILITY**

17 No commissioner, official, or employee of the City shall be personally liable to Tenant or  
18 any successor in interest in the event of any default or breach by the City or for any amount which  
19 may become due to Tenant or its successors or on any obligations under the terms of this Ground  
20 Lease.

21 **ARTICLE 35: ENERGY CONSERVATION**

22 Tenant agrees that it will use its best efforts to maximize provision of, and incorporation

1 of, both energy conservation techniques and systems and improved waste-handling methodology  
2 in the construction of the Improvements.

3 **ARTICLE 36: WAIVER**

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

14 **ARTICLE 37: TENANT RECORDS**

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

1 **ARTICLE 38: NOTICES AND CONSENTS**

2 All notices, demands, consents or approvals which may be or are required to be given by  
3 either party to the other hereunder shall be in writing and shall be deemed to have been fully  
4 given when delivered in person to such representatives of Tenant and the City as shall from time  
5 to time be designated by the parties for the receipt of notices, or when deposited in the United  
6 States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and  
7 addressed

8 if to Tenant at:

9 Mercy Housing California 51, a California Limited  
10 Partnership  
11 1360 Mission Street Suite 300  
12 San Francisco, CA 94103  
13 Attn: Asset Management  
14

15 With a copy to the  
16 Permitted Limited  
17 Partner at:

18 Asset Management  
19 Community Development Finance  
20 MUFG Union Bank, N.A.  
21 200 Pringle Avenue, Suite 355  
22 Walnut Creek, CA 94596  
23  
24

25 if to the City at:

26 San Francisco Mayor's Office of Housing and Community  
27 Development  
28 One South Van Ness Avenue, 5<sup>th</sup> Floor  
29 San Francisco, California 94103  
Attn.: Director

30 or to such other address with respect to either party as that party may from time to time  
31 designate by notice to the other given pursuant to the provisions of this Article 38. Any notice  
32 given pursuant to this Article 38 shall be effective on the date of delivery or the date delivery is



1 refused as shown on the delivery receipt.

2 **ARTICLE 39: HEADINGS**

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

6 **ARTICLE 40: SUCCESSORS AND ASSIGNS**

7 This Ground Lease shall be binding upon and inure to the benefit of the successors and  
8 assigns of the City and Tenant and where the term "Tenant" or "City" is used in this Ground  
9 Lease, it shall mean and include their respective successors and assigns; provided, however, that  
10 the City shall have no obligation under this Ground Lease to, nor shall any benefit of this Ground  
11 Lease accrue to, any unapproved successor or assign of Tenant where City approval of a  
12 successor or assign is required by this Ground Lease. At such time as City sells the Site to any  
13 third party, City shall require such third party to assume all of the City's obligations hereunder  
14 arising on and after the transfer in writing for the benefit Tenant and its successors and assigns.

15 **ARTICLE 41: TIME**

16 Time is of the essence in the enforcement of the terms and conditions of this Ground  
17 Lease.

---

18 **ARTICLE 42: PARTIAL INVALIDITY**

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

22 **ARTICLE 43: APPLICABLE LAW**

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

3 **ARTICLE 44: ATTORNEYS' FEES**

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

7 **ARTICLE 45: EXECUTION IN COUNTERPARTS**

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

11 **ARTICLE 46: RECORDATION OF MEMORANDUM OF GROUND LEASE**

12 This Ground Lease shall not be recorded, but a memorandum of this Ground Lease shall  
13 be recorded in the form attached hereto as Attachment 5. The parties shall execute the  
14 memorandum in form and substance as required by a title insurance company insuring Tenant's  
15 leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive  
16 notice of the Ground Lease to subsequent purchasers and mortgagees.

17 **ARTICLE 47: TRANSFER OF PARTNERSHIP INTERESTS IN TENANT**

18 Neither the transfer of any limited partner of Tenant interests in the Tenant or the admission of a  
19 successor limited partner or partners pursuant to the terms of the Tenant's partnership agreement  
20 shall constitute an event of default under the Ground Lease nor require the City's consent. The  
21 withdrawal or removal of a general partner of the Tenant pursuant to the terms of the Tenant's  
22 partnership agreement shall not require City consent, and shall not constitute a default under the

1 Lease provided that any replacement general partner shall require the prior written consent of the  
2 City which consent shall not be unreasonably withheld, conditioned or delayed.

3 **ARTICLE 48: CITY PROVISIONS**

4 **48.1 Non-Discrimination**

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

14 (b) Subleases and Other Subcontracts. Tenant shall include in all Subleases  
15 and other subcontracts relating to the Premises a non-discrimination clause applicable to such  
16 subtenant or other subcontractor in substantially the form of Subsection (a) above. In addition,  
17 Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of  
18 Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall  
19 require all subtenants and other subcontractors to comply with such provisions. Tenant's failure  
20 to comply with the obligations in this subsection shall constitute a material breach of this Ground  
21 Lease.

1           (c)     Non-Discrimination in Benefits. Tenant does not as of the date of this  
2 Ground Lease and will not during the Term, in any of its operations in San Francisco or with  
3 respect to its operations under this Ground Lease elsewhere within the United States, discriminate  
4 in the provision of bereavement leave, family medical leave, health benefits, membership or  
5 membership discounts, moving expenses, pension and retirement benefits or travel benefits  
6 (collectively “Core Benefits”), as well as any benefits other than Core Benefits, between  
7 employees with domestic partners and employees with spouses, and/or between the domestic  
8 partners and spouses of such employees, where the domestic partnership has been registered with  
9 a governmental entity pursuant to state or local law authorizing such registration, subject to the  
10 conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

11           (d)     Condition to Lease. As a condition to this Ground Lease, Tenant shall  
12 execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” (Form  
13 HRC-12B-101) with supporting documentation and secure the approval of the form by the San  
14 Francisco Human Rights Commission.

15           (e)     Incorporation of Administrative Code Provisions by Reference. The  
16 provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-  
17 discrimination by Parties contracting for the lease of City property are incorporated in this Section  
18 by reference and made a part of this Ground Lease as though fully set forth herein. Tenant shall  
19 comply fully with and be bound by all of the provisions that apply to this Ground Lease under  
20 such Chapters of the Administrative Code, including but not limited to the remedies provided in  
21 such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section  
22 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each

1 calendar day during which such person was discriminated against in violation of the provisions of  
2 this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

3       **48.2 MacBride Principles – Northern Ireland.** The City and County of San Francisco  
4 urges companies doing business in Northern Ireland to move toward resolving employment  
5 inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco  
6 Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San  
7 Francisco companies to do business with corporations that abide by the MacBride Principles.  
8 Tenant acknowledges that it has read and understands the above statement of the City and County  
9 of San Francisco concerning doing business in Northern Ireland.

10       **48.3 Conflicts of Interest.** Tenant states that it is familiar with the provisions of  
11 Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and  
12 Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the  
13 Government Code of the State of California, certifies that it knows of no facts which would  
14 constitute a violation of such provisions and agrees that if Tenant becomes aware of any such fact  
15 during the term of this Lease Tenant shall immediately notify the City. Tenant further certifies  
16 that it has made a complete disclosure to the City of all facts bearing on any possible interests,  
17 direct or indirect, which Tenant believes any officer or employee of the City presently has or will  
18 have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful  
19 failure by Tenant to make such disclosure, if any, shall constitute grounds for City's termination  
20 and cancellation of this Ground Lease.

21       **48.4 Charter Provisions.** This Ground Lease is governed by and subject to the  
22 provisions of the Charter of the City and County of San Francisco. Accordingly, Tenant

1 acknowledges and agrees that no officer or employee of the City has authority to commit the City  
2 to this Ground Lease unless and until an resolution of the City's Board of Supervisors has been  
3 duly enacted approving this Ground Lease. Therefore, any obligations or liabilities of the City  
4 under this Ground Lease are contingent upon enactment of an resolution, and this Ground Lease  
5 will be null and void unless the City's Mayor and the Board of Supervisors approve this Ground  
6 Lease, in their respective sole and absolute discretion, and in accordance with all applicable Laws.  
7 Approval of this Ground Lease by any City department, commission or agency may not be  
8 deemed to imply that an resolution will be enacted or create any binding obligations on the City.

9 **48.5 Tropical Hardwood/Virgin Redwood Ban.** Pursuant to Section 804(b) of the  
10 San Francisco Environment Code, the City and County of San Francisco urges companies not to  
11 import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood  
12 product, virgin redwood or virgin redwood wood product. Except as permitted by the application  
13 of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not use any  
14 items in the rehabilitation, development or operation of the Premises or otherwise in the  
15 performance of this Lease which are tropical hardwoods, tropical hardwood wood products,  
16 virgin redwood or virgin redwood wood products.

17 **48.6 Tobacco Product Advertising Ban.** Tenant acknowledges and agrees that no  
18 advertising of cigarettes or tobacco products may be allowed on the Premises. The foregoing  
19 prohibition will include the placement of the name of a company producing, selling or distributing  
20 cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion  
21 of any event or product, or on any sign. The foregoing prohibition will not apply to any  
22 advertisement sponsored by a state, local or nonprofit entity designed to communicate the health

1 hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop  
2 smoking.

3       **48.7 Pesticide Ordinance.** Tenant shall comply with the provisions of Section 308 of  
4 Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit  
5 the use of certain pesticides on City property, (ii) require the posting of certain notices and the  
6 maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the  
7 City's Department of the Environment an integrated pest management ("IPM") plan that (A) lists,  
8 to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may  
9 need to apply to the Premises during the Term of this Ground Lease, (b) describes the steps  
10 Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide  
11 Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as  
12 the Tenant's primary IPM contact person with City. In addition, Tenant shall comply with the  
13 requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall  
14 prevent Tenant, acting through the City, from seeking a determination from the City's  
15 Commission on the Environment that Tenant is exempt from complying with certain portions of  
16 the Pesticide Ordinance as provided in Section 307 thereof.

17       **48.8 Compliance with City's Sunshine Ordinance.** Tenant understands and agrees  
18 that under the City's Sunshine Ordinance (S.F. Admin. Code, Chapter 67) and the State Public  
19 Records Law (Cal. Gov. Code §§ 6250 et seq.), this Agreement and any and all records,  
20 information and materials submitted to the City hereunder are public records subject to public  
21 disclosure. Tenant hereby authorizes the City to disclose any records, information and materials  
22 submitted to the City in connection with this Ground Lease as required by Law. Further, Tenant

1 specifically agrees to conduct any meeting of its governing board that addresses any matter  
2 relating to the Project or to Tenant's performance under this Ground Lease as a passive meeting.

3 **48.9 Notification of Limitations on Contributions.** Through its execution of this  
4 Ground Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco  
5 Campaign and Governmental Conduct Code, which prohibits any person who contracts with the  
6 City for the selling or leasing any land or building to or from the City whenever such transaction  
7 would require approval by a City elective officer or the board on which that City elective officer  
8 serves, from making any campaign contribution to the officer at any time from the  
9 commencement of negotiations for such contract until the termination of negotiations for such  
10 contract or three (3) months has elapsed from the date the contract is approved by the City  
11 elective officer, or the board on which that City elective officer serves.

12 **48.10 Requiring Health Benefits for Covered Employees.** Unless exempt, Tenant  
13 agrees to comply fully with and be bound by all of the provisions of the Health Care  
14 Accountability Ordinance (the "HCAO"), as set forth in San Francisco Administrative Code  
15 Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be  
16 amended from time to time. The provisions of Chapter 12Q are incorporated in this Ground  
17 Lease by reference and made a part of this Ground Lease as though fully set forth. The text of  
18 the HCAO is available on the web at [www.sfgov.org/oca/lwlh.htm](http://www.sfgov.org/oca/lwlh.htm). Capitalized terms used in this  
19 Section and not defined in this Lease have the meanings assigned to them in Chapter 12Q.  
20 Notwithstanding this requirement, City recognizes that the residential housing component of the  
21 Improvements is not subject to the HCAO.



1 (a) For each Covered Employee, Tenant must provide the appropriate health  
2 benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option,  
3 the health plan must meet the minimum standards set forth by the San Francisco Health  
4 Commission.

5 (b) If Tenant is a small business as defined in Section 12Q.3(d) of the HCAO,  
6 Tenant will have no obligation to comply with Subsection (a) above.

7 (c) Tenant's failure to comply with the HCAO will constitute a material breach  
8 of this Lease. If Tenant fails to cure its breach within thirty (30) days after receiving the City's  
9 written notice of a breach of this Lease for violating the HCAO or, if the breach cannot  
10 reasonably be cured within the 30-day period, Tenant fails to commence efforts to cure within the  
11 30-day period, or thereafter fails diligently to pursue the cure to completion, the City will have the  
12 right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be  
13 exercisable individually or in combination with any other rights or remedies available to the City.

14 (d) Any sublease entered into by Tenant for commercial space in the Project  
15 must require the subtenant to comply with the requirements of the HCAO and must contain  
16 contractual obligations substantially the same as those set forth in this Section. Tenant must  
17 notify the City's Purchasing Department when Tenant enters into a sublease and must certify to  
18 the Purchasing Department that Tenant has notified the subtenant of the obligations under the  
19 HCAO and has imposed the requirements of the HCAO on subtenant through the sublease.  
20 Tenant will be responsible for its subtenants' compliance with this Chapter. If a subtenant fails to  
21 comply, the City may pursue the remedies set forth in this Section against Tenant based on the

1 subtenant's failure to comply, provided that City has first provided Tenant with notice and an  
2 opportunity to obtain a cure of the violation.

3 (e) Tenant may not discharge, reduce in compensation, or otherwise  
4 discriminate against any employee for notifying the City with regard to Tenant's compliance or  
5 anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed  
6 by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or  
7 enforce any rights under the HCAO by any lawful means.

8 (f) Tenant represents and warrants that it is not an entity that was set up, or is  
9 being used, for the purpose of evading the intent of the HCAO.

10 (g) Tenant must keep itself informed of the current requirements of the HCAO.

11 (h) Tenant must provide reports to the City in accordance with any reporting  
12 standards promulgated by the City under the HCAO, including reports on subtenants, as  
13 applicable.

14 (i) Tenant must provide City with access to records pertaining to compliance  
15 with HCAO after receiving a written request from the City to do so and being provided at least  
16 five (5) business days to respond.

17 (j) The City may conduct random audits of Tenant to ascertain its compliance  
18 with HCAO. Tenant agrees to cooperate with the City when it conducts audits.

19 (k) If Tenant is exempt from the HCAO when this Lease is executed because  
20 its amount is less than \$25,000 (\$50,000 for nonprofits), but Tenant later enters into an agreement  
21 or agreements that cause Tenant's aggregate amount of all agreements with the City to reach  
22 \$75,000, all the agreements will be thereafter subject to the HCAO. This obligation arises on the

1 effective date of the agreement that causes the cumulative amount of agreements between Tenant  
2 and MOHCD to be equal to or greater than \$75,000 in the fiscal year.

3           **48.11 Public Access to Meetings and Records.** If Tenant receives a cumulative total  
4 per year of at least \$250,000 in City funds or City-administered funds and is a non-profit  
5 organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant shall  
6 comply with and be bound by all the applicable provisions of that Chapter. By executing this  
7 Ground Lease, Tenant agrees to open its meetings and records to the public in the manner set  
8 forth in Sections 12L.4 and 12L.5 of the Administrative Code. Tenant further agrees to make  
9 good-faith efforts to promote community membership on its Board of Directors in the manner set  
10 forth in Section 12L.6 of the Administrative Code. Tenant acknowledges that its material failure  
11 to comply with any of the provisions of this paragraph shall constitute a material breach of this  
12 Ground Lease. Tenant further acknowledges that such material breach of the Lease shall be  
13 grounds for City to terminate and/or not renew this Ground Lease, partially or in its entirety.

14           **48.12 Resource-Efficient Building Ordinance.** Tenant acknowledges that the City and  
15 County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to  
16 resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby agrees it  
17 shall comply with the applicable provisions of such code sections as such sections may apply to  
18 the Premises.

19           **48.13 Drug Free Work Place.** Tenant acknowledges that pursuant to the Federal Drug-  
20 Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a  
21 controlled substance is prohibited on City premises. Tenant agrees that any violation of this

1 prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Ground  
2 Lease.

3 **48.14 Preservative Treated Wood Containing Arsenic.** Tenant may not purchase  
4 preservative-treated wood products containing arsenic in the performance of this Ground Lease  
5 unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code  
6 is obtained from the Department of the Environment under Section 1304 of the Code. The term  
7 "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that  
8 contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited  
9 to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or  
10 ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood  
11 products on the list of environmentally preferable alternatives prepared and adopted by the  
12 Department of the Environment. This provision does not preclude Tenant from purchasing  
13 preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater  
14 immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities  
15 that are partially or totally immersed in saltwater.

16 **48.15 Nondisclosure of Private Information.** Tenant agrees to comply fully with and  
17 be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the  
18 "Nondisclosure of Private Information Ordinance"), including the remedies provided. The  
19 provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by  
20 reference and made a part of this Agreement as though fully set forth. Capitalized terms used in  
21 this section and not defined in this Agreement shall have the meanings assigned to such terms in

1 the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the  
2 Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

3 (a) Neither Tenant nor any of its subcontractors shall disclose Private  
4 Information, unless one of the following is true:

5 (i) The disclosure is authorized by this Ground Lease;

6 (ii) Tenant received advance written approval from the Contracting  
7 Department to disclose the information; or

8 (iii) The disclosure is required by law or judicial order.

9 (b) Any disclosure or use of Private Information authorized by this Ground  
10 Lease shall be in accordance with any conditions or restrictions stated in this Ground Lease. Any  
11 disclosure or use of Private Information authorized by a Contracting Department shall be in  
12 accordance with any conditions or restrictions stated in the approval.

13 (c) Private Information shall mean any information that: (1) could be used to  
14 identify an individual, including without limitation, name, address, social security number,  
15 medical information, financial information, date and location of birth, and names of relatives; or  
16 (2) the law forbids any person from disclosing.

17 (d) Any failure of Tenant to comply with the Nondisclosure of Private  
18 Information Ordinance shall be a material breach of this Ground Lease. In such an event, in

19 addition to any other remedies available to it under equity or law, City may terminate this Ground  
20 Lease, debar Tenant, or bring a false claim action against Tenant.

21 **48.16 Graffiti.** Graffiti is detrimental to the health, safety and welfare of the community  
22 in that it promotes a perception in the community that the laws protecting public and private

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

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

1 California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual  
2 art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of  
3 Tenant to comply with this section of this Ground Lease shall constitute an event of default of this  
4 Ground Lease.

5 **48.17 Incorporation.** Each and every provision of the San Francisco Administrative  
6 Code described or referenced in this Ground Lease is hereby incorporated by reference as though  
7 fully set forth herein. Failure of Tenant to comply with any provision of this Ground Lease  
8 relating to any such code provision shall be governed by Article 19 of this Ground Lease, unless  
9 (i) such failure is otherwise specifically addressed in this Ground Lease or (ii) such failure is  
10 specifically addressed by the applicable code section.

11 **48.18 Food Service Waste Reduction.** Tenant agrees to comply fully with and be  
12 bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the  
13 San Francisco Environment Code, Chapter 16, including the remedies provided therein, and  
14 implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by  
15 reference and made a part of this Ground Lease as though fully set forth herein. This provision is  
16 a material term of this Ground Lease. By entering into this Ground Lease, Tenant agrees that if it  
17 breaches this provision, City will suffer actual damages that will be impractical or extremely  
18 difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the  
19 sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred  
20 Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred  
21 Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable  
22 estimate of the damage that City will incur based on the violation, established in light of the

1 circumstances existing at the time this Ground Lease was made. Such amounts shall not be  
2 considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's  
3 failure to comply with this provision.

4 **ARTICLE 49: COMPLETE AGREEMENT**

5 There are no oral agreements between Tenant and the City affecting this Ground Lease,  
6 and this Ground Lease supersedes and cancels any and all previous negotiations, arrangements,  
7 agreements and understandings between Tenant and the City with respect to the lease of the Site.

8 **ARTICLE 50: ATTACHMENTS**

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

- 10
- 11 1. Legal Description of Site
  - 12 2. Schedule of Performance
  - 13 3. City Consent of Leasehold Mortgage
  - 14 4. Operational Rules for Certificate Holders' Priority
  - 15 5. Memorandum of Ground Lease
  - 16 6. Income Certification Form
  - 17 7. Section 811 Addendum
- 18
- 19
- 20



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

IN WITNESS WHEREOF, the Tenant and the City have executed this Ground Lease as of

the day and year first above written.

**TENANT:**

**MERCY HOUSING CALIFORNIA 51,  
A California Limited Partnership**

**By: Mercy Housing California Family Properties,  
a California nonprofit public benefit corporation,  
its managing general partner**

**By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_**

**CITY AS LANDLORD:**

**CITY  
AND COUNTY OF SAN FRANCISCO,  
a municipal corporation**

**By: \_\_\_\_\_  
Olson Lee  
Director, Mayor's Office of Housing and Community Development**

**APPROVED AS TO FORM:**

**DENNIS J. HERRERA  
City Attorney**

**By: \_\_\_\_\_  
Evan Gross  
Deputy City Attorney**

1 Authorized by Board of Supervisors Resolution No. \_\_\_\_\_, adopted, 2014

2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

**ATTACHMENT 1**

**Legal Description of the Site**

(1009 Howard Street)

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

Beginning at the point of intersection of the Southwesterly line of Sixth Street and the Southeasterly line of Howard Street; running thence Southwesterly and along said line of Howard Street 80 feet; thence at a right angle Southeasterly 125 feet; thence at a right angle Northeasterly 80 feet to the Southwesterly line of Sixth Street; thence at a right angle Northwesterly along said line of Sixth Street 125 feet to the point of beginning.

Being part of 100 Vara Block No. 395.

**Assessor's Parcel Number: Lot 1, Block 3731**

1  
2  
3  
4  
5  
6

**ATTACHMENT 2**  
**SCHEDULE OF PERFORMANCE**

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
1.			
a.	ENA	complete	<u>complete</u>
b.	Predevelopment Financing Authorization	complete	<u>complete</u>
c.	Article 34 Authority from MOHCD	complete	<u>complete</u>
2.	Site Acquisition (Ground Lease)	10/14	<u>11/14</u>
3.	Development Team Selection		
a.	Architect	complete	<u>complete</u>
b.	General Contractor	complete	<u>complete</u>
c.	Owner's Representative	complete	<u>complete</u>
d.	Property Manager	complete	<u>complete</u>
e.	Service Provider	complete	<u>complete</u>
4.	Design		
a.	Planning/SFRA staff approval of Basic Concept Design	complete	<u>complete</u>
b.	Draft EIR and Schematic Design to Historic Preservation Commission	complete	<u>complete</u>
c.	Submittal of Schematic Design to SFRA	complete	<u>complete</u>
d.	Agency Commission workshop on Schematic Design for comment	complete	<u>complete</u>
e.	Planning Commission approval of Schematic Design	complete	<u>complete</u>
f.	Submittal of SD Cost Estimate	complete	<u>complete</u>
g.	Submittal of Design	complete	<u>complete</u>

	Development & Cost Estimate		
h.	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	complete	<u>complete</u>
5.	Environ Review		
a.	CEQA Environ Review (focused EIR) draft to Planning Commission	complete	<u>complete</u>
b.	NEPA Environ Review Submission	complete	<u>complete</u>
c.	Draft EIR approval by Historic Preservation Commission	complete	<u>complete</u>
d.	Planning Commission certifies Final EIR	complete	<u>complete</u>
6.	Permits		
a.	Building / Site Permit Application Submitted	complete	<u>complete</u>
b.	Addendum #1 Submitted	complete	
c.	Addendum #2 Submitted	complete	
d.	Addendum #3 Submitted	complete	
7.	Request for Bids Issued	complete	<u>complete</u>
8.	Resident Services Plan Submission		
a.	Preliminary (RFP submission)	complete	<u>complete</u>
b.	Final (at Gap Financing Application)	complete	<u>complete</u>
9.	Additional City/SFRA Financing		
a.	Submit preliminary financing plan acceptable to MOHCD	complete	<u>complete</u>
b.	Gap Financing Application	complete	<u>complete</u>
10.	Other Financing		
a.	HCD Application	complete	<u>complete</u>
b.	Construction Financing RFP	complete	<u>complete</u>
c.	AHP Application	complete	<u>complete</u>
d.	TCAC Application	complete	<u>complete</u>

e.	CDLAC Application	complete	<u>complete</u>
f.	Other Financing Application - HUD Section 811 - TOD application	complete complete	<u>complete</u> <u>complete</u>
11.	Closing		
a.	Construction Bank Loan Closing	9/14	<u>10/14</u>
b.	Permanent Financing Closing	8/17	<u>1/18</u>
c.	Ground Lease	9/14	<u>10/14</u>
12.	Construction		
a.	Notice to Proceed from MOHCD/HUD	9/14	<u>10/14</u>
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	10/16	<u>3/17</u>
13.	Marketing/Rent-up		
a.	Marketing Plan Draft Submission to MOHCD	8/15	<u>10/15</u>
b.	Marketing Plan Final approved by MOHCD staff	11/15	<u>3/16</u>
c.	Commercial Marketing Plan Submission	complete	<u>complete</u>
d.	Commercial Marketing Plan Final approved by MOHCD staff	2/14	<u>10/14</u>
e.	Commercial Marketing	06/15	<u>10/15</u>
f.	95% residential Occupancy	12/16	<u>4/17</u>
14.	Cost Certification/8609	12/16	<u>6/17</u>
	TCAC 8609		<u>10/17</u>
15.	Close Out MOHCD Loan(s)	10/16	<u>12/17</u>

1  
2  
3

**ATTACHMENT 3**  
**City Consent of Leasehold Mortgage**

Date:

Mayor's Office of Housing and Community Development of the  
City and County of San Francisco

Attn: Director

One South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103

RE: 200 6<sup>th</sup> Street, San Francisco (LEASEHOLD MORTGAGE)

Dear Sir or Madam:

Pursuant to Section 25.01 of the 200 6th Street Ground Lease, dated \_\_\_\_\_, 2014, between the City and County of San Francisco ("City") and Mercy Housing California 51, a California Limited Partnership, we are formally requesting the City's consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for the City to provide its consent:

Lender: \_\_\_\_\_

Principal Amount: \_\_\_\_\_

Interest: \_\_\_\_\_

Term: \_\_\_\_\_

Attached hereto are unexecuted draft loan documents, including the loan agreement, promissory note, and all associated security agreements which we understand are subject to the review and approval by the City. Furthermore, we are willing to supply any additional documentation related to the leasehold mortgage which the City deems necessary.

Sincerely,

---

Printed Name and Title

enc.

---

By signing this letter, the City consents to the leasehold mortgage, pursuant to the terms and conditions of Section 25.01 of the 200 6<sup>th</sup> Street Ground Lease, dated \_\_\_\_\_, 2014.

Mayor's Office of Housing and Community Development



1  
2  
3  
4  
5

---

Printed Name and Title

1  
2  
3 **ATTACHMENT 4**  
4 OPERATIONAL RULES FOR  
5 RESIDENTIAL CERTIFICATE OF PREFERENCE (COP) HOLDER

6 The Borrower hereby agrees that first preference in occupying units designated for Low Income  
7 Households (Low Income Units) will be given to persons displaced from their homes by  
8 redevelopment activities who have been issued a Residential Certificate of Preference (COP) and  
9 who meet all qualifications for the unit.

10 Low Income Units with other occupancy priorities required by law, contract, or program rules  
11 may apply the COP after other preferences. Preferences required by a former Redevelopment  
12 Project Area Plan are not pre-empted by the COP Program.

13 **Marketing Plan**

14 The Mayor's Office of Housing and Community Development (The City) is the agency  
15 overseeing the marketing process on behalf of the Office of Community Investment and  
16 Infrastructure (OCII). The Borrower agrees to supply The City with a complete and updated  
17 marketing plan at least six months prior to construction completion. This information shall not  
18 be changed without providing The City with fourteen (14) calendar days' written notice.

19 **Outreach to Certificate Holders**

20 The City shall furnish the following:

- 21 •Written and/or printed notices to COP holders advising them that units will soon be  
22 available. COP mailings are at the cost of the Borrower.
- 23 •Assistance to qualified tenants in filing COP applications or referral to an appropriate  
24 housing counseling organization

25 The Borrower agrees to:

- 26 •During the application period, conduct at least one general informational meeting for all  
27 persons interested in applying for occupancy in the development, at which the Borrower  
28 shall review application procedures.
- 29 •Specifically for COP holders, make support services staff available to provide assistance  
30 throughout the application process, as it may be needed, with the goal of maximizing  
31 COP participation to the extent possible. The Borrower shall ensure that COP holders are  
32 aware that such assistance is available.

33 **Application**

34 A. The Borrower agrees to ask the following questions on all applications for occupancy:

- 35 1. "Have you been displaced from your home or residence by the San Francisco  
36 Redevelopment Agency?"

37 The address from which displacement occurred shall be requested, but not required, if the  
38 applicant answers affirmatively to either question.

39 **Pre-Lottery Application Status Reports**

40 The Borrower agrees to supply The City with the names, addresses, and certificate numbers  
41 (when available) of applicants who indicate they are eligible for COP priority status. A status  
42 report with this information will be provided, at a minimum, every seven (7) calendar days from

1 the initial date applications are accepted. The City will, in turn, verify within fourteen (14)  
2 calendar days which such applicants are qualified as COP holders.  
3 If material supplied in any application by a COP holder indicates ineligibility on its face because  
4 of the Borrower's rules and regulations, such applicant will be notified in writing within seven  
5 (7) calendar days, with a copy to The City. The status report to The City shall reflect that the  
6 application has been closed and shall indicate the reason for rejection.  
7 After the application period has closed, and prior to lottery proceedings, a non-prioritized list of  
8 all interested applicants will be provided to The City. The list shall include applicant names,  
9 addresses, phone numbers, and whether the applicant holds a COP certificate.

### 10 **Lottery**

11 Borrowers shall ensure that all COP holders receive first priority for occupancy, except in cases  
12 where approved and documented occupancy priorities preempt the COP preferences.

13 The Borrower shall hold a public lottery to select renters. Applicants who submit a complete  
14 application by the application deadline receive a numbered lottery ticket whose twin ticket is  
15 entered into the lottery. Upon pre-approval from The City, lotteries may also be conducted using  
16 names of applicants. Lotteries are held in a public, accessible location. Applicants are invited to  
17 attend lotteries, but attendance is not mandatory.

18 To conduct the lottery, The City and/or the Borrower shall pull application tickets from a vessel  
19 and order and record the lottery results in rank order by application ticket number. When using  
20 names, Borrower shall pre-enter all applicant names onto individual name cards. Names shall be  
21 pulled from a vessel in rank order. There should be separate lotteries held for each preference.  
22 First, COP holders will be drawn and ranked, followed by applicants from the general  
23 population. Electronic lotteries are not allowed.

24 The Borrower should use a large computer or projector screen or hand printed flip chart sheets to  
25 display all numbers/names drawn and the sequenced lottery number assigned for each preference  
26 lottery and the general lottery. This can be done by listing all applicants in separate columns  
27 under each preference category.

28 The Borrower should record each name card/number ticket assigned a lottery number onto a  
29 computer master list as well as a hand printed paper list for double checking.

30 Results will remain projected on a screen or posted flip chart paper throughout the lottery  
31 drawing process for the public to view and record results.

32 The Borrower shall record the order of lottery numbers/names drawn and produce a final lottery  
33 list for each preference and for the general lottery. Once the lottery preferences have been  
34 confirmed and applied, applicants shall be notified of their position in the lottery.

---

### 35 **Post-Lottery Status Report**

36 Within seven (7) business days of any lottery the Borrower shall supply The City with the lottery  
37 results including the rank order of each applicant and a record of COP holders.

38 Thereafter, at least every seven (7) calendar days following any lottery or upon initiating leaseup,  
39 the Borrower shall supply The City with a "status report" listing names, addresses, and  
40 certificate numbers (when available) of COP holders indicating the status of each application as  
41 of that date until all Low Income Units are leased. If ineligibility is determined, the applicant will  
42 be notified in writing within one week after such determination is made, with a copy to The City.

1 These applicants will also appear on the status report.

2 **Response Deadline**

3 Applicants who have been accepted and notified in writing by the Borrower shall have at least  
4 ten (10) calendar days thereafter to enter into a lease agreement. If the applicant fails to  
5 affirmatively respond, the application may be closed, making that unit available to the next  
6 eligible tenant. Written notice shall be provided to applicants whose applications are closed after  
7 10 days due to a lack of response. Rejection of the unit by a COP holder and closed applications  
8 must be shown on the status report to The City.

9 **Final Documentation**

10 Within fourteen (14) calendar days after execution of a lease, the Borrower shall supply The City  
11 with a copy of the following for all COP tenants:

- 12  signed copy of lease
- 13  copy of complete application
- 14  a demographic report on all COP applicants

15 **Re-rental of Low Income Units**

16 Upon re-rental of any Low Income Unit or when re-opening the project waitlist to new  
17 applicants, the Borrower shall notify The City in advance of any vacancy or waitlist opportunity.  
18 In no event shall The City be notified fewer than thirty (30) days before the date of re-occupancy  
19 for a vacant unit. In no event shall The City be notified fewer than thirty (30) days before a  
20 closed waitlist is re-opened for new applications. Violation of the thirty (30) day notification  
21 requirement may delay re-occupancy.

22 Appeals, response deadline, application forms, and final documentation requirements listed  
23 above shall apply to all re-rentals.

24 *Waitlists*

25 Borrowers filling unit vacancies off a waitlist must accept applications from approved COP  
26 holders at any time, regardless of whether the waitlist is closed to other applicants. If a COP  
27 holder is found eligible for a Low Income Unit in the building, they shall be placed at the top of  
28 the waitlist.

29 No more than seven (7) calendar days following the date that any new applications are accepted  
30 for a waitlist, the Borrower shall supply The City with a status report listing names, addresses  
31 and certificate numbers (when available) of COP holders indicating the status of each application  
32 as of that date and the reason for any rejections.

33 The City will, in turn, verify within seven (7) calendar days which such applicants are qualified  
34 as COP holders.

35 On an annual basis and each time a new waitlist is established, The City shall be provided with a  
36 complete list of all applicant names, rank on the waitlist, and whether they hold a COP upon  
37 finalization of the waitlist.

38 *Lotteries*

39 Borrowers that fill unit vacancies using a lottery process must adhere to the procedures  
40 pertaining to lotteries and status reports for new and vacant buildings.

41 *Other Re-rental Processes*

42 Borrowers that fill unit vacancies using some other process than an established waitlist or a

1  
2  
3

lottery, such as those who use a first-come first-served method, must consult The City prior to beginning the lease up process. This will ensure a fair, transparent process that adheres to the required COP priorities.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

**ATTACHMENT 5**

Form of Memorandum of Lease

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, Fifth Floor  
San Francisco, California 94103  
Attn: Director

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into as of \_\_\_\_\_, 2013, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through the Mayor's Office Of Housing and Community Development ("City"), and MERCY HOUSING CALIFORNIA 51, A California Limited Partnership ("Tenant"), with respect to that certain Ground Lease (the "Lease") dated \_\_\_\_\_, 2014, between City and Tenant.

Pursuant to the Lease, City hereby leases to Tenant and Tenant leases from City the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Lease shall commence on the date set forth above and shall end on the date which is 75 years from the date set forth above, unless terminated earlier or extended pursuant to the terms of the Lease.

It is the intent of the parties to the Lease that the Lease shall create a constructive notice of severance of the Improvements (as defined in the Lease), without the necessity of a deed from Lessor to Lessee, which Improvements are and shall remain real property.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

This Memorandum may be signed by the parties hereto in counterparts with the same

1 effect as if the signatures to each counterpart were upon a single instrument. All counterparts  
2 shall be deemed an original of this Memorandum.

3  
4  
5 Executed as of \_\_\_\_\_, 2014 in San Francisco, California.

6  
7  
8 TENANT:

9  
10 MERCY HOUSING CALIFORNIA 51,  
11 a California Limited Partnership.

12  
13 By: Mercy Housing California Family Properties,  
14 a California nonprofit public benefit corporation,  
15 its managing general partner

16  
17 By: \_\_\_\_\_  
18 Name: \_\_\_\_\_  
19 Title: \_\_\_\_\_

20  
21  
22 CITY:  
23 CITY AND COUNTY OF SAN FRANCISCO,  
24 a municipal corporation

25  
26  
27 By: \_\_\_\_\_  
28 Olson Lee  
29 Director, Mayor's Office of Housing and Community Development

30  
31  
32 APPROVED AS TO FORM:  
33  
34 DENNIS J. HERRERA, City Attorney

35  
36  
37 By: \_\_\_\_\_  
38 Evan Gross  
39 Deputy City Attorney

40





1  
2  
3  
4  
5  
6

ATTACHMENT 6  
FORM OF TENANT INCOME CERTIFICATION



ATTACHMENT 7

Section 811 Addendum

Notwithstanding any other provisions of this lease, if and so long as this leasehold is subject to a Section 811 Mortgage held by the Secretary of Housing and Urban Development (HUD), or given to the Secretary of HUD in connection with a resale, or the demised premises are acquired and held by him because of a default under said mortgage:

(1) The Tenant is authorized to obtain, directly or indirectly, a Section 811 Capital Advance from the Secretary of HUD, secured by a mortgage on this leasehold estate. Tenant is further authorized to execute a mortgage on the leasehold and otherwise to comply with the requirements of HUD for obtaining a mortgage, directly or by assignment.

(2) The Secretary of HUD, or his successors in office, shall have the option in the event that he or his successor in office shall acquire title to the leasehold estate, to purchase good and marketable fee title to the demised premises, free of all liens and encumbrances except such as may be waived or accepted by him or his successor in office, within twelve (12) months after so acquiring the leasehold estate, for the sum of \$ \_\_\_\_\_ payable in cash or by certified or U.S. Treasury check, provided all rents are paid to date of transfer of title, upon first giving sixty (60) days written notice to the Landlord or other person or corporation who may then be the owner of the fee, and the owner of the fee shall thereupon execute and deliver to the Secretary, or his successor in office, a deed of conveyance to the demised premises, containing a covenant against the grantor's acts, but excepting therefrom such acts of the Tenant and those claiming by through or under the holder of the leasehold estate. ~~Nothing in this option shall require the~~ Landlord to pay any taxes or assessments which were due and payable by the Tenant.

(3) If approved by the Secretary of HUD, Tenant may assign, transfer or sell its interest in the demised premises.

(4) (a) Insurance policies shall be in an amount, and by such companies, and in such form, and against such risks and

1 hazards, as shall be required by the mortgagee and/or the  
2 Secretary of HUD.

3  
4 (b) The Landlord shall not take out separate insurance  
5 concurrent in form or contributing in the event of loss with that  
6 specifically required to be furnished by the Tenant to HUD. The  
7 Landlord may at its own expense, however, take out separate  
8 insurance which is not concurrent in form or not contributing in  
9 the event of loss with that specifically required to be.

10  
11 (5) (a) If all or any part of the demised premises shall  
12 be taken by condemnation that portion of any award attributable  
13 to the improvements, or damage to the improvements, shall be paid  
14 to the mortgagee or otherwise disposed of as may be provided in  
15 the mortgage. Any portion of the award attributable solely to  
16 the taking of the land shall be paid to the Landlord. After the  
17 date of taking, the annual ground rent shall be reduced ratably  
18 by the proportion which the award paid to the Landlord bears to the  
19 total value of the land as established by the amount the  
20 Secretary of Housing and Urban Development would be required to  
21 pay upon acquisition of the fee.

22  
23 (b) In the event of a negotiated sale of all or any  
24 portion of the demised premises in lieu of condemnation, the  
25 proceeds shall be distributed and ground rents reduced as  
26 provided in cases of condemnation, but the approval of the  
27 Secretary of HUD shall be required as to the amount and division  
28 of the payment to be received.

29  
30 (6) The Landlord agrees that, within ten (10) days after  
31 receipt of written request from the Tenant, it will join in any  
32 authorizations required by any governmental or other body  
33 claiming jurisdiction in connection with any work which the  
34 Tenant may do hereunder, and will also join in any grants for  
35 easements for electric, telephone, gas, water, sewer and such  
36 other public utilities and facilities as may be reasonably  
37 necessary in the operation of the demised premises or of any  
38 improvements that may be erected thereon, and if at the  
39 expiration of such ten (10) day's period, the Landlord shall not  
40 have joined in any such application, or grants for easements, the  
41 Tenant shall have the right to execute such application and  
42 grants in the name of the Landlord, and, for that purpose, the

1 Landlord hereby irrevocably appoints the Tenant as its  
2 Attorney-in-fact to execute such papers on behalf of the Landlord.  
3  
4

5 (7) Nothing in this lease contained shall require the  
6 Tenant to pay any franchise, estate, inheritance, succession,  
7 capital levy or transfer tax, or any other tax, assessment,  
8 charge or levy upon the rent payable by the Landlord under this  
9 lease.  
10

11 (8) Upon any default under this lease which authorizes the  
12 cancellation thereof by the Landlord, Landlord shall give notice to  
13 the secretary of HUD, and the Secretary of HUD, his successors  
14 and assigns, shall have the right any time within six (6) months  
15 from the date of such notice to correct the default and reinstate  
16 the lease unless Landlord has first terminated the lease as  
17 provided herein.  
18

19 At any time after two (2) months from the date a notice of  
20 default is given to the Secretary of HUD, the Landlord may elect to  
21 terminate the lease and acquire possession of the demised  
22 premises. Upon acquiring possession of the demised premises,  
23 Landlord shall notify the Secretary. The Secretary shall have six  
24 (6) months from the date of such notice of acquisition to elect  
25 to take a new lease on the demised premises. Such new lease  
26 shall have a term equal to the unexpired portion of the term of  
27 this lease and shall be on the same terms and conditions as  
28 contained in this lease, except that the Secretary's liability  
29 for ground rent shall not extend beyond his occupancy under such  
30 lease. The Landlord shall tender such new lease to the secretary  
31 within thirty (30) days after a request for such lease and shall  
32 deliver possession of the demised immediately upon execution of  
33 the new lease. Upon executing a new lease, the Secretary shall  
34 pay to Landlord any unpaid ground rentals due or that would have  
35 become due under this lease to the date of execution of the new  
36 lease, including any taxes which were liens on demised premises  
37 and which were paid by Landlord, less any net rentals or other  
38 income which Landlord may have received on account of this property  
39 since the date of default under the lease.  
40

41 (9) All notices, demands and requests which are required to  
42 be given by the Landlord, the Tenant, or the Secretary shall be in

1 writing and shall be sent by registered or certified mail,  
2 postage prepaid, and addressed to: \_\_\_\_\_ (Insert Field Office \_\_\_\_\_  
3 Address) \_\_\_\_\_  
4 \_\_\_\_\_

5 unless a request for a change in this address has been sent to  
6 the party giving the notice by registered or certified mail prior  
7 to the time when such notice is given.

8  
9 (10) This lease shall not be modified without the consent of  
10 the Secretary of Housing and Urban Development.  
11  
12  
13



**SAN FRANCISCO REDEVELOPMENT AGENCY**

**Housing Development  
Request For Proposals**

To develop and operate affordable,  
family rental housing at:

**200 Sixth Street**

(Southwest corner of Howard and Sixth Streets,  
formerly the Hugo Hotel)

**Assessor's Parcel Number: Block 3731, Lot 001**

**South of Market Redevelopment Project Area**

**Deadline for Submission:**

**4 p.m., Thursday, July 29, 2010**

**Issued by:**

**San Francisco Redevelopment Agency  
One South Van Ness Avenue, Fifth Floor  
San Francisco, CA 94103**

**Contact: Jeff White  
Email: [jeff.white@sfgov.org](mailto:jeff.white@sfgov.org)  
Phone: (415)749-2429  
Fax: (415)749-2590**

# TABLE OF CONTENTS

<b>SECTION I. SUMMARY</b>	<b>1</b>
<b>SECTION II. IMPORTANT DATES &amp; SUBMISSION PROCESS</b>	<b>3</b>
A. Important Dates	3
B. Pre-Submission Meeting	3
C. Questions and Requests for Additional Information	4
D. Registration and Fee for RFP Packet Required	4
E. Submission Time, Place, Date, and Contact	4
<b>SECTION III. BACKGROUND</b>	<b>4</b>
A. Project Overview	4
B. The Site	6
C. Soil Conditions	6
<b>SECTION IV. DEVELOPMENT PROGRAM COMPONENTS</b>	<b>7</b>
A. Housing Development Concept	7
B. Affordability Restrictions and Financing Plan	8
C. Occupancy Preferences and Resident Selection	9
D. Resident Services	10
E. Property Management/Maintenance Oversight	10
F. Land Use Restrictions	10
G. Design and Construction	11
H. Community Outreach	13
<b>SECTION V. SELECTION PROCESS AND CRITERIA</b>	<b>13</b>
A. Selection Process	13
B. Selection Criteria	14
<b>SECTION VI. SUBMISSION REQUIREMENTS</b>	<b>14</b>
<hr/>	
A. Development Concept and Financing Proposal	15
B. Applicant Description	16
C. Developer Experience & Capacity	17
D. Architect's Experience & Capacity	18
E. Property Management Experience	18
F. Resident Services Provider Experience	18
G. Other Required Information	18
<b>SECTION VII. ADDITIONAL REQUIREMENTS</b>	<b>20</b>
A. Nondiscrimination in Contracts and Benefits	20



B.	Small Business Enterprise Program	20
C.	Construction Workforce Requirements	20
D.	Permanent Workforce Policy	21
E.	Minimum Compensation Policy	21
F.	Health Care Accountability Policy	21
G.	Prevailing Wages	21
H.	Certification Regarding Insurance & Indemnification	22
I.	Other Information, Forms and Attachments	23
<b>SECTION VIII. AGENCY PAYMENTS &amp; FEES</b>		<b>23</b>
A.	RFP Fee & Offer Deposit	23
B.	Performance Deposit (Selected Applicant Only)	23
C.	City Fees (Selected Applicant Only)	23
<b>SECTION IX. ADDITIONAL TERMS AND CONDITIONS</b>		<b>23</b>
A.	Selected Applicant Team's Responsibility	23
B.	Applicant's Duty of Loyalty	24
C.	Agency Non-Responsibility	24
D.	Geotechnical Investigations	24
E.	Environmental Review Approvals	24
F.	Accessibility Requirements	24
G.	Applicant's Expenses	25
H.	Agency Right to Modify or Suspend RFP	25
I.	Claims Against the Agency	26
<b>LIST OF ATTACHMENTS</b>		

## **SECTION I. SUMMARY**

The Redevelopment Agency of the City and County of San Francisco (the "Agency" or "SFRA") is seeking proposals from qualified applicants to develop, own, and operate affordable, family rental housing at 200 Sixth Street at Howard Street (the "Project") in the South of Market Redevelopment Project Area ("Project Area"). The Agency seeks a Project that maximizes the number of housing units, maximizes the amount of ground floor commercial space, maximizes the Project's financial feasibility, and provides excellent architectural design. An applicant ("Applicant") is defined as a team comprised of only the following: a non-profit or for-profit developer ("Developer"), property manager, and an architect (all other consultants will be selected in accordance with the Agency's Small Business Enterprise Program). The subject of this Request for Proposal ("RFP") is 200-214 Sixth Street (Assessor's Parcel Number 3731, Lot 001), located at the southwest corner of Howard Street and Sixth Street (the "Site").

In order to ensure an expedited development process, the selected Applicant must possess the qualifications and experience to implement a financially sound development plan, incorporate sustainable building strategies, achieve a quality design with amenities that enhance unit livability, and construct and manage the housing units. This RFP describes the development opportunity, the proposal process, and the Applicant selection process in detail.

The Project will be affordable to households earning up to a maximum of 50% area median income (as defined by San Francisco Mayor's Office of Housing). The Project should include one, two and three bedroom units. Community space and laundry facilities appropriate to a family rental development should be incorporated into the development. The ground floor of the development must include storefront space, residential lobby, on-grade off-street parking wrapped by active spaces that front Howard Street and Sixth Street, and a driveway to the parking. The storefront spaces should anticipate uses that activate the street, such as neighborhood serving retail, and that are in compliance with the Site's zoning (see Section IV.F.)

Unique attributes of the Site should be given special consideration. The Site is located at a highly visible intersection and the Site's redevelopment is a key component of the Agency's efforts to revitalize the Project Area. The Site is 9,997 square feet of land area with an existing 32,408 square feet vacant, four-story building, formerly known as the Hugo Hotel (the "Hugo"). The building has been unoccupied and abandoned for more than 20 years. The Site was acquired in November 2009 by the Agency. The South of Market Project Area Committee (the "SOMPAC") will be consulted at various times during the Applicant selection, design and construction process. This is the first RFP published for this Site.

The Site is within the proposed Sixth Street Lodginghouse District ("District") survey area, which is expected to be adopted by the Historic Preservation Commission ("HPC") in late Spring, 2010. The existing building will have to be evaluated through an environmental impact review process as a potential historic resource (please see Section III.A. and Section IV.A. and G. for further information on this issue).

A site-specific, temporary, sculptural mural known as Defenestration was installed on the building's exterior in 1997. The Agency has a Permit to Enter Agreement with the artist to maintain and ensure the public safety of the installation. The agreement maintains the artwork as

property of the artist, and requires the removal of the installation prior to the Project's construction.

The Agency seeks designs that meet the following criteria:

- Maximizing the number of family rental units based on the unit mix described in Section IV.A.
- Maximizing building envelop pursuant to the form-based zoning applicable to the Site.
- Maximizing financial feasibility and economies of scale, including minimizing Agency subsidy per unit.
- Maximizing livability of the units, including maximizing light and air in the living spaces.

Projects that best achieve the Agency's criteria for the Site will be considered most favorably. Prior to construction of the new Project, the Developer must comply with the California Environmental Quality Act ("CEQA") guidelines in anticipation of the Site's redevelopment.

The Agency requires the incorporation of "green" elements in design and construction to maximize the overall sustainability and durability for the Project. Development concepts are to include, at a minimum, standards as specified in the City of San Francisco, Department of Building Inspection, Administrative Bulletin No. AB-093 (the "Bulletin"). In addition, the Agency also requires that all of the major building systems be "commissioned" by an approved third party commissioning agent upon completion of the construction phase of the project. The commissioning agent must also provide a follow-up report on actual building performance no earlier than the end of the first year of operation, but no later than 18 months after completion of the construction phase.

Agency staff will recommend an Applicant for the Agency Commission's consideration. Staff's recommendation will be based on the Applicant's proposed development concept as well as demonstrated successful experience on relevant and comparable projects. **The Agency may, in its sole discretion, disqualify any Developer and/or Architect or Other Personnel if they have any uncured defaults on any Agency agreement within the last five (5) years.**

Applicants are advised that the Agency is committed to vigorous equal opportunity employment and the payment of prevailing wages. Upon selection of an Applicant, the Agency will seek to enter into an exclusive negotiation agreement with the selected Developer that will lead to a long term ground lease for the Site and other related development documents.

## SECTION II. IMPORTANT DATES & SUBMISSION PROCESS

### A. Important Dates

Proposals are due by 4:00 p.m., Thursday, July 29, 2010

1. ISSUE DATE: RFP available at the Agency <sup>1</sup> (\$50.00 registration fee required)	May 27, 2010
2. Pre-Submission Meeting at the Agency at 1 S. Van Ness Ave, 5 <sup>th</sup> Floor	12:00 p.m. June 17, 2010
3. Deadline for written questions / requests for additional information	July 1, 2010
4. PROPOSAL SUBMISSION DEADLINE	4:00 p.m. July 29, 2010
5. Notification to Developer Teams who failed to meet minimum submission requirements	August 19, 2010
6. Developer Team interviews	August 26, 2010 <sup>2</sup>
7. Proposals Evaluated & Ranked	Week of August 30, 2010 <sup>2</sup>
8. Presentation of Panel's Selection to South of Market Project Area Committee	September or October, 2010 <sup>2</sup>
9. Agency Commission consideration of Exclusive Negotiations Agreement and Predevelopment Loan	TBD <sup>2</sup>

### B. Pre-Submission Meeting

A pre-submission meeting will be held at the Agency, located at the 1 S. Van Ness Avenue, 5<sup>th</sup> Floor, on the date and time shown above, in Section II.A. The purpose of the meeting is to ensure that all teams understand the programmatic design and financing information that is

<sup>1</sup> Packets are available for pickup as of this date.

<sup>2</sup> These dates and times are proposed, and are subject to change.

required. Professional services related contracting and employment goals will be discussed during the meeting. Although attendance is not mandatory, it is highly recommended.

**C. Questions and Requests for Additional Information**

Please submit all questions and information requests to the attention of the contact person listed on the cover page of this RFP. All questions and requests for additional information regarding this RFP must be received **in writing** by the Agency (via messenger, mail, fax, or e-mail) -- *on or before* --the time and date as shown above, in Section II.A. Questions received after the deadline may not be answered. All responses and additional information will be distributed to all registered RFP holders and made available on the Agency's website. The Agency reserves the right, in its sole discretion, to determine the timing and content of the response, if any, to all questions and requests for additional information. In addition, the Agency may respond via messenger, fax, or e-mail.

**D. Registration and Fee for RFP Packet Required**

Responses to this RFP will be accepted only from those Applicants who have registered with the Agency by completing the RFP Registration Form and paid a non-refundable registration fee of **Fifty Dollars (\$50.00)** at the time the RFP is obtained. RFP packets will be available on and following the issue date listed in Section II.A., above, at the offices of the San Francisco Redevelopment Agency, One South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103. The RFP may also be viewed and downloaded online in PDF format, **however, an RFP Registration Form and registration fee must be submitted prior to the Agency's acceptance of the RFP.**

**E. Submission Time, Place, Date, and Contact**

**One original plus six (6) copies of the proposal must be received by the Agency receptionist no later than:**

**Thursday, July 29, 2010 at 4:00 p.m.**

**San Francisco Redevelopment Agency  
One South Van Ness Avenue, Fifth Floor  
San Francisco, California 94103  
Attn: Jeff White**

**SECTION III. BACKGROUND**

**A. Project Overview**

**South of Market Redevelopment Project Area**

The Site for the proposed Project is located the South of Market Redevelopment Project Area. This Section III provides background information on the Project Area. Section IV provides detailed information on the development program components to be incorporated into the Project. The Agency's website at [www.sfdevelopment.org/index.aspx?page=63](http://www.sfdevelopment.org/index.aspx?page=63) provides direct

links to the following documents that should be reviewed and considered as Applicants prepare submissions:

- Boundary Map
- Redevelopment Plan
- South of Market Owner Participation Rules - Adopted on October 5, 2005
- South of Market Delegation Agreement
- Sixth Street Design Guidelines

The South of Market Redevelopment Project Area, created in 1990 as the South of Market Earthquake Recovery Redevelopment Project Area, was originally adopted to repair damage caused by the 1989 Loma Prieta Earthquake. The original Earthquake Recovery Redevelopment Plan was amended and converted into a full Redevelopment Plan in 2005. Since 1990, the Agency has been able to: 1) provide earthquake recovery assistance to residents and businesses; 2) improve housing opportunities by funding the construction or rehabilitation of more than 1,400 new affordable housing units; 3) fund the construction on Sixth Street of new, widened sidewalks with new street trees and street lights, which were completed in February 2006; 4) since 2002, provide façade and tenant improvement loans to property owners and neighborhood-serving businesses on Sixth Street and provide street cleaning services for Sixth Street; 5) support community nonprofits that provide health care and other services that contribute to the cultural identity of the area; and 6) implement Project Area-wide alleyway improvements to enhance livability along those spaces.

The Project Area is approximately 70 acres in size and located in the central city area of San Francisco. The Project Area is roughly bounded by Stevenson, Mission and Natoma Streets in the north, Fifth Street in the east, Harrison Street in the south and Seventh Street in the west. Its focus is the Sixth Street corridor, a mixed-use community located between Market and Harrison Streets and characterized by a prevalence of older residential and commercial buildings, including many single-room occupancy (SRO) hotels, several commercial and light industrial uses, and a large number of vacant ground-floor spaces. The remainder of the Project Area consists mainly of a combination of older residential and commercial buildings, as well as the new Bessie Carmichael School and the proposed location of the new Victoria Manalo Draves Park.

#### Development Controls

The Site is subject to the Planning Code of the City and County of San Francisco, and pursuant to a Delegation Agreement dated July 3, 2006, the Agency is delegating to the Planning Department of City and County of San Francisco (the "Planning Department") the administration of the Planning Code. The Site is located within a larger area of San Francisco known as the Eastern Neighborhoods. In 2008, the Planning Code was amended and zoning changes were adopted. The Planning Department will administer the Planning Code, and the administration of the CEQA mitigation requirements. See Section IV. F, Land Use Restrictions for further details.

#### Project Area Committee

The SOMPAC advises the Agency on matters heard by the Agency Commission, including selection of an Applicant, Schematic Design proposals, and requests for Agency financing in the Project Area. Agency staff will arrange for the selected Applicant to present their RFP proposal for the Project to the SOMPAC prior to Commission action.

## California Environmental Quality Act

Pursuant to the Delegation Agreement, the Planning Department will administer the CEQA requirements. Prior to construction of the new Project, the Developer must comply with CEQA guidelines for completing environmental review of the proposed Project. This may include the completion and certification of an Environmental Impact Report ("EIR"). The EIR would be prepared in conformance with the *Consultant Guidelines for the Preparation of Environmental Review Documents* (Planning Department, September 11, 2008) under the direction of Planning Department and Agency environmental review staff. Following completion of an Initial Study, the scope of the EIR may be focused on select environmental effect topics, such as historical resources and transportation.

During the Project's predevelopment phase, the selected Developer would be responsible for contracting with an environmental consultant and for incorporating the time necessary for completion and certification of the EIR into the development schedule. Environmental consultants shall be selected from the Planning Department's list of pre-qualified environmental consultants. The environmental consultant will prepare an Environmental Evaluation ("EE") application for the Planning Department. Following submission of the EE application to the Planning Department, the EIR consultant will prepare the Initial Study, then the EIR. The list of environmental consultants and the *Consultant Guidelines* can be found at <http://www.sf-planning.org/index.aspx?page=1886>. Although the Consultant Guidelines are draft, consultants are directed to use the guidelines in this form.

### **B. The Site**

The Site is located at the southwest corner of Howard and Sixth Streets. The Site is flat, rectangular shaped, and has approximately 125 feet of frontage along Sixth Street and 80 feet of frontage along Howard Street. Based on the City's tax records, the Site is 9,997 square feet; however, this measurement is not based on a current survey. If the Site measures 10,000 square feet or more, a conditional use permit will be required for the Project. It is improved with a vacant mixed-use, four-story building and currently has the street addresses of 200-214 Sixth Street. The building improvements contain approximately 32,408 square feet (excluding basement). **Attachment #19** provides a site map.

The Agency owns a fee simple interest in the Site; it was acquired in November 2009 by the Agency through an eminent domain action. At the time construction commences, the Agency ~~anticipates entering into a long term ground lease with the Developer or a Developer controlled~~ partnership so that the Agency will retain fee simple interest in the land. The Site will be ground leased in "as-is" condition. The existing building on the Site was constructed in approximately 1909, and has been unoccupied and abandoned since 1987.

### **C. Soil Conditions**

Soil conditions at the Site are unknown. During the predevelopment phase, the Developer will need to contract for both Phase I and Phase II site assessments. The Agency does not have any reports available on soil conditions.

## **SECTION IV. DEVELOPMENT PROGRAM COMPONENTS**

### **A. Housing Development Concept**

As previously stated, the Agency's development goal for the Site is constructing the maximum number of rental units for very low- and low-income families in the Project, maximizing the amount of ground floor commercial space, maximizing the Project's financial feasibility, and providing excellent architectural design. Units will be affordable to households earning up to a maximum of 50% area median income (as defined by San Francisco Mayor's Office of Housing ("MOH")). The Project units should include a unit mix of one, two and three-bedroom units. Based on recent affordable housing demand in the South of Market area, the number of one-bedroom units must be approximately 30% of the total number units, the number of two-bedrooms must be approximately 40% of the total number of units, and the number of three-bedroom units must be approximately 30% of the total number of units.

The Agency seeks to create units that exceed the minimum unit sizes established by the State of California's Tax Credit Allocation Committee ("TCAC"); low income housing tax credits are expected to be a funding source for the Project. The TCAC minimums are: 500 square feet for a one-bedroom, 750 square feet for a two-bedroom, and 1,000 square feet for a three-bedroom. Proposals should exceed these minimums. The Agency is currently reviewing its policy on unit size and may require that the selected developer modify the size of the units at a future time. For the Project, Applicants' proposals should exceed the following unit size minimums:

- 550 square feet for one-bedroom units
- 800 square feet for two-bedroom units
- 1000 square feet for three-bedroom units

Given the size of the Project and its population, a 24-hour desk clerk coverage should not be incorporated and would not be financially feasible. Services should be designed to serve the prospective resident families. A multi-purpose community room with a kitchen should be included and will be utilized for both building-wide resident meetings as well as any resident programming, as needed. The community room should not be located in groundfloor space that fronts Sixth Street or Howard Street.

The ground floor of the development must include storefront space, residential lobby, parking at grade wrapped by the storefront space/residential lobby that front Howard Street and Sixth Street, and a driveway to the parking. ~~The storefront spaces should anticipate uses that activate the street, such as neighborhood serving retail, and that are in compliance with the Site's zoning (see Section IV.F.) Neighborhood serving retail uses are preferred.~~ Proposals should reflect the Applicant's thorough consideration of the storefront spaces of the Project to ensure the success of those spaces. Proposals should respond in sufficient detail regarding retail space design, marketing and leasing, tenant selection, property management, and be consistent with the Policy on the Inclusion and Funding of Commercial Space in MOH/SFRA-Funded Housing Developments (**Attachment #23**). As this Policy limits the use of Agency affordable housing funds for commercial tenant improvements, Applicants may assume in their proposals that Agency funding of \$400,000 of economic development grant/forgivable loan funds are available so that fully built-out retail tenant improvements are provided for tenants leasing the space.



Consistent with the applicable zoning, off-street parking for resident should be provided at a ratio of no more than .5 spaces per unit, and may be less. Parking should not be less than .25 spaces per unit. A car share pod should be considered but is not required.

In addition to design goals already stated, the Agency seeks designs that meet the following criteria:

- Maximizing the number of family rental units based on the unit mix described above.
- Maximizing building envelop pursuant to the form-based zoning applicable to the Site.
- Maximizing financial feasibility and economies of scale, including minimizing Agency subsidy per unit.
- Maximizing livability of the units, including maximizing light and air in the living spaces.

The Site is within the proposed Sixth Street Lodginghouse District (“District”) survey area. The survey area is expected to be adopted by the Historic Preservation Commission (“HPC”) in late Spring, 2010. The existing building will have to be evaluated through an environmental impact review process as a potential historic resource (see Section III.A. and Section IV.G. for further descriptions). The HPC will later make a finding of compatibility of the Project’s proposed design with this historic survey area. In determining whether or not the proposed Project is compatible with the contributory buildings of the District, many architectural styles may be considered compatible; the design does not necessarily need to replicate the design of the contributory buildings. Proposals that best meet the Agency’s criteria and goals mentioned above will be more favorably considered.

The Applicant should determine the optimal construction type for the Site to meet the programming and design requirements of this RFP.

The Agency may elect to include Housing Opportunities for People with AIDS (“HOPWA”) housing units during the development process. However, for the purposes of this RFP, proposals should assume there are no HOPWA units.

Please refer to Section IV.F. below for a summary of applicable land use restrictions. The Agency reserves the right to select a Applicant and require significant redesign. The Agency further reserves the right to change the scope of the development program and/or require changes to the building design and unit configuration as it deems appropriate.

---

## **B. Affordability Restrictions and Financing Plan**

The Agency’s goal is that 200 Sixth Street remains permanently affordable. To ensure this outcome, the Agency will transfer site control to the selected developer through a long-term ground lease (with an initial term of 75 years and an option to extend 24 years, for a total of 99 years). The Agency acquired the Site with tax exempt bond proceeds and the Developer may need to work with one of the Agency’s bond counsel to ensure compliance with the Tax Code.

Developers should submit, as further described in Section VI.A.2-6, a financial plan that demonstrates project feasibility. Limited Agency resources may be available to assist in the development of the Project; however, the Developer will be expected to aggressively pursue non-Agency sources of development financing. Proposals will be evaluated, in part, based on the

level of Agency subsidy required and the extent to which these funds are leveraged to obtain non-Agency sources. Developers must account for all costs of development, including environmental regulations compliance; utility connections and site work; demolition, grading and shoring; and all permitting and applicable City or other fees. To provide this information, Applicants should submit a detailed Sources & Uses budget that includes the following:

- Primary capital funding sources. Those sources could include: 4% low income housing tax credits with tax-exempt bonds, State housing programs funds as available (e.g. Multifamily Housing Program funds, Transit Oriented Development Program), Federal Home Loan Bank Affordable Housing Program funds, Agency subsidy, and any other funding Developers deem applicable.
- Rents set at the following affordability levels:  
100% of the units with rents set not to exceed 50% of the unadjusted Area Median Income (“AMI”) for the U.S. Department of Housing and Urban Development Metro Fair Market Rent Area (“HMFA”) that contains San Francisco as established by MOH. See **Attachment #21** for current applicable income limits. The income limits may also be found online at: [www.sfgov.org/site/moh\\_page.asp?id=62377](http://www.sfgov.org/site/moh_page.asp?id=62377). The 50% MOH AMI for 2009 is \$48,400 for a family of four. Depending on funding sources the Applicant proposes, rents may be tiered and be less than 50% AMI.
- An operating budget that includes all expenses necessary to properly operate and maintain the building with staffing and other assumptions noted.
- Construction type to be determined by the Applicant, and a construction commencement date of January 2013.
- A 75-year initial term ground lease agreement (with an option to extend to a total of 99 years) with the Agency for the Site. Applicants may assume a \$1 base land lease payment, and should be considered as and part of the Project’s “above the line” operating expenses.

All proposed financing will be subject to underwriting using the most current version of the Agency/City underwriting guidelines, as posted on the Mayor’s Office of Housing website [www.sfgov.org/site/moh\\_index.asp?id=101258](http://www.sfgov.org/site/moh_index.asp?id=101258). All Applicants should use these guidelines in preparing their financing plans.

---

### **C. Occupancy Preferences and Resident Selection**

During the development process the Agency will require a detailed Marketing Plan that will define occupancy preferences and resident selection. Consistent with Agency policy, the Developer will be required to give first preference in resident selection to “Agency Certificate of Preference Holders” (residents of redevelopment project areas who have been certified by the Agency to have been displaced by Agency action). Second preference will be given to residents of San Francisco. Applying preferences to a geographic area smaller than the City and County of San Francisco may limit funding sources for the Project because such preferences may favor certain groups, which may violate Fair Housing law.

The Developer’s established screening requirements must meet these preference requirements, and final selection will lie with the Developer. Any authorized residency preference shall be

permitted only to the extent that such preference: (a) does not have the purpose or effect of delaying or otherwise denying access to a housing development or unit based on race, color, ethnic origin, gender, religion, disability, age, sexual orientation, or other protected characteristic of any member of an applicant household; and (b) is not based on how long an applicant has resided or worked in the area. Agency staff will work with the selected developer teams to resolve potential occupancy conflicts and determine additional occupancy preferences and marketing requirements. Agency staff will work with the selected Developer to ensure adherence to Agency occupancy preferences and marketing requirements. If more applicants apply than the number of units available, the Developer shall conduct a lottery.

The Agency requires Developers to broadly advertise availability of new affordable units, as well as provide notice through public meetings and mailings. The Agency assists Developers in notifying holders of an Agency Certificate of Preference (Certificate Holders) and others on the Agency's mailing list of those interested in rental opportunities.

**D. Resident Services**

Appropriate onsite services and associated service space should be incorporated into the development. Services should be designed to serve the prospective resident families. No separate subsidy will be made available for services; the cost of services should be incorporated into the operating budget and may include costs of up to one full-time employee.

**E. Property Management/Maintenance Oversight**

Applicants must provide information regarding proposed property management team's experience – including previous work with family rental housing. Please see Submission Requirements, Section VI.E. below. The property management firm is expected to provide sound operational and building management, and willing to meet with residents, along with the Developer, at regularly scheduled tenant meetings.

**F. Land Use Restrictions**

The Site is subject to the land use controls of the Planning Code of the City and County of San Francisco and administered by the Planning Department of the City and County of San Francisco. Below is a summary of the Planning Code. However, **the Applicant should not rely on this summary and the Applicant should make its own independent review and interpretation of the Planning Code as it applies to the Site.**

	<b>Current Zoning per San Francisco Municipal Code</b>
<b>Use District</b>	<i>Applicable Zoning District:</i> SoMa NCT (Neighborhood Commercial Transit) District and the SoMa Youth and Family Special Use District.
<b>Permitted Uses</b>	SoMa NCT has a pattern of ground floor commercial and upper story residential units. Controls are designed to permit moderate-scale buildings and uses, protecting rear yards above the ground story and at residential levels. Active, neighborhood-serving commercial development is required at the ground story, curb cuts are prohibited along Sixth Street at the Site, and ground floor transparency and fenestration adds to the activation of the ground story. A curb cut along Sixth Street at the Site would require a variance. (See Planning Code Section 735.1)  The SoMa Youth and Family Special Use District is intended to expand the provisions of affordable housing in the area. This zoning is intended to protect and enhance the health and environment of youth and families by adopting policies that focus on certain lower density areas of this District for the expansion of affordable housing opportunities.

	Nonresidential uses allowed: Permitted up to 3,999 sq. ft; Conditional 4,000 sq. ft. and above. The use area shall be measured as the gross floor area for each individual nonresidential use.
<b>Density</b>	No residential density limit by lot area. Density is restricted by physical envelope controls of height, bulk, setbacks, open space, exposure and other applicable controls of this and other Codes.  No less than 40 percent of the total number of dwelling units on site shall contain at least two bedrooms. Any fraction resulting from this calculation shall be rounded to the nearest whole number of dwelling units.
<b>FAR</b>	For Commercial uses: 2.5:1 (the above floor area ratio limits shall not apply to dwellings or to other residential uses)
<b>Height/ Bulk</b>	85-X (no Bulk controls)
<b>Rear Yards</b>	Rear yards shall be provided at the lowest story containing a dwelling unit, and at each succeeding level or story of the building (see Sect. 134.e.2 for further requirements for Corner Lots). 25% of lot area with a minimum 25 foot horizontal dimension
<b>Open space</b>	Generally, either 80 sq. ft. per unit, if private.  Where common usable open space is used to satisfy all or part of the requirement for a dwelling unit, such common usable open space shall be provided in an amount equal to 1.33 square feet for each one square foot of private usable open space specified (80 x 1.33).
<b>Off-Street Parking</b>	Residential parking is not required and generally limited. Permitted up to 0.5 for each dwelling unit; Conditional up to 0.75 per unit. Not permitted above 0.75 cars for each unit. (Subject to criteria of 151.1(f))  Commercial establishments are discouraged or prohibited from building accessory off-street parking. There are prohibitions on access (i.e. driveways, garage entries) to off-street parking and loading on critical stretches of NC and transit streets. (See Section 151.1 for further non-residential off-street parking requirements).
<b>Off-Street Loading</b>	For Commercial: none required if gross floor area is less than 10,000 sq. ft.

The requirements include, but are not limited to, the following categories: density, open space, height/bulk, parking, off-street loading, bicycle parking, rear yards, setbacks, street trees, signage, and utilities. Developers are responsible for ensuring that their proposal complies with all applicable design development requirements, as described below.

### **G. Design and Construction**

The Agency seeks to maximize the number of residential units in the Project while maximizing the Project's financial feasibility. The Agency requires excellent architectural design and physical acknowledgement, through the highest design and construction standards, of the Site's location in a high density and mixed-use neighborhood. The design should maximize the livability of the residential units, including maximizing light and air in the living spaces. In addition, the design should provide for safe access to and from the Site for loading operations and off-street parking. As mentioned previously, the Project will serve as at a key intersection in the Project area along Sixth Street and is a key component of the Project Area goals to continue the revitalization of the retail and residential uses along the Sixth Street corridor.

The design of the Project should also be compatible with the contributory buildings of the proposed Sixth Street Lodginghouse District ("District") survey area. The survey area is expected to be adopted by the Historic Preservation Commission ("HPC") in late Spring, 2010. The HPC will later make a finding of compatibility of the Project's proposed design with this historic survey area. The resource evaluation document written by Anne Bloomfield is dated August 1, 1997, and surveys the Sixth Street Lodginghouse District (provided as **Attachment #6**). On the evaluation document, the Site is shown as "214 Sixth, Hayston Apartments". In

determining whether or not the proposed Project is compatible with the contributory buildings of the District, many architectural styles may be considered compatible; the design does not necessarily need to replicate the design of the contributory buildings.

*Ground Floor.* The ground floor of the development must include storefront space, a residential lobby, parking wrapped by the spaces that front Howard Street and Sixth Street, and a driveway to access the parking. The storefront spaces should anticipate uses that activate the street, such as neighborhood serving retail, and that are in compliance with uses allowed by the Site's zoning. The community room for the Project should not be located in the storefront space.

Proposals should reflect the Applicant's thorough consideration of the ground floor uses of the Project to ensure the success of those spaces. The design of the ground floor space should seek to maximize overall transparency through the use of transparent window materials at the street level. There should be no dark, mirrored glass, opaque window displays or other treatment that reduces visibility between the interior and the sidewalk. The design of the ground floor space should also be consistent with the Sixth Street Design Guidelines, at: [www.sfdevelopment.org/index.aspx?page=63#design](http://www.sfdevelopment.org/index.aspx?page=63#design). The overall objectives of the Guidelines are to enhance the visual environment, to improve pedestrian safety, to promote economic development and attract greater investment to the area, and to complement public streetscape improvements including new street lights and trees. Preference will be given to designs that wrap ground floor parking with active uses along Howard Street and Sixth Street so that parking is not visible from the street other than the garage driveway.

The design should be in compliance with applicable Land Use Regulations as described in Section IV. F.

The Agency has a collaborative design review process in which the Applicant should be prepared to work closely with Agency staff, the Planning Department staff, and the community to design a project that contributes significantly to the larger South of Market community.

The Agency encourages Developers coming in with a non-Small Business Enterprise ("SBE") architect to consider a joint venture with an Agency-certified SBE architect. In order for the SBE component of the joint venture to be recognized, the SBE must meet a 35 percent threshold for the architectural scope of work to be performed. Otherwise, the joint venture shall not be recognized as an SBE. Furthermore, and in the interest of increasing the variety of designs and expanding the number of architecture firms among Agency sponsored projects, the Agency strongly encourages Developers to consider experienced architecture firms that may have not worked directly on an Agency sponsored project in the past.

#### **Green Design Guidelines:**

The Agency requires the incorporation of "green" elements in design and construction to maximize the overall sustainability and durability for the Project. Development concepts are to include, at a minimum, standards as specified in the City of San Francisco, Department of Building Inspection, Administrative Bulletin No. AB-093 (the "Bulletin"). Pursuant to this Bulletin, the Developer may use either the Green Point Rated Program ([www.builditgreen.org/greenpoint-rated](http://www.builditgreen.org/greenpoint-rated)) or the Leadership in Energy Efficient Design ("LEED") rating system. If the Developer chooses the Green Point Rated Program, the Agency requires a

Green Point score of at least 100 points. Developers are encouraged to apply for the Enterprise Foundation's Green Communities Grant. Information on this program can be found at: [www.greencommunitiesonline.org/tools/criteria/index.asp](http://www.greencommunitiesonline.org/tools/criteria/index.asp). If the Developer is awarded the Green Communities Grant, then the Developer will also need to comply with the Green Communities guidelines.

In addition, the Agency also requires that all of the major building systems be "commissioned" by an approved third party commissioning agent upon completion of the construction phase of the project. The commissioning agent must also provide a follow-up report on actual building performance no earlier than the end of the first year of operation, but no later than 18 months after completion of the construction phase.

## **H. Community Outreach**

It is critical to the success of the development program that the selected Developer conduct extensive community outreach and establish positive links with surrounding neighbors and the larger community. This RFP has been developed with the participation of the SOMPAC, an advisory body, comprised of residents, business owners, and community organizations in the Project Area, which advises the Redevelopment Agency on all matters which affect the Project Area. The SOMPAC advises the Agency on matters heard by the Agency Commission, including selection of an Applicant, Schematic Design proposal, and requests for Agency financing for the Project.

## **SECTION V. SELECTION PROCESS AND CRITERIA**

### **A. Selection Process**

1. Proposals will be accepted at the Agency's offices only until the date and time shown in Sections II.A. and E.
2. Proposals must be complete with an original plus six (6) hard copies to be considered. No submissions received by facsimile or electronic mail will be considered. The Applicant is solely responsible for ensuring that all information requested in Section VI, Submission Requirements, is submitted.
3. Agency staff will contact references.
4. Applicants who have provided Proposals that meet the requirements of this RFP will be interviewed. Interviews are scheduled to be held on the date(s) shown in Section II. A. These dates are subject to change. All Applicants should advise Agency staff of availability on these days. Interviews will be held at the San Francisco Redevelopment Agency located at One South Van Ness Avenue in San Francisco on the fifth floor.
5. Further information or written material regarding qualifications or proposals may be requested prior to or following interviews.

6. Agency staff will make a recommendation to the Agency Commission based on evaluation of the Proposals, interviews, and reference checks.
7. The Agency Commission will approve selection of the successful Applicant.

**B. Selection Criteria**

The selection of the Applicant will be based on the strength of the proposed development concept as well as the Applicant team members' experience as described below:

<u>POINTS</u>		<u>CRITERIA</u>
<b>45</b>		<b>Proposed Development Concept</b>
	20	Proposed Massing Concept: strength and constructability of proposed massing concept, consistency with design criteria in this RFP, number of units, conformance with the Redevelopment Plan, compatibility with Sixth Street Lodginghouse District survey area.
	20	Financial Feasibility & Level of Agency Subsidy
	5	Proposed concept for ground floor uses
<b>55</b>		<b>Developer Team Experience and Capacity</b>
	15	Developer experience in developing affordable housing <i>comparable</i> to the housing proposed in this RFP, including performance on other Agency or MOH sponsored projects.
	5	Developer experience with government assisted affordable housing programs and financing sources and/or "green" housing, including performance on other Agency or MOH sponsored projects.
	5	Developer Workload Capacity
	20	Architect experience & capacity, including "green" housing.
	10	Property Manager experience & capacity
<b>100</b>	<b>100</b>	<b>Total Points</b>

**SECTION VI. SUBMISSION REQUIREMENTS**

The Applicant must submit **one original, plus six (6) copies** of the proposal containing the information requested in this RFP.

Applicants are encouraged to provide the requested information in the order indicated below, to include a table of contents, and to index the proposal.

The proposal should be submitted to the Agency, on or before the time, date and at the place shown above in Section II. E. **Hand delivery is advised.** Late, incomplete, emailed or faxed proposals will **not** be considered.

**A. Development Concept and Financing Proposal**

Using standard estimating techniques, and clearly describing all important assumptions, provide the following documents:

1. **Narrative:**  
Submit a narrative of no more than three (3) pages describing the proposed project.
2. **Sources & Uses Pro-Forma:**  
Submit a construction and permanent sources and uses pro forma. The pro forma should be in approximately the same format as the California Tax Credit Allocation Committee's ("CTCAC") Development Budget. (See **Attachment #22** for reference purposes. Developers may add or delete line items to the CTCAC pro forma as necessary to provide the most complete and accurate financial information possible.) For purposes of evaluation and ranking of proposals, developers are asked to leave out any commercial space income or expense projections in the pro forma (See #6, below). The retail/commercial shell space may be included in the project cost, consistent with the Agency's Policy on the Inclusion and Funding of Commercial Space in MOH/SFRA-Funded Housing Developments, however Applicants should clearly note their assumptions on these costs.
3. **Financing Plan:**  
Submit a financing plan that is consistent with the Development Program Components as described in Section IV.
4. **Operating Budget:**  
Submit an operating budget with detailed income and expense projections which tie to the Cash Flow projection. Submit a detail narrative of all operating budget assumptions, including proposed staffing.
5. **Cash Flow:**  
Submit a 30-year cash flow projection.
6. **Commercial Pro-Forma:**  
Submit a separate commercial operating budget and cash flow analysis, and include a narrative of all lease-up and operating assumptions.
7. **Resident Services Plan:**  
Submit a description of planned resident services of no more than one (1) page that is consistent with the resident services as described in Section IV.D. Any resident services expenses should be incorporated to the operating budget as described in Section VI.A.4.
8. **Massing Concept**
  - a. **Narrative:** Provide a narrative description of the design concept including the Applicant's approach and the description of construction type, building materials, and green building strategies.



- b. Drawings: Provide the following drawings in black and white (color may be used only to differentiate program areas from one another and shall not be used to depict material finishes):
- i. Site Plan: at 1/32" = 1'-0" showing building massing and the relationship of buildings, open space, streets and parking areas. Indicate locations of community space, main residential entrance and lobby, housing layout, elevator, auto ingress/egress, etc.
  - ii. Sections: Two site sections at 1/32" = 1'-0", one longitudinal and one transverse, that best describe the massing concept.
  - iii. Floor Plans: Plans of all floors at 1/32" = 1'-0", showing proposed uses. Floor plans should indicate the number of bedrooms per unit, but not show unit layouts or detail layouts of any of the uses except for parking.
  - iv. Building Elevations: All Elevations at 1/32" = 1'-0'.
  - v. Building Perspectives: Three perspectives at 1/32" = 1'-0', at eye level:
    - i. from diagonally across the intersection of Sixth Street and Howard Street
    - ii. from Sixth Street, approach from the north, approximately from the middle of Sixth Street
    - iii. from Howard Street, approach from the west, approximately from the middle of Howard Street

➤ **NOTE**: The intent of the drawings is not to develop an architectural design for the Site, but to illustrate unit mix and the massing implications of the proposed development program. Applicants are required to submit only their proposed architecture massing concept in their proposal according to the criteria below.

**No other drawings, renderings, elevations, or models of any kind are required or will be accepted at the time of proposal. Proposals in excess of the required materials shall be returned and will not be eligible for any payments pursuant to Section IX.G.2. Furthermore, Applicants are prohibited from presenting any additional drawings, renderings, elevations or models in excess of the accepted submission at community meetings, interviews, or Commission meetings.**

## B. Applicant Description

1. Applicant Description Form:  
Complete Attachment #1, Applicant Description Form.
2. Résumés:  
Submit résumés for all persons identified on the Applicant Description Form.

3. **Organizational Documents:**

Submit a current copy of the following documents. NOTE: If Applicant is a joint venture or partnership of multiple Developer entities, EACH Developer entity must submit the following:

- a. Certificate of good standing from California Secretary of State. (Please note that the Certificate must bear the official State of California seal and that web screen prints from the Secretary of State of California website are not acceptable).
- b. Certification of 501(c)(3) status from the Internal Revenue Service (if applicable, for any nonprofit corporations).
- c. Certification of 501(c)(3) status from the California Franchise Tax Board (if applicable, for any nonprofit corporations).
- d. The latest two (2) years of either:
  - i. signed federal income tax returns (including schedules or attachments, if any);  
or
  - ii. audited financial statements (with management letters, if any).

C. **Developer Experience & Capacity**

1. **Developer's Experience in Comparable Projects**

- a. Project Details: Complete **Attachment #3**, the Comparable Projects Experience Form. Developers should use this chart to convey their experience in up to a maximum of three (3) projects completed within the past five (5) years by the Developer(s), preferably in San Francisco, that are comparable to the proposed project. For purposes of this RFP, a comparable project would be affordable family rental housing of similar construction type and density. Preferably those projects would have a comparable level of services. Photos of projects may be included, but are not required.
- b. Community Outreach Narrative: Provide a narrative of no more than three (3) pages describing how the Developer successfully conducted community outreach prior to construction commencement for the projects listed on **Attachment #3**, the Comparable Projects Experience Form.

2. **Developer's Experience in Other San Francisco Projects**

Complete **Attachment #4**, the San Francisco Projects Experience Form. Developers should use this chart to convey their experience in any other projects developed within San Francisco only. Photos of projects may be included, but are not required.

3. **Developer's Workload Capacity**

Complete **Attachment #2**, the Staffing Workload Form. All "Key Personnel" of the Developer must complete this form.

**D. Architect's Experience & Capacity**

**1. Architects Experience in Comparable Projects:**

a. Project Descriptions: Describe at least one, but no more than three (3), completed comparable developments preferably in, but not limited to San Francisco, including dates completed and client contact information for each. For purposes of this RFP, a comparable project would be affordable family rental housing of similar construction type and density. Preferably those projects would have a comparable level of services. (If the Architect was not the sole architect, please describe the Architect's role in the project).

b. Photos: Submit three (3) photos of the interiors and exteriors of the comparable projects listed above, to display architectural design features, relationships of buildings and relationships with adjacent uses (other developments, streets, etc).

**2. Architect's "Green" Experience:**

Describe green building design experience and evidence of current Green Point Rated professionals, if any.

**3. Architect's Project Experience Outside San Francisco:**

Describe experience with up to three (3) other relevant projects located outside San Francisco, if any.

**4. Architect's Experience with Local Regulatory Agencies:**

Describe experience working with the San Francisco Mayor's Office on Disability and the Department of Building Inspection, if any.

**5. Architect's Workload Capacity:**

Complete Attachment #2, the Staffing Workload Form.

**E. Property Management Experience**

Complete Attachment #5, the Property Management Experience Form.

---

**F. Resident Services Provider Experience**

Provide a written narrative (no more than one (1) page) describing how the Developer plans to meet residents needs of the target population.

**G. Other Required Information**

**1. Disclosure Questions**

Each Developer Entity, as defined in Section A of Attachment #1, Applicant Description Form, shall complete and submit Attachment #7, the Disclosure Questions. These questions are designed to identify any potential conflicts of interest and/or liability issues. A summary of Government Code Section 87103 containing the relevant portion of the Fair Political Practices Act is included as a footnote on the Disclosure Form for

reference. **\*Failure to include a complete, signed certification will disqualify the proposal.**

2. **Statement of Compliance with Agency Policies**

The Developer must agree to comply with all of the Agency's policies, including but not limited to, Nondiscrimination in Contracts and Benefits, Minimum Compensation Policy, Health Care Accountability Policy, SBE Policy, Construction Workforce requirements, and insurance indemnification requirements found in this RFP and shall execute a statement of compliance certifying the same, included as **Attachment #8**. **\*Failure to include a complete, signed certification will disqualify the proposal.**

3. **Offer to Negotiate Exclusively**

a. *Form:* The Applicant shall complete and submit **Attachment #9**, Offer to Negotiate Exclusively. The person signing this form must have the authority to bind the entire Applicant Team. **\*Failure to include a complete, signed Offer to Negotiate will disqualify the proposal.**

b. *Deposit:* The Applicant shall submit an "Offer to Negotiate Exclusively Deposit" in the amount of **One Thousand Dollars (\$1,000)** ("**Deposit**") made payable to the Agency as part of the proposal. This payment shall be refunded to all Applicants not selected by the Agency Commission to enter into exclusive negotiations. (It shall also be refunded in the event an Applicant selected by the Agency Commission does not obtain Agency Commission approval for development of the project.) **\*Failure to include a valid "Offer to Negotiate Exclusively Deposit" will disqualify the proposal.**

4. **Submission Checklist**

The Applicant must complete and submit **Attachment #10** Submission Checklist, certifying that all items on the Checklist are contained in the Proposal.

**THIS IS THE END OF THE SUBMISSION REQUIREMENTS SECTION.  
ALL INFORMATION REQUESTED ABOVE IN SECTION VI MUST BE SUBMITTED  
IN ORDER FOR A PROPOSAL TO BE DEEMED COMPLETE.  
APPLICANTS SCORES MAY BE NEGATIVELY IMPACTED BY ANY INCOMPLETE  
INFORMATION.**

## **SECTION VII. ADDITIONAL REQUIREMENTS** *(for Recommended Applicant Only)*

After the evaluation panel's interviews and presentation to the South of Market Project Area Committee, the recommended Applicant shall then be required to submit the following additional information *prior to Agency Commission consideration.*

### **DO NOT SUBMIT THESE FORMS WITH THE INITIAL PROPOSAL.**

#### **A. Nondiscrimination in Contracts and Benefits**

The Developer shall complete and submit Attachment #11, the Declaration of Nondiscrimination in Contracts and Benefits. The Agency has established a policy prohibiting discrimination in contracting, which includes a prohibition on discrimination in providing benefits between employees with spouses and employees with domestic partners. For further information, see instructions contained in Attachment #11 or contact Kimberly Wilson with the Agency's Contract Compliance Department at 415-749-2425.

#### **B. Small Business Enterprise Program**

The Developer shall complete and submit Attachment #12, the Small Business Enterprise ("SBE") Agreement, to staff upon request after the interview process. The Agency requires the Developer to perform extensive good faith efforts to include Agency certified SBEs. The Agency has established a goal of 50% of all construction contracts and supplier agreements to be awarded to SBEs. The Agency has established a policy where first consideration will be given in awarding contracts in the following order: (1) Project and Survey Area SBEs, (2) Local SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) all other SBEs (outside of San Francisco). Non-local SBEs should be used to satisfy participation goals only if Project and Survey Area SBEs or Local SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-local SBEs. For further information, see Attachment #12 or contact Kimberly Wilson with the Agency's Contract Compliance Department at 415-749-2425.

#### **C. Construction Workforce Requirements**

The Developer agrees and will require each contractor and all subcontractors to use its good faith efforts to employ 50% of its construction workforce hires by trade and by hours from qualified SOM Project Area residents, then San Francisco residents with first consideration to other redevelopment project area residents. The Developer and contractors will be deemed in compliance with this Employment and Contracting Policy by meeting or exceeding the goal or by taking the following steps in good faith towards compliance. See Attachment #13.

#### **D. Permanent Workforce Policy**

The Developer agrees and will require each employer to use its good faith efforts to employ 50% of its permanent / temporary workforce from qualified SOM Project Area residents and then San Francisco residents with first consideration to other redevelopment project area residents. The Developer and employers will be deemed in compliance with this Employment and Contracting

Policy by meeting or exceeding the goal or by documenting the good faith efforts as set forth in the Agreement. See Attachment #14.

**E. Minimum Compensation Policy**

The Applicant (defined throughout this RFP as the Developer, the property manager, the architect, and the service provider) shall complete and submit Attachment #15, the Agency’s Minimum Compensation Policy (“MCP”) Declaration. The MCP requires the payment of a minimum level of compensation to employees for all consultants working on Agency funded projects.

**F. Health Care Accountability Policy**

The Applicant shall complete and submit Attachment #16, the Health Care Accountability Policy (“HCAP”) Declaration. The HCAP requires that contractors offer certain health plan benefits to their employees or participate in a health benefits program developed by the City’s Department of Public Health, or make a payment in lieu of such benefits to the City’s Department of Public Health.

**G. Prevailing Wages**

The successful Developer, General Contractor and their subcontractors will comply with the Agency’s Prevailing Wage Policy which includes payment of the State of California’s prevailing wages.

**H. Certification Regarding Insurance & Indemnification**

At the time of selection, the successful Developer team must procure and maintain insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work under the Agency contract by the Developer team members, the general and subcontractors, their agents, representatives, and employees. The Developer team must provide current certificates of insurance and required endorsements as evidence of coverage. Unless the insurance requirements are modified by the Agency’s Risk Manager in his/her sole discretion, the selected Developer team must procure and maintain insurance with insurers that have a current A.M. Best rating of A:VII with at least the following coverages and limits:

1. Commercial General Liability:	\$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit. Additional Insured endorsement required.
2. Automobile Liability:	\$1,000,000 combined single limit per accident for bodily injury and property damage. Additional Insured or Designated Insured endorsement required.
3. Workers' Compensation and Employer's Liability:	Workers' Compensation as required by the State of California and Employer's Liability with limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual

	aggregate for bodily injury by disease. Workers' Compensation Waiver of Subrogation required.
4. Professional Liability (Errors and Omissions):	\$1,000,000 each claim/\$2,000,000 policy aggregate covering all negligent acts, errors and omissions of Applicant's design team members, including all architects, engineers and surveyors. Each design team member of the Applicant must submit proof of Professional Liability Insurance of \$1,000,000/\$2,000,000 covering negligent acts, errors, and omissions. If the design and engineering consultants' professional liability insurance is "claims made" coverage, these minimum limits shall be maintained by the consultants for no less than ten years beyond the completion date of the construction.
5. Course of Construction (Builder's Risk):	Completed value of the project with no coinsurance penalty provisions.

From the time of selection, the selected Developer team shall defend, hold harmless and indemnify the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising out of or connected with the performance of the Agency contract and any of the contractor's operations or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

**I. Other Information, Forms and Attachments**

**Limitation on Contributions and Campaign Contribution Disclosure Form.**

For the purposes of responding to this RFP, Applicant acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Applicant 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. Applicant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Applicant's board of directors; Applicant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Applicant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Applicant. Additionally, Applicant acknowledges that Applicant must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126. See **Attachment #18.**

Finally, Applicant agrees to provide to the Agency the names of each member of Applicant's board of directors; Applicant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in

Applicant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Applicant.

## **SECTION VIII. AGENCY PAYMENTS & FEES**

The selected Developer is responsible for any applicable payments, deposits and fees in connection with, but not limited to, the following:

### **A. RFP Fee & Offer Deposit**

An RFP registration fee of Fifty Dollars (\$50.00) is collected when the RFP is picked up. Offer to Negotiate Exclusively Deposit in the amount of One Thousand Dollars (\$1,000.00) made payable to the San Francisco Redevelopment Agency is due at the time of Proposal submission.

### **B. Performance Deposit (Selected Applicant Only)**

If the Agency Commission approves entering into a development contract with the Developer, then the Developer shall deposit with the Agency an additional Nine Thousand Dollars \$9,000.00 ("Additional Deposit"). The Additional Deposit shall be combined with the Deposit to form the performance deposit ("Performance Deposit"). The Performance Deposit shall be held by the Agency until completion of the development.

### **C. City Fees (Selected Applicant Only)**

The selected Applicant will be responsible for payment of all applicable City fees and relevant transactional costs, including but not limited to: environmental review fees, building permit fees, utility relocation and connection fees, subdivision fees, transfer taxes, and transit fees.

## **SECTION IX. ADDITIONAL TERMS AND CONDITIONS**

### **A. Selected Applicant Team's Responsibility**

The selected Applicant will be solely responsible for construction of all improvements according to the Agency-approved construction documents, and in accordance with applicable City building codes. This includes, but is not limited to, all on-site improvements and any changes from existing conditions, including underground utilities, street lighting, curbs, gutters, street trees and sidewalks. The Developer Team will be solely responsible for all transactional costs and closing requirements, including, but not limited to, title insurance, escrow fees, parcel maps, etc.

### **B. Applicant's Duty of Loyalty**

Applicant for itself and its Contractors agree to abide by the Agency's duty of loyalty, which appears at (Prohibited Activities of Present and Former Employees, Commissioners and Consultants) of the Agency's Personnel Policy and which states in part the following: "Unless



approved in advance in writing by the Agency, no present or former employee, Commissioner or consultant of the Agency shall knowingly act for anyone other than the Agency in connection with any particular matter in which the Agency is a party, or has a direct and substantial interest, and in which he or she participated personally and substantially as an Agency employee, Commissioner or consultant whether through decisions, recommendations, advice, investigation or otherwise. Violation of this section by a present employee, consultant or Commissioner may, in the case of an employee or consultant, be grounds for discharge or termination of the consultant contract, and in the case of a Commissioner, be considered misconduct in office pursuant of California Health and Safety Code Section 33115.”

**C. Agency Non-Responsibility**

The Agency has no obligation to demolish any improvements on the Site, remove, relocate or install utilities, complete on-site or off-site preparation work or improvements, or make any changes whatsoever to existing conditions.

**D. Geotechnical Investigations**

All geotechnical investigation must be conducted by a licensed geotechnical engineer, retained by the Applicant, to investigate and supervise excavation and recompaction efforts as necessary, which investigations may only occur upon the issuance of a permit to enter the Site by the Agency.

**E. Environmental Review Approvals**

The selected Applicant will be responsible for securing all environmental review approvals necessary to move forward with the development of the Site. In addition to CEQA review, these reviews may include the requirements of the National Environmental Protection Act (“NEPA”) and/or Section 106 of the National Historic Preservation Act (“NHPA”), as applicable.

**F. Accessibility Requirements**

The selected Applicant will be responsible for meeting all applicable accessibility standards related to publicly-funded multifamily housing development under Section 504 of the Rehabilitation Act of 1973, the Architectural Barriers Act, the Americans with Disabilities Act, the Fair Housing Amendments Act of 1991, and Title 24 of the California Code of Regulations. If selected, Applicants must submit the permit set of architectural plans for the Site to the Mayor’s Office on Disability for review and approval. Additionally, the Agency requires an architect’s certification at the completion of project design and construction that the improvements built are in accordance with all local, state and federal laws and regulations with respect to access for persons with disabilities.

**G. Applicant’s Expenses**

1. The Applicant responding to this RFP does so at its own expense. The Agency will not consider any costs related to preparing the Proposal or negotiating the development contract as reimbursable. The foregoing notwithstanding, the Agency will reimburse the cost for architectural massing drawings required by this RFP as set forth in Section IX.G.2 below.

2. The Agency is requiring the proposal of an architectural massing concept as part of this RFP. In order to mitigate some of these costs to the Developers submitting proposals, the Agency will reimburse those Developers whose principal office is located in San Francisco and whose Proposal, in the sole discretion of the Agency, has met each of the minimum qualifications described in Section VI, Submission Requirements of this RFP. The total aggregate payment for architectural reimbursables by the Agency shall not exceed \$50,000, and payments to Applicants who submit complete Proposals shall be prorated accordingly, in an amount not to exceed \$5,000 per Applicant. Qualifying Developers seeking architectural reimbursement payments must submit invoices from their architects.

#### **H. Agency Right to Modify or Suspend RFP**

The Agency, through its Executive Director, reserves the right at any time, in its sole and absolute discretion, to modify or suspend any and all aspects of the selection process, including, but not limited to this RFP, and all or any portion of the contractor selection process in or subsequent to the RFP; to obtain further information from any Applicant member, to waive any defects as to form or content of the RFP or any other step in the selection process; to reject any and all responses submitted; to reissue the RFP; procure the desired services by any other means or not proceed in procuring the services; to negotiate with any, all, or none of the respondents to this RFP as to fees, scope of services, or any other aspect of the RFP or services; to negotiate and modify any and all terms of an agreement; and to accept or reject any Developer Team.

Firms wishing to contest the selection process or results will have five (5) business days from the date that the Applicant is notified that they were not selected to submit written complaints to Agency.

#### **I. Claims Against the Agency**

Each Applicant member, by responding to this RFP, waives any claim, liability or expense whatsoever against the Agency and its respective officers, commissioners, employees and agents by reason of any or all of the following: any aspect of this RFP, the selection process or any part thereof, any informalities or defects in the selection process, the failure to enter into any agreement, any statements, representations, acts or omissions of the Agency, the exercise of any discretion set forth or concerning any of the foregoing, and any other matters arising out of all or any of the foregoing.

## List of Attachments

### To be submitted with Submission Package:

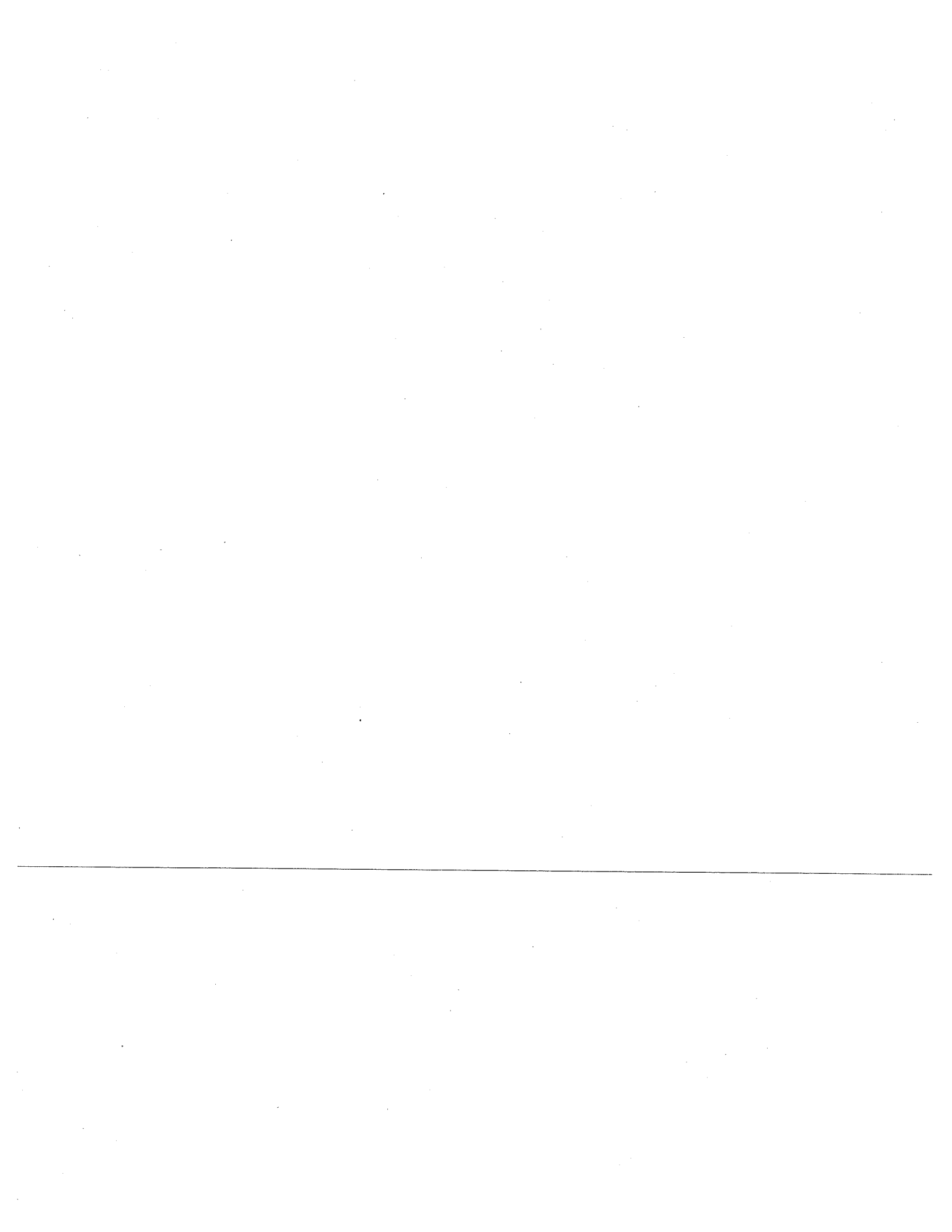
- Attachment #1: Applicant Description Form
- Attachment #2: Staffing Workload Form
- Attachment #3: Comparable Projects Experience Form
- Attachment #4: San Francisco Projects Experience Form
- Attachment #5: Property Manager Experience Form
- Attachment #6: Sixth Street Lodginghouse District DPR form 523 (evaluation dated 8/01/1997)
- Attachment #7: Disclosure Questions
- Attachment #8: Statement of Compliance with Agency Policies & Certification of Applicant
- Attachment #9: Offer to Negotiate Exclusively
- Attachment #10: Submission Checklist

### To be completed by recommended Developer only after evaluation and interviews.

- Attachment #11: Declaration of Nondiscrimination in Contracts and Benefits
- Attachment #12: Small Business Enterprise Agreement
- Attachment #13: Construction Workforce Requirements
- Attachment #14: Permanent Workforce Policy
- Attachment #15: Minimum Compensation Policy (MCP) Declaration
- Attachment #16: Health Care Accountability Policy (HCAP) Declaration
- Attachment #17: Prevailing Wage Provisions
- Attachment #18: Form SFEC 126: Notification of Contract Approval

### For information purposes only.

- Attachment #19: Site Map: 200-214 Sixth Street
- Attachment #20: Developer Fee Policy
- Attachment #21: Area Median Income ("AMI") Levels for 2009
- Attachment #22: California Tax Credit Allocation Committee Development Budget example
- Attachment #23: Policy on the Inclusion and Funding of Commercial Space in MOH/SFRA-Funded Housing Developments (for reference only)



Commission on Community Investment and Infrastructure

RESOLUTION NO. 31-2014

Adopted May 6, 2014

AUTHORIZING THE TRANSFER OF OWNERSHIP, AND ASSIGNMENT OF THE PREDEVELOPMENT LOAN, FOR 200 6TH STREET (ASSESSORS PARCEL NUMBER 3731, LOT 001) TO THE MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT AS SUCCESSOR HOUSING AGENCY.

WHEREAS, In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq. the "CRL"), the former San Francisco Redevelopment Agency (the "Agency") undertook programs for the reconstruction and construction of blighted areas in the City and County of San Francisco; and,

WHEREAS, In accordance with the CRL, the City, acting through its Board of Supervisors, approved a Redevelopment Plan for the South of Market Earthquake Recovery Redevelopment Project Area (the "Project Area") by Ordinance No. 234-90 adopted on June 11, 1990, as amended by Ordinance No. 276-05 on December 6, 2005. The Redevelopment Plan is referred to as the "South of Market Redevelopment Plan." In cooperation with the City, OCII, as successor to the Agency, is responsible for implementing the South of Market Redevelopment Plan (the "Redevelopment Plan"); and,

WHEREAS, Through an act of Eminent Domain, the Agency completed acquisition of 200 6<sup>th</sup> Street (the "Site") on November 12, 2009, for the sum of \$4,600,000; and,

WHEREAS, On May 27, 2010, the Agency issued a Housing Development Request for Proposals (the "RFP") for the development and management of very low-income, rental housing and ground floor uses at the Site; and,

WHEREAS, Mercy Housing was selected as the winning RFP respondent for the site and on November 16, 2010, the Agency authorized an Exclusive Negotiations Agreement ("ENA") with Mercy Housing California 51 L.P., a California limited partnership ("Mercy") consisting of the following general partner and initial limited partner: Mercy Housing Calwest, a California nonprofit public benefit corporation ("Managing General Partner" or "General Partner") and South of Market Mercy Housing, a California nonprofit public benefit corporation (the "Initial Limited Partner"), for the development of very low-income family housing at 200 Sixth Street; and,

WHEREAS, The future tenant, Mercy, intends to redevelop the Site with 66 very low-income rental housing units (plus one manager's unit) (the "Residential Space") and an approximately 2,550 square foot ground floor retail component (the "Non-Residential Space"), and parking spaces for the Residential Space and other ancillary uses on the Site (together, the "Project"); and,

- WHEREAS, The Project has been identified by the future Tenant, Mercy, and approved by U.S. Department of Housing and Urban Development (“HUD”), for a Section 811 award of \$2,377,000 to provide 14 units of supportive housing for developmentally disabled adults; and,
- WHEREAS, On January 18, 2011 per Resolution No.5-2011 (“Agency Resolution”), the Agency Commission authorized the Agency Executive Director to execute a Predevelopment Loan (the “Loan”) in an amount not to exceed Three Million Two Hundred One Thousand Nine Hundred Nine Dollars (\$3,201,909) with Mercy, to enable Mercy to pursue predevelopment activities for the construction and management of the Project; and,
- WHEREAS, Pursuant to the State Redevelopment Dissolution Law known as AB X1 26, which was subsequently amended under AB 1484 (together, the “Redevelopment Dissolution Law”), the Agency was dissolved as of February 1, 2012. As a result of the Redevelopment Dissolution Law, OCII became the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, and the City and County of San Francisco, acting through the Mayor’s Office of Housing and Community Development (“MOCHD”), became the Housing Successor Agency under Board Resolution 11-12 (January 26, 2012; and,
- WHEREAS, The City implemented AB 1484 through Ordinance No. 215-12 (October 4, 2012), in which the City acknowledged that OCII retained the affordable housing obligations associated with the Hunters Point Shipyard/Candlestick Point, Mission Bay North and South, and Transbay Projects (the “Major Approved Development Projects”), and the Agency’s obligation to replace about 6,700 affordable units destroyed in the 1960’s and 1970’s (the “Replacement Housing Obligation”), together known as the “Retained Housing Obligations”. OCII intends to transfer the affordable housing assets for the Retained Housing Obligations to MOHCD as Housing Successor Agency upon completion of each individual project, pursuant to Dissolution Law; and,
- WHEREAS, OCII requested \$1,100,000 in Redevelopment Property Tax Trust Funds (“RPTTF”) for a portion of the construction costs of the Project through the Recognized Obligation Payment Schedule for January to June 2014 (“ROPS 13-14B”), in furtherance of OCII’s Replacement Housing Obligation, with MOHCD, planning to contribute the remaining local subsidy needed for the Project; and,
- WHEREAS, On December 17, 2013, the California Department of Finance denied OCII’s request to utilize \$1,100,000 in RPTTF funds for the Project, stating that because there was no construction funding contract in place prior to the passage of the Redevelopment Dissolution Law in June 2011, there was no enforceable obligation to provide the requested funds for the Project; and,
- WHEREAS, Since OCII cannot provide any future funding to the Project, and since MOHCD was already on planning to provide the majority of local subsidy, OCII desires to transfer the 200 6<sup>th</sup> Street land and improvements, along with the Predevelopment Loan restrictions, to MOHCD at this time rather than wait until the Project is

completed. MOHCD will therefore provide the \$1,100,000 that OCII had intended to provide; and,

WHEREAS, On August 1, 2013, the Planning Commission adopted a Final Environmental Impact Report ("FEIR") for the proposed Project. The FEIR describes the proposed Project, assesses the potential environmental impacts of the Project, and identifies mitigation measures to preclude significant impacts or reduce such impacts to less than significant levels. The Planning Commission also approved a Conditional Use Application and the Mitigation Monitoring Program that attaches the mitigation measures contained in the FEIR; and,

WHEREAS, Copies of the Exclusive Negotiation Agreement, Predevelopment Loan Agreement, and FEIR are on file with the Secretary of this Commission; now, therefore, be it;

RESOLVED, That the Commission on Community Investment and Infrastructure authorizes the Executive Director to transfer the asset and assign the predevelopment loan for the development of 66 very low-income family rental housing units, with 14 units for developmentally disabled adults (plus one manager's unit) and a ground floor retail component (formerly known as 200 Sixth Street(Assessor's Block 3731, Lot 001), and to enter into any and all ancillary documents or take any additional actions necessary to consummate the transaction.

I hereby certify that the foregoing resolution was adopted by the OCII Commission at its meeting of May 6, 2014.

*Natasha Jones*

Commission Secretary





Oversight Board to the Successor Agency of the Redevelopment Agency  
of the City and County of San Francisco

RESOLUTION NO. 5-2014  
Adopted June 9, 2014

RESOLUTION AUTHORIZING THE TRANSFER OF OWNERSHIP AND ASSIGNMENT OF THE PREDVELOPMENT LOAN FOR 200 6TH STREET (ASSESSORS PARCEL NUMBER 3731, LOT 001) TO THE MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT AS SUCCESSOR HOUSING AGENCY.

WHEREAS, In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq. the "CRL"), the former San Francisco Redevelopment Agency (the "Agency") undertook programs for the reconstruction and construction of blighted areas in the City and County of San Francisco; and,

WHEREAS, In accordance with the CRL, the City, acting through its Board of Supervisors, approved a Redevelopment Plan for the South of Market Earthquake Recovery Redevelopment Project Area (the "Project Area") by Ordinance No. 234-90 adopted on June 11, 1990, as amended by Ordinance No. 276-05 on December 6, 2005. The Redevelopment Plan is referred to as the "South of Market Redevelopment Plan." In cooperation with the City, the Office of Community Investment and Infrastructure ("OCII"), as successor to the Agency, is responsible for implementing the South of Market Redevelopment Plan (the "Redevelopment Plan"); and,

WHEREAS, Through an act of Eminent Domain, the Agency completed acquisition of 200 6th Street (the "Site") on November 12, 2009, for the sum of \$4,600,000. The Site consists of a 9,997 square foot parcel located at Assessor's Parcel Number 3731, Lot 001 and includes the former Hugo Hotel, a four-story single room occupancy hotel that has been vacant and abandoned for over 25 years. The Site was acquired for the purpose of developing low-income housing; and,

WHEREAS, On May 27, 2010, the Agency issued a Housing Development Request for Proposals (the "RFP") for the development and management of very low-income, rental housing and ground floor uses at the Site; and,

WHEREAS, Mercy Housing was selected as the winning RFP respondent for the site and on November 16, 2010, the Agency authorized an Exclusive Negotiations Agreement ("ENA") with Mercy Housing California 51 L.P., a California limited partnership ("Mercy") consisting of the following general partner and initial limited partner: Mercy Housing Calwest, a California nonprofit public

benefit corporation (“Managing General Partner” or “General Partner”) and South of Market Mercy Housing, a California nonprofit public benefit corporation (the “Initial Limited Partner”) , for the development of very low-income family housing at 200 Sixth Street; and,

WHEREAS, The future tenant, Mercy, intends to redevelop the Site with 66 very low-income rental housing units (plus one manager’s unit) (the “Residential Space”) and an approximately 2,550 square foot ground floor retail component (the “Non-Residential Space”), and parking spaces for the Residential Space and other ancillary uses on the Site (together, the “Project”); and,

WHEREAS, The Project has been identified by the future Tenant, Mercy, and approved by U.S. Department of Housing and Urban Development (“HUD”), for a Section 811 award of \$2,377,000 to provide 14 units of supportive housing for developmentally disabled adults; and,

WHEREAS, On January 18, 2011 per Resolution No.5-2011 (“Agency Resolution”), the Agency Commission authorized the Agency Executive Director to execute a Predevelopment Loan (the “Loan”) in an amount not to exceed Three Million Two Hundred One Thousand Nine Hundred Nine Dollars (\$3,201,909) with Mercy , to enable Mercy to pursue predevelopment activities for the construction and management of the Project; and,

WHEREAS, Pursuant to the State Redevelopment Dissolution Law known as AB X1 26, which was subsequently amended under AB 1484 (together, the “Redevelopment Dissolution Law”), the Agency was dissolved as of February 1, 2012. As a result of the Redevelopment Dissolution Law, OCII became the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, and the City and County of San Francisco, acting through the Mayor’s Office of Housing and Community Development (“MOCHD”), became the Housing Successor Agency under Board Resolution 11-12 (January 26, 2012; and,

WHEREAS, The City implemented AB 1484 through Ordinance No. 215-12 (October 4, 2012), in which the City acknowledged that OCII retained the affordable housing obligations associated with the Hunters Point Shipyard/Candlestick Point, Mission Bay North and South, and Transbay Projects (the “Major Approved Development Projects”), and the Agency’s obligation to replace about 6,700 affordable units destroyed in the 1960’s and 1970’s (the “Replacement Housing Obligation”), together known as the “Retained Housing Obligations”. OCII intends to transfer the affordable housing assets for the Retained Housing Obligations to MOHCD as Housing Successor Agency upon completion of each individual project, pursuant to Dissolution Law; and,

WHEREAS, OCII requested \$1,100,000 in Redevelopment Property Tax Trust Funds ("RPTTF") for a portion of the construction costs of the Project through the Recognized Obligation Payment Schedule for January to June 2014 ("ROPS 13-14B"), in furtherance of OCII's Replacement Housing Obligation, with MOHCD. planning to contribute the remaining local subsidy needed for the Project; and,

WHEREAS, On December 17, 2013, the California Department of Finance denied OCII's request to utilize \$1,100,000 in RPTTF funds for the Project, stating that because there was no construction funding contract in place prior to the passage of the Redevelopment Dissolution Law in June 2011, there was no enforceable obligation to provide the requested funds for the Project; and,

WHEREAS, Since OCII cannot provide any future funding to the Project, and since MOHCD was already on planning to provide the majority of local subsidy, OCII desires to transfer the 200 6th Street land and improvements, along with the Predevelopment Loan restrictions, to MOHCD at this time rather than wait until the Project is completed. MOHCD will therefore provide the \$1,100,000 that OCII had intended to provide; and,

WHEREAS, On August 1, 2013, the Planning Commission adopted a Final Environmental Impact Report ("FEIR") for the proposed Project. The FEIR describes the proposed Project, assesses the potential environmental impacts of the Project, and identifies mitigation measures to preclude significant impacts or reduce such impacts to less than significant levels. The Planning Commission also approved a Conditional Use Application and the Mitigation Monitoring Program that attaches the mitigation measures contained in the FEIR; and,

WHEREAS, The proposed transfer of ownership from OCII to the City is exempt from the California Environmental Quality Act ("CEQA") on the following grounds:

1. Pursuant to Section 15061(b)(3) of CEQA Guidelines, the transfer of real property is exempt from environmental review under CEQA because it can be seen with certainty that there is no possibility that the transfer may have a significant effect on the environment; and
2. Pursuant to Section 15301 of the State CEQA Guidelines, the transfer of real property is exempt from environmental review under CEQA because the transfer will result in a continuation of existing facilities involving no expansion of use, and any future development for the real property will require separate environmental review (this is already accomplished by FEIR SCH No. 2012082052); and
3. Finally, under Section 15268 of the CEQA Guidelines, transfer of ownership is a ministerial act required under the Redevelopment Dissolution Law.

WHEREAS, Copies of the Exclusive Negotiation Agreement, Predevelopment Loan Agreement, and FEIR are on file with the Secretary of this Oversight Board; now, therefore, be it;

RESOLVED, That the Oversight Board of the Office of Community Investment and Infrastructure authorizes the Executive Director to transfer the asset and assign the predevelopment loan for the development of 66 very low-income family rental housing units, with 14 units for developmentally disabled adults (plus one manager's unit) and a ground floor retail component (formerly known as 200 Sixth Street(Assessor's Block 3731, Lot 001), and to enter into any and all ancillary documents or take any additional actions necessary to consummate the transaction.

I hereby certify that the foregoing resolution was adopted by the Oversight Board at its meeting of June 9, 2014.

*Natasha Jones*

---

Board Secretary



# SAN FRANCISCO PLANNING DEPARTMENT

---

## General Plan Referral

*Date:* July 28, 2014  
*Case No.* Case No. 2011.0119R  
  
200 6<sup>th</sup> Street Ground Lease

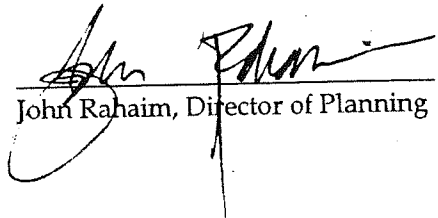
*Block/Lot No.:* 3731/001  
*Project Sponsor:* John Updike  
SF Real Estate Division  
25 Van Ness Ave., Suite 400  
San Francisco, CA 94102

*Applicant:* John Updike  
SF Real Estate Division  
25 Van Ness Ave., Suite 400  
San Francisco, CA 94102

*Staff Contact:* Amnon Ben-Pazi – (415) 575-9077  
[amnon.ben-pazi@sfgov.org](mailto:amnon.ben-pazi@sfgov.org)

*Recommendation:* Finding the project, on balance, is in conformity with the General Plan

*Recommended By:*

  
John Rahaim, Director of Planning

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

## PROJECT DESCRIPTION

The Mayor's Office of Housing and Community Development (MOHCD) proposes to enter into a ground lease agreement with Mercy Housing California for the property located at 200 6<sup>th</sup> Street.

The property was transferred to MOHCD from the former Redevelopment Agency of San Francisco (SFRA). MOHCD proposes to enter into a partnership with Mercy Housing California to construct at the project site a 9-story mixed-use development with 67 affordable housing units for families and developmentally challenged adults. The planned mixed-use development received Planning Commission approvals in August of 2013 and the existing vacant building at the site has been scheduled for demolition in September of 2014.

## SITE DESCRIPTION AND PRESENT USE

The site is located at the south-east corner of 6<sup>th</sup> and Howard Streets in the City's South of Market neighborhood. The site is currently improved with a 4-story structure built in 1909. This building, formerly used as a residential hotel, has been vacant for approximately 20 years and is in considerable disrepair. The property was purchased by the former SFRA through eminent domain with the specific purpose of constructing new affordable housing at the site.

## ENVIRONMENTAL REVIEW

Environmental clearance for the project was issued on August 1, 2013 under case no. 2011.0119E.

## GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

The project is, on balance, **in-conformity** with the following Objectives and Policies of the General Plan:

---

## HOUSING ELEMENT

**OBJECTIVE 1:** Identify and make available for development adequate sites to meet the City's housing needs, especially permanently affordable housing.

**POLICY 1.1:** Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

*The former SFRA identified the site for permanently affordable housing. The proposed land lease would make this site available for the development of 67 units of permanently affordable housing for families and developmentally challenged adults.*

**OBJECTIVE 2:** Retain existing housing units, and promote safety and maintenance standards, without jeopardizing affordability.

**POLICY 2.1:** Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.

*The existing 4-story building at the project site has been vacant for approximately 20 years and is in considerable disrepair. Demolition of this building and construction of the proposed 9-story mixed use building would result in considerable net increase in affordable housing.*

**OBJECTIVE 4:** Foster a housing stock that meets the needs of all residents across lifecycles.

**POLICY 4.1:** Develop new housing, and encourage the remodeling of existing housing, for families with children.

**POLICY 4.2:** Provide a range of housing options for residents with special needs for housing support and services.

*The proposed mixed use building would include large apartments suitable for families with children, as well as housing and support services for developmentally challenged adults.*

#### **PROPOSITION M FINDINGS – PLANNING CODE SECTION 101.1**

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project, demolition and replacement of the Chinese Recreation Center, is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

##### **Eight Priority Policies Findings**

The subject project is found to be consistent with the Eight Priority Policies of Planning Code Section 101.1 in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

*The proposed mixed-use development will include ground-floor commercial space.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhood.

*While the existing 4-story building at the project site did in the past provide housing, it has been vacant for approximately 20 years and is in considerable disrepair. The proposed new 9-story mixed-use building would provide a significantly greater amount of housing, meeting all current*

*housing standards. As determined by the Historic Preservation Commission, the proposed new building would meet all design guidelines intended to preserve neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced.

*The proposed mixed-use development would enhance the City's supply of affordable housing with 67 new permanently affordable housing units.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The proposed mixed-use development would be predominantly residential and is not expected to generate significant commuter traffic.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for residential employment and ownership in these sectors be enhanced.

*The proposed mixed-use development would not include commercial office uses.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The proposed new building will comply with all applicable safety standards.*

7. That landmarks and historic buildings be preserved.

*While the existing building at the project site was built in 1909, it is in considerable disrepair and is not a landmark. In considering the project, the Historic Preservation Commission determined that there were overriding considerations which, on balance, permitted the demolition of this structure.*

8. That our parks and open space and their access to sunlight and vistas be protected from development.

*The project will have no effect on access to sunlight and vistas at the City's parks and open space.*

<b>RECOMMENDATION:</b>	<b>Finding the Project, on balance, in-conformity with the General Plan</b>
------------------------	---





# SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

## Planning Commission CEQA Findings Motion No. 18937 HEARING DATE: AUGUST 1, 2013

Date: Revised – July 31, 2013  
Case No.: 2011.0119 ECKV  
Project Address: 200-214 6<sup>th</sup> Street  
Zoning: SoMa NCT (Neighborhood Commercial Transit)  
SoMa Youth and Family Special Use District  
85-X Height and Bulk District  
Block/Lot: 3731/001  
Project Sponsor: Sharon Christen  
Mercy Housing California  
1360 Mission Street  
San Francisco, CA 94103  
Staff Contact: Corey Teague – (415) 575-9081  
[corey.teague@sfgov.org](mailto:corey.teague@sfgov.org)

ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS OF FACT, EVALUATION OF MITIGATION MEASURES AND ALTERNATIVES, STATEMENT OF OVERRIDING CONSIDERATIONS, AND A MITIGATION MONITORING AND REPORTING PROGRAM RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 121.1, 249.40A, 303, 317, AND 735.38 TO DEMOLISH THE EXISTING RESIDENTIAL BUILDING AND CONSTRUCT A 9-STORY, 85-FOOT TALL MIXED USE BUILDING CONTAINING 67 AFFORDABLE DWELLING UNITS AND AN APPROXIMATELY 2,845 GROUND FLOOR RESTAURANT SPACE WITHIN THE SOMA NCT (NEIGHBORHOOD COMMERCIAL TRANSIT) ZONING DISTRICT, THE SOMA YOUTH AND FAMILY SPECIAL USE DISTRICT, AND 85-X HEIGHT AND BULK DISTRICT.

In determining to approve the proposed 200-214 6<sup>th</sup> Street Project and related approval actions ("Project"), the San Francisco Planning Commission ("Planning Commission" or "Commission") makes and adopts the following findings of fact and statement of overriding considerations and adopts the following recommendations regarding mitigation measures and alternatives based on substantial evidence in the whole record of this proceeding and under the California Environmental Quality Act,

California Public Resources Code Sections 21000 et seq. ("CEQA"), particularly Sections 21081 and 21081.5, the Guidelines for implementation of CEQA, California Code of Regulations, Title 14, Sections 15000 et seq. ("CEQA Guidelines"), particularly Sections 15091 through 15093, and Chapter 31 of the San Francisco Administration Code.

## **I. Introduction**

This document is organized as follows:

Section I provides a description of the proposed Project, the environmental review process for the 200-214 6th Street Project Environmental Impact Report (the "EIR"), the Approval Actions required for Project implementation, and the location of records;

Section II identifies the impacts found not to be significant that do not require mitigation;

Section III identifies potentially significant impacts that can be avoided or reduced to less-than-significant levels through mitigation;

Section IV identifies significant impacts that cannot be avoided or reduced to less-than significant levels;

Section V evaluates the economic, legal, social, technological, and other considerations that support the rejection of the alternatives analyzed in the EIR;

Section VI presents a statement of overriding considerations setting forth specific reasons in support of the Planning Commission's actions in light of the environmental consequences of the project; and

Section VII includes a statement incorporating the Final EIR by reference.

Attached to these findings as **Exhibit 1** is the Mitigation Monitoring and Reporting Program ("MMRP") for the mitigation and improvement measures that have been proposed for adoption. The Mitigation Monitoring and Reporting Program is required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. It provides a table setting forth each mitigation measure listed in the Final EIR ("FEIR") that is required to reduce or avoid a significant adverse impact. **Exhibit 1** also specifies the agency responsible for implementation of each measure and establishes monitoring actions and a monitoring schedule.

These findings are based upon substantial evidence in the entire record before the Planning Commission. The references set forth in these findings to certain pages or sections of the EIR or responses to comments in the Final EIR are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

## **A. Project Description**

The 200-214 6th Street Affordable Housing with Ground-Floor Retail project site is on the southwest corner of Howard and 6th Streets in the South of Market (SoMa) neighborhood (Assessor's Block 3731, Lot 001). The rectangular site is on the block bounded by Howard Street (north), 7th Street (west), Folsom Street (south), and 6th Street (east). The project site is located is within the SoMa Neighborhood

Commercial Transit (NCT) district, the SoMa Youth and Family Special Use district and an 85-X height and bulk district. The project site is also within the Sixth Street Lodginghouse (6SL) district and is near the SoMa Extended Preservation (SOMEPE) district.

The approximately 9,997- square-foot (0.23 acre) project site contains a vacant four-story hotel, and a 10-foot-wide gated open space along the west side of the building. The building was constructed in 1909. The existing building is a contributor to a National Register-eligible Historic District. A temporary, site-specific art installation project known as "Defenestration" currently adorns the exterior of the vacant building. The art installation—consisting of colorful cartoon-like tables, chairs, a bathtub, and other household furnishings spilling out of windows and down the walls— was intended to be temporary, but has remained in place for 15 years. The installation has no historic significance as it is not associated with the historical context of the building itself and is not eligible for consideration for listing on the California Register.

The proposed project would include demolition of the existing contributory building in a historic district, and construction of a nine-story, 85-foot-tall, approximately 68,540-square-foot mixed-use building with 67 affordable rental housing units (studio, and one-, two- and three-bedroom units). The residential units would be affordable to very low income households. Of the 67 units proposed, the approximate breakdown of unit types would be as follows:

Studios	One-Bedroom	Two-Bedroom	Three-Bedroom	Total Units
8	24	25	10	67
12%	36%	37%	15%	100%

Fourteen of the units--11 1-bedroom and 3 2-bedroom units--would be available to households with developmentally disabled members.

The proposed project would include approximately 47,710 square feet of residential space, 2,845 square feet of ground-floor commercial space, a 1,215-square-foot community room, and 2,589 square feet of private and 3,691 square feet of common open space (respectively), including a rear yard and 2,303 square foot roof terrace. There would be 29 bicycle parking spaces; no vehicle parking spaces are included.

The new steel building would be clad in a mixture of brick veneer, dark patinated metal panels, and dark anodized aluminum windows. The building would be highly articulated by a geometric pattern of projecting rectangular bays on the 6th Street façade, as well as by the larger building massing consisting of a taller vertical element at the front corner/Howard Street façade, and a shorter element extending along 6th Street.

Project construction is estimated to take 20 months, including two months for demolition of the existing building, with a construction cost of approximately \$18.8 million. Construction of the foundation would require excavation of up to 3,800 cubic yards of soil to accommodate the four-foot-thick replacement mat slab. It would require repairing or replacing the retaining walls in the existing building, and drilling 30 to 40 feet below the basement to construct soil cement columns. Construction is anticipated to begin in mid- to late 2014, with occupancy expected in early- to mid-2016.

**B. Environmental Review**

The Planning Department determined that an Environmental Impact Report was required for the Project. The Planning Department published the Draft EIR (State Clearinghouse No. 2012082052) and provided public notice of the availability of the Draft EIR for public review and comment February 27, 2013.

On February 27, 2013, a Notice of Completion and copies of the Draft EIR were distributed to the State Clearinghouse. Notices of availability for the Draft EIR of the date and time of the public hearings were posted on the Planning Department's website on February 27, 2013.

The Planning Commission held a duly noticed public hearing on the Draft EIR on April 4, 2013. At this hearing, opportunity for public comment was given, and public comment was received on the Draft EIR. The Planning Department accepted public comments on the Draft EIR from February 27, 2013, to April 15, 2013.

The Planning Department published the Responses to Comments on the Draft EIR on July 17, 2013. This document includes responses to environmental comments on the Draft EIR made at the public hearing on April 4, 2013, as well as written comments submitted on the Draft EIR during the public review period from February 27, 2013 to April 15, 2013. The comments and responses document also contains text changes to the Draft EIR to correct or clarify information presented in the Draft EIR, including changes to the Draft EIR text made in response to comments.

**C. Approval Actions to be taken furtherance of the Project**

**1. Required Planning Commission Approvals**

The Planning Commission will be responsible for:

- a) Certification of the Final EIR;
- b) Adoption of these CEQA Findings, mitigation measures, and a mitigation monitoring and reporting program ("MMRP");
- c) Making findings of General Plan and Priority Policies (Planning Code Section 101.1) consistency; and
- d) Conducting a Discretionary Review if requested under Planning Code Section 312 for demolition of a residential building.
- e) Conditional Use Approval for:
  1. Construction of a building on a site equal to or exceeding 10,000 square feet pursuant to Planning Code Section 121.1;
  2. Establishment of a possible full service restaurant pursuant to Planning Code Section 249.40A; and
  3. Demolition of existing dwelling units in the NCT pursuant to Planning Code Sections 207.7 and 317.

**2. Required Zoning Administrator Approvals**

- a) A rear yard variance or Zoning Administrator modification pursuant to Planning Code Section 134(e) because the proposed rear yard does not meet the 25 percent of lot area required for a compliant rear-yard;
- b) An open space variance under Planning Code Section 135 because the open space will not be located in one area on the site; and,
- c) A dwelling unit exposure variance because not all units will face onto the required unobstructed depth required by Planning Code Section 140.

3. **Other City Agency Approvals**

Municipal Transportation Agency (MTA)

- a) Approval of a white passenger loading zone in front of the building's lobby on Howard Street; and
- b) Approval of a yellow commercial loading zone along 6th Street.

Department of Building Inspection (DBI)

Approval of demolition and building permits

**D. Location of Records**

The record upon which all findings and determinations related to the Project are based includes the following:

- The EIR, and all documents referenced in or relied upon by the EIR.
- All information (including written evidence and testimony) provided by City staff to the Planning Commission relating to the EIR, the proposed approvals and entitlements, the Project, and the alternatives set forth in the EIR.
- All information (including written evidence and testimony) presented to the Planning Commission by the environmental consultant and subconsultants who prepared the EIR, or incorporated into reports presented to the Planning Commission.
- All information (including written evidence and testimony) presented to the City from other public agencies relating to the Project or the EIR.
- All applications, letters, testimony and presentations presented to the City by Mercy Housing, the project sponsor for the Project.
- All information (including written evidence and testimony) presented at any public hearing or workshop related to the Project and the EIR.
- For documentary and information purposes, all locally-adopted land use plans and ordinances, including, without limitation, general plans, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.
- The Mitigation Monitoring and Reporting Program (MMRP).

- All other documents comprising the record pursuant to Public Resources Code Section 2116.76(e)

The public hearing transcript, a copy of all letters regarding the Final EIR received during the public review period from February 27, 2013 to April 15, 2013, the administrative record, and background documentation for the Final EIR are located at the Planning Department, 1650 Mission Street, Suite 400, San Francisco. Jonas Ionin, Acting Commission Secretary, is the custodian of these documents and materials.

These findings are based upon substantial evidence in the entire record before the Planning Commission.

## II. Impacts Found Not To Be Significant, Thus Requiring No Mitigation

**Finding:** Based on substantial evidence in the whole record of this proceeding, the Planning Commission finds that the implementation of the Project would not result in any significant environmental impacts in the following areas: Land Use and Land Use Planning; Aesthetics; Population and Housing; Transportation and Circulation; Greenhouse Gas Emissions; Wind and Shadow; Recreation; Utilities and Service Systems; Public Services; Biological Resources; Geology and Soils; Hydrology and Water Quality; Mineral/Energy Resources; and Agriculture and Forest Resources. Each of these topics is analyzed and discussed in detail in the Initial Study, attached as Appendix A to the Draft EIR.

## III. Findings of Potentially Significant Impacts That Can Be Avoided or Reduced To A Less Than Significant Level

**Finding:** CEQA requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potential significant impacts if such measures are feasible.

The findings in this Section III and in Section IV concern impacts identified in the EIR and mitigation measures set forth in the EIR. These findings discuss mitigation measures as proposed in the EIR and recommended for adoption by this Commission and other City entities that can be implemented by the City agencies or departments. The mitigation measures proposed for adoption in this section are identical to the mitigation measures identified in the attached MMRP. The Draft EIR and Response to Comments document provides additional evidence as to how these measures would avoid or reduce the identified impacts as described herein. Such analysis, as stated in Section VII, is incorporated herein by reference.

As explained previously, **Exhibit 1**, attached, contains the MMRP required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. It provides a table setting forth each mitigation measure listed in the FEIR that is required to reduce or avoid a significant adverse impact. **Exhibit 1** also specifies the party responsible for implementation of each measure, establishes monitoring actions and a monitoring schedule.

The Planning Commission finds, based on the record before it, that the mitigation measures proposed for adoption in the MMRP are feasible, and that they can and should be carried out by the Project Sponsor and the identified agencies at the designated time. The Planning Commission urges other agencies to adopt and implement applicable mitigation measures set forth in the MMRP that are within the jurisdiction and responsibility of such entities. The Planning Commission acknowledges that if such

measures are not adopted and implemented, the Project may result in additional significant unavoidable impacts. For this reason, and as discussed in Section I, the Planning Commission is adopting a Statement of Overriding Considerations as set forth in Section VI.

All mitigation measures identified in the FEIR that are applicable to the Project and would reduce or avoid significant adverse environmental impacts of the Project are proposed for adoption and are set forth in Exhibit 1, in the MMRP. The Planning Commission agrees to and adopts all mitigation measures set forth in the MMRP.

## A. Air Quality

### 1. Impact – Minimization of Construction Air Emissions and Toxic Air Contaminants

#### a) Potentially Significant Impact

The EIR finds implementation of the Project could result in exposure of sensitive receptors to construction emissions and toxic air contaminants.

#### b) Mitigation Measures M-AQ-2 and M-AQ-4 and Conclusion

The Planning Commission finds the potentially significant impacts listed above would be reduced to a less-than-significant level with incorporation into the Project of Mitigation Measures M-AQ-2 and M-AQ-4 as set forth the Initial Study (Appendix A to the Draft EIR) at p. 154-157, as follows:

#### Mitigation Measure M-AQ-2

Prior to issuance of a construction permit, the project sponsor shall submit a Construction Emissions Minimization Plan (Plan) to the Environmental Review Officer (ERO) for review and approval by an Environmental Planning Air Quality Specialist. The Plan shall detail project compliance with the following requirements:

1. All off-road equipment greater than 25 hp and operating for more than 20 total hours over the entire duration of construction activities shall meet the following requirements:

a) ~~Where access to alternative sources of power are available, portable diesel engines shall be prohibited;~~

b) All off-road equipment shall have:

- i. Engines that meet or exceed either USEPA or ARB Tier 2 off-road emission standards, and
- ii. Engines that are retrofitted with an ARB Level 3 Verified Diesel Emissions Control Strategy (VDECS).

c) Exceptions:

- i. Exceptions to A(1)(a) may be granted if the project sponsor has submitted information providing evidence to the satisfaction of the ERO that an alternative source of power is limited or

infeasible at the project site and that the requirements of this exception provision apply. Under this circumstance, the sponsor shall submit documentation of compliance with A(1)(b) for onsite power generation.

ii. Exceptions to A(1)(b)(ii) may be granted if the project sponsor has submitted information providing evidence to the satisfaction of the ERO that a particular piece of off-road equipment with an ARB Level 3 VDECS is:

- (1) technically not feasible,
- (2) would not produce desired emissions reductions due to expected operating modes, (3) installing the control device would create a safety hazard or impaired visibility for the operator, or
- (4) there is a compelling emergency need to use off-road equipment that are not retrofitted with an ARB Level 3 VDECS and the sponsor has submitted documentation to the ERO that the requirements of this exception provision apply. If granted an exception to (A)(1)(b)(ii), the project sponsor must comply with the requirements of (A)(1)(c)(iii).

iii. If an exception is granted pursuant to (A)(1)(c)(ii), the project sponsor shall provide the next cleanest piece of off-road equipment as provided by the step down schedule below.

TABLE M-AQ-2  
OFF-ROAD EQUIPMENT COMPLIANCE  
STEP DOWN SCHEDULE\*

Compliance Alternative	Engine Emission Standard	Emissions Control
1	Tier 2	ARB Level 2 VDECS
2	Tier 2	ARB Level 1 VDECS
3	Tier 2	Alternative Fuel*

\* How to use the table. If the requirements of (A)(1)(b) cannot be met, then the project sponsor would need to meet Compliance Alternative 1. Should the project sponsor not be able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 would need to be met. Should the project sponsor not be able to supply off-road equipment meeting Compliance Alternative 2, then Compliance Alternative 3 would need to be met.

\*\* Alternative fuels are not a VDECS

\* Alternative fuels are not a VDECS.

- 2. The project sponsor shall require the idling time for off-road and on-road equipment be limited to no more than two minutes, except as provided in exceptions to the applicable state regulations regarding idling for off-road and on-road equipment. Legible and visible signs shall be posted in multiple languages (English, Spanish, Chinese) in designated queuing areas and at the construction site to remind operators of the two minute idling limit.
- 3. The project sponsor shall require that construction operators properly maintain and tune equipment in accordance with manufacturer specifications.
- 4. The Plan shall include estimates of the construction timeline by phase with a description of each piece of off-road equipment required for every construction phase. Off-road equipment descriptions and information may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier



rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For VDECS installed: technology type, serial number, make, model, manufacturer, ARB verification number level, and installation date and hour meter reading on installation date. For off-road equipment using alternative fuels, reporting shall indicate the type of alternative fuel being used.

5. The Plan shall be kept on-site and available for review by any persons requesting it and a legible sign shall be posted at the perimeter of the construction site indicating to the public the basic requirements of the Plan and a way to request a copy of the Plan. The project sponsor shall provide copies of Plan to members of the public as requested.

B. Reporting. Monthly reports shall be submitted to the ERO indicating the construction phase and off-road equipment information used during each phase including the information required in A(4). In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.

Within six months of the completion of construction activities, the project sponsor shall submit to the ERO a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. For each phase, the report shall include detailed information required in A(4). In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.

C. Certification Statement and On-site Requirements. Prior to the commencement of construction activities, the project sponsor must certify (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications.

#### Mitigation Measure M-AQ-4

Air Filtration and Ventilation Requirements for Sensitive Land Uses. Prior to receipt of any building permit, the project sponsor shall submit a ventilation plan for the proposed building(s). The ventilation plan shall show that the building ventilation system removes at least 80 percent of the outdoor PM2.5 concentrations from habitable areas and be designed by an engineer certified by ASHRAE, who shall provide a written report documenting that the system meets the 80 percent performance standard identified in this measure and offers the best available technology to minimize outdoor to indoor transmission of air pollution.

Maintenance Plan. Prior to receipt of any building permit, the project sponsor shall present a plan that ensures ongoing maintenance for the ventilation and filtration systems.

Disclosure to buyers and renters. The project sponsor shall also ensure the disclosure to buyers (and renters) that the building is located in an area with existing sources of air pollution and as such, the building includes an air filtration and ventilation system designed to remove 80 percent of outdoor particulate matter and shall inform occupants of the proper use of the installed air filtration system.

## B. Cultural and Paleontological Resources

1. Impact – Substantial Damage to Archeological Resources from Excavation (CP-2)

a) Potentially Significant Impact CP:2

The EIR finds that excavation for the proposed project could result in an adverse effect to archeological deposits that may be present beneath the surface of the project site.

b) Mitigation Measure M-CP-2 and Conclusion

Although the EIR finds that the Project would not cause a substantial adverse change in the significance of an archeological resource pursuant to Section 15064.5, because of the amount of Project excavation, the Project could have a significant impact on human remains. The Planning Commission therefore finds the potentially significant impacts listed above would be reduced to a less-than-significant level with implementation of Mitigation Measure M-CP-2, pp. 89–92 of Draft EIR, which would require the implementation of an Archeological Testing Plan, as follows:

**Mitigation Measure M-CP-2**

The Project Sponsor shall retain the services of an archeological consultant from the pool of qualified archeological consultants maintained by the Planning Department archeologist. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure and with the requirements of the project archeological research design and treatment plan at the direction of the Environmental Review Officer (ERO). In instances of inconsistency between the requirements of the project archeological research design and treatment plan and requirements of this archeological mitigation measure, the requirements of this archeological mitigation measure shall prevail. All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to less-than-significant levels potential effects on a significant archeological resource as defined in CEQA *Guidelines* Section 15064.5 (a) through (c).

*Consultation with Descendant Communities.* On discovery of an archeological site<sup>1</sup> associated with descendant Native Americans or the Overseas Chinese, the ERO and an appropriate representative<sup>2</sup> of the descendant group shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to consult with the ERO regarding appropriate archeological treatment of the site and recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archeological Resources Report shall be provided to the representative of the descendant group.

<sup>1</sup> The term "archeological site" is intended here to minimally include any archeological deposit, feature, burial, or evidence of burial.

<sup>2</sup> An "appropriate representative" of the descendant group is here defined to mean, in the case of Native Americans, any individual listed in the current Native American Contact List for the City and County of San Francisco maintained by the California Native American Heritage Commission and, in the case of the Overseas Chinese, the Chinese Historical Society of America.

*Archeological Testing Program.* The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes a historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

- A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or
- B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

*Archeological Monitoring Program.* If the ERO in consultation with the archeological consultant determines that an archeological monitoring program (AMP) shall be implemented, the archeological monitoring program shall minimally include the following provisions:

- The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils-disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), and site remediation, shall require archeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context.
- The archeological consultant shall advise all project contractors of the need to be on the alert for evidence of the presence of the expected resource(s), ways to identify the evidence of the expected resource(s), and the appropriate protocol in the event of apparent discovery of an archeological resource.
- The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits.

- The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis.
- If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If, in the case of pile-driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile-driving activity may affect an archeological resource, the pile-driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit and present the findings of this assessment to the ERO.

Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

*Archeological Data Recovery Program.* The archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP shall identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, shall be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if non-destructive methods are practical.

The scope of the ADRP shall include the following elements:

- *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program

- *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.
- 
- *Final Report.* Description of proposed report format and distribution of results.
- 
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

*Human Remains and Associated or Unassociated Funerary Objects.* The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable state and federal laws. This shall include immediate notification of the coroner of the City and County of San Francisco and in the event of the coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Public Resources Code Section 5097.98). The archeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.

*Final Archeological Resources Report.* The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO. The FARR shall evaluate the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the FARR shall be distributed as follows: the ~~California Archaeological Site Survey Northwest Information Center (NWIC)~~ shall receive one copy; the ERO shall receive a copy of the transmittal of the FARR to the NWIC; and the Environmental Planning Division of the Planning Department shall receive one bound copy, one unbound copy, and one unlocked, searchable PDF copy on CD, along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or high interpretive value of the resource, the ERO may require a different final report content, format, and distribution from that presented above.

## 2. Impact –Impacts to Human Remains (CP-3)

### b) Potentially Significant Impact

The EIR finds that excavation of the project site could result in the disturbance or removal of human remains.

b) Mitigation Measure M-CP-2 and Conclusion

The Planning Commission finds the potentially significant impacts listed above would be reduced to a less-than-significant level with implementation of Mitigation Measure M-CP-2, Archeological Testing Plan, p. 89-92 of the Draft EIR, and discussed above.

**C. Hazards and Hazardous Materials**

1. Impact – Potential Creation of Significant Public Hazard from Release of Hazardous Materials (Impact HZ-2)

b) Potentially Significant Impact

The EIR finds demolition and/or excavation may result in the unexpected or accidental release of mercury or PCBs as well as other materials on site such that implementation of the project could create a significant hazard to the public or environment.

b) Mitigation Measures M-HZ-2(a) and M-HZ-2(b) and Conclusion

The Planning Commission finds the potentially significant impacts listed above would be reduced to a less-than-significant level with implementation of Mitigation Measures M-HZ-2(a) and M-HZ-2(b), as set forth Appendix A to the Draft EIR at p. 157, as follows:

**Mitigation Measure M-HZ-2(a)**

**Hazardous Materials Contingency Plan and Health and Safety Plan**

A Contingency Plan that describes the procedures for controlling, containing, remediating, testing and disposing of any unexpected contaminated soil, water, or other material is required by the San Francisco Department of Public Health (SFDPH) Contaminated Sites Assessment and Mitigation Program (SAM).

The Contingency Plan shall include collection of two or three confirmation soil samples to verify earlier soil data.

Construction-related documents to address dust control, run off, noise control, and worker health and safety shall also be prepared and submitted to the Planning Department with copies to SFDPH SAM at least two weeks prior to beginning construction work.

Should an Underground Storage Tank (UST) be encountered, work will be suspended and the owner notified. The site owner will notify the SFDPH of the situation and the proposed response actions. The UST shall be removed under permit with the SFDPH Hazardous Materials and Waste Program (HMWP) and the San Francisco Fire Department.

The project sponsor is required to submit the Contingency Plan at least 4 weeks prior to beginning construction or basement demolition work.

In addition to the Contingency Plan, SFDPH and the California Occupational Safety and Health Administration (CAL OSHA) require the preparation of a Health and Safety Plan for this project. The project sponsor is required to submit the Health and Safety Plan to the SFDPH not less than two weeks prior to the beginning of construction field work.

The project sponsor shall submit a final project report describing project activities and implementation of the Contingency Plan, Health and Safety Plan, etc. Report appendices should include copies of project permits, manifests or bills of lading for soil or groundwater disposed or discharged, copies of laboratory reports for any soil or water samples analyzed. Two confirmation samples from the basement are requested by SFDPH to complete the project report and verify earlier data.

**Mitigation Measure M-HZ-2(b)**

Other Hazardous Building Materials (PCBs, Mercury, Lead, and others)

The project sponsor shall ensure that pre-construction building surveys for PCB- and mercury-containing equipment, hydraulic oils, fluorescent lights, mercury and other potentially toxic building materials are performed prior to the start of any demolition or renovation activities. A survey for lead has been conducted and identified the presence of lead in the existing building. Any hazardous building materials discovered during surveys would be abated according to federal, state, and local laws and regulations.

**D. Noise and Vibration**

1. Impact-Interior and Exterior Noise (Impact NO-1)

a) Potentially Significant Impact

The EIR finds that construction of the Project could expose persons to noise levels in excess of established standards and could result in a substantial permanent increase in ambient noise levels.

b) Mitigation Measures M-NO-1(a), M-NO-1(b), and M-NO-1(c) and Conclusion

The Planning Commission finds the potentially significant impacts listed above would be reduced to a less-than-significant level with incorporation of Mitigation Measures M-NO-1(a), M-NO-1(b), and M-NO-1(c) into the project, as set forth in Appendix A of the Draft EIR, at pp. 152-153 as follows:

**Mitigation Measure M-NO-1(a)**

For new residential development located along streets with noise levels above 75dBA Ldn, the Planning Department requires the following:

1. Preparation of an analysis that includes, at a minimum, a site survey to identify potential noise-generating uses within two blocks of the project site, and at least one 24-hour noise measurement (with maximum noise level readings taken at least every 15 minutes), prior to completion of the environmental review. The analysis should demonstrate with reasonable certainty that Title 24 standards, where applicable, can be met, and that there are no particular circumstances about the proposed project site that appear to warrant heightened concern about noise levels in the vicinity. Should such concerns be present, the Department may require the completion of a detailed noise assessment by person(s) qualified in acoustical analysis and/or engineering prior to the first project approval action, in order to demonstrate that acceptable interior noise levels consistent with those in the Title 24 standards can be attained; and
2. To minimize effects on development in noisy areas, the Planning Department shall, through its building permit review process, in conjunction with the noise analysis required above, require that open space required under the Planning Code for such uses be protected, to the maximum feasible extent, from existing ambient noise levels that could prove annoying or disruptive to users of the open space. One way that this might be accomplished is through a site design that uses the building itself to shield on-site open space from the greatest noise sources, construction of noise barriers between noise sources and open space, and appropriate use of both common and private open space in multi-family dwellings, and implementation would also be undertaken consistent with other principles of urban design (see Mitigation Measure M-NO-1: Interior and Exterior Noise, San Francisco 2004 and 2009 Housing Element EIR).

**Mitigation Measure M-NO-1(b)**

The project sponsor shall construct the proposed residential units with the following window and wall assemblies: Windows shall be Torrance 2500 approved equal windows with one-inch dual-glazed frames with 7/16-inch laminated glazing, 5/16-inch air space, and ¼-inch glazing; exterior walls shall consist of 3/8-inch plywood; 2x6-inch wood stud or 16-gauge steel stud, 16 inches on center with fiberglass sheets in stud cavities; resilient channels; and ½-inch gypsum board.

**Mitigation Measure M-NO-1(c)**

---

If deviations from these assemblies are proposed, the alternative window and/or wall assemblies shall be evaluated by a qualified acoustical consultant to ensure that Title 24 standards are met.

2. Impact – Construction Noise Levels (Impact NO-2)

b) Potentially Significant Impact

The EIR finds that construction of the Project could expose persons to temporary or periodic increases in noise and vibration levels substantially in excess of ambient levels.

b) Mitigation Measure M-NO-2 and Conclusion



The Planning Commission finds the potentially significant impacts listed above would be reduced to a less-than-significant level with incorporation of Mitigation Measures M-NO-2 into the project, as set forth in Appendix A of the Draft EIR, at pp. 153-154 as follows:

#### Mitigation Measure M-NO-2

To ensure that project noise from construction activities is minimized to the maximum extent feasible, the sponsor shall undertake the following:

- The project sponsor shall require the general contractor to ensure that equipment and trucks used for project construction use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically attenuating shields or shrouds, wherever feasible).
- The project sponsor shall require the general contractor to locate stationary noise sources (such as compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could reduce construction noise by as much as 5.0 dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, if feasible.
- The project sponsor shall require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which could reduce noise levels by as much as 10 dBA.
- The project sponsor shall include noise control requirements in specifications provided to construction contractors. Such requirements could include, but not be limited to, performing all work in a manner that minimizes noise to the extent feasible; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants, as feasible; and selecting haul routes that avoid residential buildings inasmuch as such routes are otherwise feasible.
- Prior to the issuance of each building permit, along with the submission of construction documents, the project sponsor shall submit to DBI a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include: (1) a procedure and phone numbers for notifying DBI, the SFDPH, and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing noise complaint procedures and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area at least 30 days in advance of extreme noise-generating activities (defined as activities generating noise levels of 90 dBA or greater) about the estimated duration of the activity.

#### IV. Significant Impacts That Cannot Be Avoided or Reduced to a Less Than Significant Level

**Finding:** Based on substantial evidence in the whole record of these proceedings, the Planning Commission finds that, where feasible, changes or alterations can and should be incorporated into the Project to reduce the significant environmental impacts listed below as identified in the FEIR. The Planning Commission determines that the following significant impacts on the environment, as reflected in the FEIR, are unavoidable, but under Public Resources Code Section 21081(a)(3) and (b), and CEQA Guidelines 15091(a)(3), 15092(b)(2)(B), and 15093, the Commission determines that the impacts are acceptable due to the overriding considerations described in Section VI below. This finding is supported by substantial evidence in the record of this proceeding.

##### A. Cultural and Paleontological Resources

###### 1. Impact -Project-Specific and Cumulative Impacts to Historical Architectural Resources (CP-4)

###### a) Potentially Significant Impact

The EIR finds that the proposed demolition of the 200-214 6<sup>th</sup> Street building, a contributor to a National Register-eligible Historic District, would result in a significant project-specific and, in combination with past, present, and reasonably foreseeable future projects in the vicinity, would contribute considerably to cumulatively significant impacts to historic architectural resources.

###### b) Mitigation Measures M-CP-4(a) and M-CP-4(b) and Conclusion

The Planning Commission finds the potentially significant impacts listed above would not be reduced to less-than-significant levels by implementation of Mitigation Measures M-CP-4(a) and M-CP-4(b), at pp. 93-94 of the Draft EIR, as follows.

###### **Mitigation Measure M-CP-4(a) (HABS Documentation)**

To partially offset the loss of the resource, the project sponsor shall at a minimum, ensure that a complete survey meeting the standards of the Historic American Building Survey (HABS) is undertaken prior to demolition, as follows:

- Prior to approval of the demolition permit, the Project Sponsor shall undertake HABS (Historic American Building Survey) documentation of the subject property. The documentation shall be undertaken by a qualified professional who meets the standards for history, architectural history, or architecture (as appropriate), as set forth by the Secretary of the Interior's Professional Qualification Standards (36 CFR, Part 61). The documentation shall consist of the following:
- HABS-Level Photography: Archival photographs of the interior and the exterior of subject property. Large format negatives are not required. Digital photography may be taken as guided by HABS/HAER/HALS Photography Guidelines. Generally, the following requirements shall apply: the digital sensor size should be at least full frame (35mm) with a minimum of 24 megapixels taken with a perspective correction or other lens resulting in photographs that do not require post-processing. Photographic prints should be accompanied by a data sheet from the

printer noting the paper used, printer model, type of ink, and estimated longevity. The scope and number of the archival photographs shall be reviewed and approved by Planning Department Preservation staff, and all photography shall be conducted according to the latest National Park Service standards and guidelines. The photography shall be undertaken by a qualified professional with demonstrated experience in HABS Photography, and shall be labeled according to HABS Photography Guidelines; and

- HABS Historical Report: A written historical narrative and report, per HABS Historical Report Guidelines. The professional shall prepare the documentation and submit it for review and approval by the San Francisco Planning Department's Preservation Technical Specialist. The final documentation shall be disseminated to the San Francisco Planning Department, San Francisco Library History Room, Northwest Information Center-California Historical Resource Information System, and San Francisco Architectural Heritage.

#### Mitigation Measure CP-4(b) Interpretive Display

Completing a historical resources survey to HABS documentation standards would reduce the Impact CP-4, but not to a less-than-significant level. (Significant, Unavoidable) Implementation of this mitigation measure would reduce Impact CP-4 (historic architectural resources), but not to a less-than-significant level. Therefore, impacts related to the demolition of the 200-214 6th Street building would remain significant and unavoidable. However, to partially offset the loss of the resource, the project sponsor shall incorporate an exhibit/interpretative display on the history of the building, the Defenestration art installation, and the surrounding historic district prior to approval of the demolition permit. It should be noted that the Defenestration art installation is included in the exhibit/interpretive display although the art installation, itself, is not an historic resource. The documentation and interpretive display shall be designed by a qualified professional who meets the standards for history or architectural history (as appropriate), as set forth by the Secretary of the Interior's Professional Qualification Standards (36 CFR, Part 61). Planning Department Preservation staff shall review and approve the scope, content, design and location of the new exhibit/interpretative display. The new exhibit/interpretative display shall be located within a publicly-accessible or publicly viewable area within the new buildings, as determined by Planning Department Preservation staff and the ERO.

### V. Evaluation of Project Alternatives

This Section describes the alternatives analyzed in the EIR and the reasons for rejecting the alternatives. This Section also outlines the proposed Project's (for purposes of this section, "Preferred Project") purposes (the "Project objectives"), describes the components of the alternatives, and explains the rationale for selecting or rejecting alternatives.

CEQA mandates that an EIR evaluate a reasonable range of alternatives to the project, which would "feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen effects of the project, and evaluate the comparative merits of the project." (CEQA Guidelines, Section 15126.6(a)).

CEQA requires that every EIR evaluate a "No Project" alternative as part of the range of alternatives analyzed in the EIR. The 200-214 6th Street Project EIR's No Project Alternative analysis was prepared in accordance with CEQA Guidelines Sections 15126.6(e)(3)(A) and (C).

Alternatives provide a basis of comparison to the Preferred Project in terms of beneficial, significant, and unavoidable impacts. This comparative analysis is used to consider reasonable feasible ways to avoid or substantially lessen the significant environmental consequences of the Preferred Project.

#### **A. Project Objectives**

As stated on EIR p. 29, the following are the Project Sponsors' objectives for the Preferred Project:

1. Increase the supply of affordable housing in San Francisco.
2. Develop a project with minimal environmental disruption.
3. Increase the supply of affordable housing with ground floor retail opportunities to help activate the Sixth Street corridor.
4. Develop affordable housing that complements the existing urban character of the area.
5. Complete the project on schedule and within budget..

#### **B. Reasons for Selection of the Preferred Project**

The EIR analyzes the following alternatives:

- No Project Alternative (Alternative A); and
- Preservation Alternative (Alternative B)
- Partial Preservation Alternative (Alternative C)

These alternatives are discussed in greater detail in Chapter VII, Alternatives, of the EIR.

#### **C. Alternatives Considered but not Analyzed in Detail**

CEQA Guidelines Section 15126.6(c) provides that alternatives can be eliminated from detailed consideration in an EIR if they fail to meet most basic project objectives, are infeasible or are unable to avoid significant environmental impacts. The FEIR did not analyze alternatives other than those assessed because none could be identified that could substantially reduce the significant environmental impacts of the Project. An alternative location pursuant to CEQA Guidelines Section 15126.6(f)(2) was not analyzed because the project sponsor does not own any alternative sites in San Francisco, and no viable alternative sites were identified within San Francisco where the Project could be constructed that would meet most of the project sponsor's objectives and where the Project's environmental impacts would be substantially lessened or avoided.

#### **D. Alternatives Rejected and Reasons for Rejection**

The Planning Commission recommends rejection of the alternatives set forth in the Final EIR and listed below because the Planning Commission finds that there is substantial evidence, including evidence of economic, legal, social, technological, and other considerations described in this Section in addition to those described in Section VI below under CEQA Guidelines 15091(a)(3), that make such alternatives infeasible.

**1. No Project Alternative (Alternative A)**

The No Project Alternative, with respect to the 200-214 6th Street Project, would involve no development at the 200-214 6th Street Project Site. The existing vacant building would remain in its current condition; the only change would be removal of the "Defenestration" installation which would not result in any environmental impacts.

The No Project Alternative would have no environmental impacts as no physical change would occur to the building or the Project Site.

The No Project Alternative does not meet most of the Preferred Project objectives for the following reasons.

1. Increase the supply of affordable housing in San Francisco.

The No Project Alternative would not meet this objective because no affordable housing would be built at the Project Site.

2. Develop a project with minimal environmental disruption.

The No Project Alternative would partially meet this objective. Since no project will be built at the Project site, there is no possibility that this Alternative would result in any environmental disruption at the Project Site.

3. Increase the supply of affordable housing with ground floor retail opportunities to help activate the Sixth Street corridor.

The No Project Alternative would not meet this objective because it will not result in the construction of affordable housing at the Project Site which also provides ground floor retail opportunities.

4. Develop affordable housing that complements the existing urban character of the area.

The No Project Alternative would not meet this objective because it will not result in the construction of affordable housing at the Project Site.

5. Complete the project on schedule and within budget.

The No Project Alternative would not meet this objective since there will be no project constructed.

For the reasons listed above and in Section VI, Statement of Overriding Considerations, the Planning Commission hereby rejects as infeasible the No Project Alternative.

## 2. Preservation Alternative (Alternative B)

The Preservation Alternative would retain and restore the building to the Secretary of Interior's Standards, including the retention of all character-defining features of the existing building, such as all exterior elevations and rooflines visible from the public right of way. It would add a fifth-story addition set back up to 8 feet from the existing fourth story. The approximately 61-foot-tall building would have a footprint similar to the Preferred Project. The Preservation Alternative would provide a total of 32 dwelling units (six three-bedroom, 11 two-bedroom, 13 one-bedroom and 2 studios) and 2,265 square feet of ground-floor retail space, a 905-square-foot community room, 400 square feet of private open space, and 3,380 square feet of common open space. Like the Preferred Project, the Preservation Alternative would not include on-site parking.

The Preservation Alternative's impacts would be similar to the Preferred Project, except that its impact to historic resources would be less than significant because this Alternative retains the existing building.

In comparison to the Project, the Preservation Alternative's impacts are as follows:

Historic Resources: The Preservation Alternative does not result in a significant and unmitigable impact because it retains the existing building whereas the Project results in demolition of the existing building. As a result, the Preservation Alternative's impact to historic resources is less than significant.

Archeological Resources/Human Remains: Similar to the potentially significant impacts to archeological resources and human remains from Project excavation and grading of the Project Site, this Alternative could result in potentially significant impacts to archeological resources and human remains. These potentially significant impacts would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.

Interior and Exterior Noise: Similar to the potentially significant noise impacts resulting from Project construction activity, construction of the Preservation Alternative could result in potentially significant impacts to interior and exterior noise levels. These potentially significant impacts would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.

Construction Noise: Similar to the potentially significant noise impacts resulting from Project construction activity, the construction of the Preservation Alternative could result in potentially significant impacts from construction noise. These potentially significant impacts would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.

Construction Air Quality/Toxic Air Contaminants: Similar to the potentially significant air quality impacts resulting from Project construction and grading activity, construction and grading for the Preservation Alternative could result in potentially significant impacts to air quality. These potentially significant impacts would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.

Hazardous Building Materials/Contaminated Soils: Similar to the potentially significant hazardous impacts resulting from Project construction and grading activity, construction and grading of the Preservation Alternative could result in potentially significant impacts from hazardous materials disturbed during construction. These potentially significant impacts would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.

Impacts identified by the Initial Study as less than significant: Like the Project, the Preservation Alternative will have no or less than significant impacts without mitigation to the following resources: Land Use and Land Use Planning; Aesthetics; Population and Housing; Transportation and Circulation; Greenhouse Gas Emissions; Wind and Shadow; Recreation; Utilities and Service Systems; Public Services; Biological Resources; Geology and Soils; Hydrology and Water Quality; Mineral/Energy Resources; and Agriculture and Forest Resources.

The Preservation Alternative would meet all of the Preferred Project objectives for the following reasons:

1. Increase the supply of affordable housing in San Francisco.

The Preservation Alternative would meet this objective by providing 32 units of affordable housing. However, it would only provide 47% of the number of units provided by the Project.

2. Develop a project with minimal environmental disruption.

The Preservation Alternative would meet this objective because all of its potentially significant impacts would be mitigated to less than significant levels by its retention of the existing building and imposition of the mitigation measures adopted in the FEIR.

3. Increase the supply of affordable housing with ground floor retail opportunities to help activate the Sixth Street corridor.

The Preservation Alternative would meet this objective because it will result in the construction of affordable housing at the site and will provide ground floor retail opportunities.

4. Develop affordable housing that complements the existing urban character of the area.

---

The Preservation Alternative would meet this objective because it will result in the construction of affordable housing at the site that will complement the existing urban character of the area.

5. Complete the project on schedule and within budget.

The Preservation Alternative would meet this objective since it can complete the project on schedule and within budget.

For the reasons listed above and in Section VI, Statement of Overriding Considerations, the Planning Commission hereby rejects as infeasible the Preservation Alternative.

3. **Partial Preservation Alternative (Alternative C)**

The Partial Preservation Alternative will retain a portion of the existing building's exterior shell while accommodating as much of the Preferred Project's program as possible. Generally, it will create building additions that fill out the maximum allowable zoning envelope up to 85 feet high at the roof and built out to both street fronting property lines without setbacks. It proposes 52 dwelling units: 8 three-bedroom units, 18 two-bedroom units, 22 one-bedroom units, and 4 studio units.

The Partial Preservation Alternative would provide 1,810 square feet of ground-floor retail space, a 1,250-square-foot community room, 400 square feet of private open space, and 5,250 square feet of common open space. Like the Preferred Project, the Preservation Alternative would not include on-site parking.

The Partial Preservation Alternative's impacts would be similar to those caused by the Preferred Project, including significant and unavoidable impacts to the historic resource, since this Alternative proposes an addition that does not meet the Secretary of Interior's Standards.

In comparison to the Project, the Partial Preservation Alternative's impacts are as follows:

Historic Resources: Similar to the Project, the Partial Preservation Alternative results in a significant and unmitigable impact to historic resources because although this Alternative retains the existing building, the proposed addition does not meet the Secretary of the Interior's Standards, and thus, would also result in a significant unavoidable impact to the historic district.

Archeological Resources/Human Remains: Similar to the potentially significant impacts to archeological resources and human remains from Project excavation and grading of the Project Site, the excavation and grading of the Partial Preservation Alternative could result in potentially significant impacts to archeological resources and human remains. These potentially significant impacts would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.

Interior and Exterior Noise: Similar to the potentially significant noise impacts resulting from Project construction activity, construction of the Partial Preservation Alternative could result in potentially significant impacts to interior and exterior noise levels. These potentially significant impacts would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.

Construction Noise: Similar to the potentially significant noise impacts resulting from Project construction activity, construction of the Partial Preservation Alternative could result in potentially significant impacts from construction noise. These potentially significant impacts would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.

Construction Air Quality/Toxic Air Contaminants: Similar to the potentially significant air quality impacts resulting from Project construction and grading activity, construction and grading of the Partial Preservation Alternative could result in potentially significant impacts to air quality. These potentially significant impacts would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.



Hazardous Building Materials/Contaminated Soils: Similar to the potentially significant hazardous impacts resulting from Project construction and grading activity, construction and grading of the Partial Preservation Alternative could result in potentially significant impacts from hazardous materials disturbed during construction. These potentially significant impacts would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.

Impacts identified by the Initial Study as less than significant: Like the Project, the Partial Preservation Alternative will have no or less than significant impacts without mitigation to the following resources: Land Use and Land Use Planning; Aesthetics; Population and Housing; Transportation and Circulation; Greenhouse Gas Emissions; Wind and Shadow; Recreation; Utilities and Service Systems; Public Services; Biological Resources; Geology and Soils; Hydrology and Water Quality; Mineral/Energy Resources; and Agriculture and Forest Resources.

The Partial Preservation Alternative would meet or partially meet the Preferred Project objectives for the following reasons:

1. Increase the supply of affordable housing in San Francisco.

The Partial Preservation Alternative would partially meet this objective by providing 52 units of affordable housing. Accordingly, the City's supply of housing would be increased as a result of this Alternative but by providing less than 78% of the number of affordable units that would be provided by the Project.

2. Develop a project with minimal environmental disruption.

The Partial Preservation Alternative would partially meet this objective because it would still cause a significant and unmitigable impact to historic resources. Like the Project, the potentially significant impacts that would result from Project construction would be mitigated to less than significant levels by the mitigation measures adopted in the FEIR and imposed through the MMRP.

3. Increase the supply of affordable housing with ground floor retail opportunities to help activate the Sixth Street corridor.

The Partial Preservation Alternative will meet this objective because it will result in the construction of affordable housing at the site and will provide ground floor retail opportunities.

4. Develop affordable housing that complements the existing urban character of the area.

The Partial Preservation Alternative will meet this objective because it will result in the construction of affordable housing at the site that will complement the existing urban character of the area.

5. Complete the project on schedule and within budget.

The Partial Preservation Alternative would meet this objective since it can complete the project on schedule and within budget.

For the reasons listed above and in Section VI, Statement of Overriding Considerations, the Planning Commission hereby rejects as infeasible the Preservation Alternative.

Based on the reasons set forth in this Section V and in Section VI, Statement of Overriding Considerations, the Planning Commission hereby rejects as infeasible the No Project Alternative, the Preservation Alternative and the Partial Preservation Alternative.

## VI. STATEMENT OF OVERRIDING CONSIDERATIONS

Notwithstanding the significant effects noted above, pursuant to CEQA Section 21081(b) and the CEQA Guidelines Section 15093, the Planning Commission finds, after considering the EIR and based on substantial evidence in the administrative record as a whole and as set forth herein, that specific overriding economic, legal, social, and other considerations outweigh the identified significant effects on the environment. Moreover, in addition to the specific reasons discussed in Section V above, the Planning Commission finds that the alternatives rejected above are also rejected for the following specific economic, social, or other considerations resulting from Project approval and implementation:

A. The Project Site currently contains a long-vacant and poorly maintained building that does not contribute to the economic, social and aesthetic qualities of the surrounding SoMa neighborhood. The Project will redevelop this underutilized site with an infill residential project that includes a mix of land uses, including 35 family sized rental units, which would respect the surrounding neighborhood and bring activity to that portion of the neighborhood.

B. The Project will increase affordable housing opportunities to very low income households and families with a developmentally disabled member at a density that is suitable for an intensely-developed urban context served by ample public transit and retail services. By providing infill residential development at the Project Site, residents of the Project will be able to walk, bicycle, or take transit to commute, shop and meet other needs without relying on private automobiles. The Project encourages such non-auto transportation by providing 29 bicycle parking spaces and not offering any on-site parking spaces. The Project's infill location and close proximity to public transit will also help reduce regional urban sprawl and its substantial negative regional environmental, economic, and health impacts, including air and water pollution, greenhouse gas emissions, congestion, and loss of open space and habitat.

C. The Project's proposed ground floor retail uses will help activate the streetscape and create visual interest for pedestrians. This use will also provide employment opportunities for residents in and around the 6<sup>th</sup> Street corridor and for those living in the Project. The Project will also create an attractive and pedestrian-oriented neighborhood scale of development at the site through incorporation of superior design and architectural standards.

D. The Project's retail/commercial and residential uses will be typical of the surrounding neighborhood and will not introduce operational noises or odors that are detrimental, excessive or atypical for the area. While some temporary increase in noise can be expected during construction, this noise is limited in duration and will be regulated by the San Francisco Noise Ordinance and mitigation measures which will regulate excessive noise levels from construction activity and limit the permitted hours of work.

Motion No. 18937  
August 1, 2013

E. The Project will include ample amounts of private and common open space. The SoMa community in general and the 6<sup>th</sup> Street Corridor in particular, lacks the open space amenities and features that most other neighborhoods take for granted. Thus the introduction of 3,691 square feet of common open space, including a rear yard and a 2,303 square foot roof terrace provides a direct benefit to Project residents and enhances the character of the neighborhood.

F. The Project will introduce an architecturally superior building at a prominent location along the 6<sup>th</sup> Street Corridor. Constructed in a contemporary style intended to embrace and reflect the existing aesthetic of the surrounding buildings, the building would be clad in a mixture of brick veneer, dark patinated metal panels, and dark anodized aluminum windows. The building would be highly articulated by a geometric pattern of projecting rectangular bays. This creative design retains the panache at this corner that was achieved by the Defenestration installation. However, unlike that artwork, this design is permanent.

G. The Project will provide 67 affordable housing units to very low income households, a demographic whose housing needs are not frequently met at this scale. Thirty five of those units will be family sized units, with 14 of those targeted to households with a developmentally disabled family member. By providing new, well designed housing in a transit rich neighborhood to two (2) largely underserved populations, the Project is promoting many objectives and policies of the Housing Element, including: promoting mixed use development, developing new housing, particularly affordable housing, providing a range of unit types, providing special needs housing, and promoting the construction of well-designed housing.

H. The Project conforms to the neighborhood character. The existing development in the area surrounding the Project Site is varied in scale and intensity. At 85 feet in height, the Project will be an appropriate transition from the smaller scale of buildings north of Howard to the larger scale buildings south of Howard in and around the 6<sup>th</sup> Street Corridor.

I. The Project would further and be consistent with numerous General Plan objectives and policies, including but not limited to numerous Housing Element, Transportation Element and Urban Design Element policies such as providing adequate sites to meet the City's housing needs, developing special needs housing, such as for families with developmentally disabled members and providing family size units available to low and very low income households. Both the Housing and Transportation Elements encourage locating housing in transit-rich locations to minimize reliance on the car and to maximize use of a building for housing rather than parking spaces. Lastly, the Housing and Urban Design Elements encourage development that is architecturally compatible with surroundings.

Having considered these benefits of the proposed Project, including the benefits and considerations discussed above, the Planning Commission finds that the Project's benefits outweigh its unavoidable adverse environmental effects, and that the adverse environmental effects are therefore considered acceptable. The Planning Commission further finds that each of the Project benefits discussed above is a separate and independent basis for these findings.

## VII. INCORPORATION BY REFERENCE

The Final EIR is hereby incorporated into these Findings in its entirety. Without limitation, this incorporation is intended to elaborate on the scope and nature of the mitigation measures, the basis for determining the significance of impacts, the comparative analysis of alternatives, and the reasons for approving the Project in spite of the potential for associated significant and unavoidable adverse environmental effects.

DECISION

The Planning Commission hereby adopts these findings, including a Statement of Overriding Considerations, and adopts the Mitigation Monitoring and Reporting Program (MMRP) attached as Exhibit A as conditions of approval.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on August 1, 2013.

Jonas P. Ionin  
Acting Commission Secretary

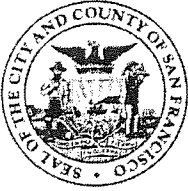
AYES: Commissioners Antonini, Borden, Fong, Hillis, Moore, Sugaya, and Wu

NAYS:

ABSENT:

ADOPTED: August 1, 2013

---



# SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

## Planning Commission Motion No. 18938

HEARING DATE: AUGUST 1, 2013

*Date:* July 25, 2013  
*Case No.:* 2011.0119 ECKV  
*Project Address:* 200 6<sup>th</sup> Street  
*Zoning:* SoMa NCT (Neighborhood Commercial Transit)  
 SoMa Youth and Family Special Use District  
 85-X Height and Bulk District  
*Block/Lot:* 3731/001  
*Project Sponsor:* Sharon Christen  
 Mercy Housing California  
 1360 Mission Street  
 San Francisco, CA 94103  
*Staff Contact:* Corey Teague – (415) 575-9081  
[corey.teague@sfgov.org](mailto:corey.teague@sfgov.org)

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 121.1, 249.40A, 303, 317, AND 735.38 TO DEMOLISH THE EXISTING RESIDENTIAL BUILDING AND CONSTRUCT A 9-STORY, 85-FOOT TALL MIXED USE BUILDING CONTAINING 67 AFFORDABLE DWELLING UNITS AND AN APPROXIMATELY 2,550 GROUND FLOOR RESTAURANT SPACE WITHIN THE SOMA NCT (NEIGHBORHOOD COMMERCIAL TRANSIT) ZONING DISTRICT, THE SOMA YOUTH AND FAMILY SPECIAL USE DISTRICT, AND 85-X HEIGHT AND BULK DISTRICT, INCLUDING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

### PREAMBLE

On November 10, 2011 Sharon Christen, representing Mercy Housing California (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section(s) 121.1, 249.40A, 303, 317, and 735.38 to demolish the existing residential building and construct a 9-story, 85-foot tall mixed use building containing 67 permanently affordable dwelling units and an approximately 2,550 ground floor restaurant space within the SoMa NCT (Neighborhood Commercial Transit) Zoning District, the SoMa Youth and Family Special Use District, and 85-X Height and Bulk District.

On April 29, 2011, the Project Sponsor filed a Review of Shadow Impacts on Public Parks (Case No. 2011.0119K).

The Department determined that an Environmental Impact Report ("EIR") was required and the Department printed and circulated a Notice of Preparation on August 15, 2012, that solicited comments regarding the content of the proposed EIR for the Project. The Department accepted comments on the EIR content through September 14, 2012. Subsequently, the Department published the Draft EIR on February 27, 2013, on which comments were accepted until April 15, 2013. A public hearing on the Draft EIR was held on April 4, 2013. Following the close of the public review and comment period, the Department prepared written responses that addressed all of the substantive written and oral comments on the Draft EIR, and the EIR was revised accordingly.

On March 6, 2013 and March 20, 2013, the San Francisco Historic Preservation Commission (hereinafter "Preservation Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to review the Draft EIR and provide comment.

Several comments on the Draft EIR were made both in writing and at a public hearing in front of the Planning Commission (hereinafter "Commission") on April 4, 2013, and those comments were incorporated in the Final EIR with a response. The Comments and Responses added a new alternative in response to the comments provided by the Preservation Commission, but did not substantially revise the analysis and conclusions regarding significant impacts of the Draft EIR and therefore no recirculation was required under the State CEQA Guidelines Section 15073.3.

On August 1, 2013, the Commission certified the final EIR (hereinafter "FEIR") for the Project. The Project's FEIR identifies a Project specific unavoidable significant impact on the existing building resulting from its demolition. Mitigation measures that are recommended for implementation by the Project Sponsor would reduce but not eliminate this impact.

On August 1, 2013, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Motion No. 18937 that included the necessary CEQA findings, including a statement of overriding considerations, and a Mitigation Monitoring and Reporting Program (hereinafter "MMRP"), which is hereby incorporated in this Motion by reference as if set forth in full. The MMRP was made available to the public and this Commission for this Commission's review, consideration and action.

On August 1, 2013, the Zoning Administrator conducted a duly noticed public hearing at a regularly scheduled meeting on Variance Application No. 2011.0119V.

On August 1, 2013, the San Francisco Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.0119C.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2011.0119C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on the southwest corner of 6<sup>th</sup> and Howard Streets, Block 3731, Lot 001. The property currently contains a four-story residential building with ground floor commercial space that covers the entire property and was constructed in 1909. It is identified as a historic resource as a contributor to the Sixth Street Lodging House District, and is commonly known as the Hugo Hotel, or alternately as the "Defenestration" building because of an art installation of pieces of furniture attached to the exterior of the building. The building contained 23 apartments, but was damaged by fire and earthquake in the late 1980s and has not been occupied since 1987. The former San Francisco Redevelopment Agency purchased the property in 2009 through eminent domain in order to develop affordable housing on the site.
3. **Surrounding Properties and Neighborhood.** The project site falls in the East SoMa Plan Area and the South of Market Redevelopment Project Area, which runs along 6<sup>th</sup> Street from Stevenson Street to Harrison Street. The area includes a variety of small businesses and housing types, and substantial Residential Enclave Districts is nearby along Minna, Natoma, Harriet, Russ, and Moss Streets between 6th and 7th Streets. Additionally, the Gene Friend Recreation Center is on the same block at the corner of 6<sup>th</sup> and Folsom Streets.  
  
The SoMa NCT is located along a portion of the 6th Street and Folsom Street corridors in the South of Market neighborhood. The commercial area provides a limited selection of convenience goods for the residents of SoMa. A moderate number of eating and drinking establishments contribute to the street's mixed-use character and activity in the evening hours. A number of upper-story professional and business offices are located in the district. In general, residential uses are found above the commercial uses on the ground floor.
4. **Project Description.** The proposal is to demolish the existing building and construct a 9-story, 85-foot tall mixed use building containing 67 permanently affordable dwelling units, one manager's unit, and an approximately 2,550 square foot ground floor restaurant space. Fourteen of the 67 dwelling units will be provided for the sole use of developmentally disabled persons. The

building will also contain a community room on the ground floor, no off-street parking, and 29 bicycle parking spaces.

5. **Public Comment.** The Department received 14 letters of support for the project neighborhood residents and various community groups and organizations, and no letters of opposition.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Land Uses.** Planning Code Section 735.1 permits residential uses and restaurants as of right. However, Section 249.40A (SoMa Youth and Family Special Use District) requires a conditional use authorization for new restaurants.

*The project is seeking a conditional use authorization for the ground floor restaurant space pursuant to Section 249.40A.*

- B. **Inclusionary Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements would apply to projects that consist of 10 or more units, where the first application (EE or BPA) was applied for on or after July 18, 2006.

*As currently proposed, the Project will be 100 percent affordable, with 67 dwelling units. In the event that the Project changes and some or all of the units become market-rate, the Project shall comply with the inclusionary housing requirements set forth in Section 415 of the Code.*

- C. **Eastern Neighborhoods Infrastructure Impact Fee.** Planning Code Section 423 et seq. establishes specific impact fees that are required for new developments within the East SoMa Plan Area.

*Planning Code Section 406 grants a waiver to the Eastern Neighborhood Infrastructure Impact Fee for affordable dwelling units that 1) are affordable to a household at or below 80% of the Area Median Income (as published by HUD), including units that qualify as replacement Section 8 units under the HOPE SF program, 2) are subsidized by MOH, the San Francisco Housing Authority, and/or the San Francisco Redevelopment Agency, and 3) are subsidized in a manner which maintains its affordability for a term no less than 55 years, whether it is a rental or ownership opportunity. Project sponsors must demonstrate to the Planning Department staff that a governmental agency will be enforcing the term of affordability and reviewing performance and service plans as necessary. All dwelling units within the project will be affordable to a household at or below 80% of the Area Median Income, and therefore will not be subject to the Eastern Neighborhoods Infrastructure Impact Fee.*

- D. **Shadow.** Planning Code Section 295 allows no building permit authorizing the construction of any structure that will cast any shade or shadow upon any property under the jurisdiction of, or designated for acquisition by, the Recreation and Park Commission to be issued except



upon appropriate action of the City Planning and, if needed, the Recreation and Park Commission.

*A shadow analysis was conducted that determined no net new shadow from the project would be cast onto any property under the jurisdiction of, or designated for acquisition for, the Recreation and Park Commission.*

- E. **Rear Yard.** Planning Code Section 134 requires residential developments in the SoMa NCT Zoning District to provide a rear yard of at least 25 percent of the depth of the property at the lowest story containing a dwelling unit, and at each succeeding level or story of the building. However, Section 134(e)(1) allows the Zoning Administrator to modify the required rear yard in NC Zoning Districts through typical variance procedures, but under different criteria.

*The project proposes a rear yard beginning at grade level in the interior corner of the parcel that equals approximately 14 percent of the lot area. The project is requesting that the Zoning Administrator grant a rear yard modification pursuant to Planning Code Section 134(e)(1).*

- F. **Open Space.** Planning Code Section 135 requires each dwelling unit in the SoMa NCT Zoning District to have access to at least 80 square feet of private open space, 106 square feet of common open space, or some combination of the two.

*The project provides a combination of private decks, a nearly 1,400 square foot common rear yard, and a common roof deck of nearly 2,300 square feet, which combine to meet the minimum square feet of open space required for the project. However, because the rear yard is not code-compliant and not of a sufficient size to qualify as an interior court, the private decks fronting the rear yard are not considered useable open space pursuant to Section 135(f). Therefore, the project is seeking an open space variance from the Zoning Administrator.*

- G. **Exposure.** Planning Code Section 140 requires dwelling units to front a public street, public alley at least 25 feet in width, side yard at least 25 feet in width, a code-complying rear yard, or a sufficient open area.

*The project includes 24 dwelling units that only front the proposed rear yard, which is not code-complying and does otherwise constitute a sufficient open area pursuant to Section 140(a)(2). Therefore, the project is seeking an exposure variance from the Zoning Administrator.*

- H. **Vehicle and Bicycle Parking.** Planning Section 151.1 provides a maximum amount of off-street vehicle parking that may be provided for residential and commercial uses, but does not require a minimum amount. Planning Code Section 155.5 requires one Class 1 bicycle parking space for every two dwelling units in projects greater than 50 units.

*The project includes no off-street parking. The project meets the requirements of Planning Code Section 155.5 for bicycle parking for 53 dwelling units and 14 dwelling units for developmentally disabled persons by providing 29 Class 1 bicycle parking spaces.*

- I. **Street Frontage in Neighborhood Commercial Districts.** Planning Code Section 145.1 requires the following for street frontages in Eastern Neighborhood Mixed Use Districts: (1) not more than 1/3 the width of the building facing the street may be devoted to ingress/egress to parking; (2) off-street parking at street grade must be set back at least 25 feet; (3) "active" use shall be provided within the first 25 feet of building depth at the ground floor; (4) ground floor non-residential uses in the SoMa NCT Zoning District shall have a floor-to-floor height of 14-feet; (5) frontages with active uses shall be fenestrated with transparent windows; and, (6) decorative railings or grillwork placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular views.

---

*The project meets the requirements of Section 145.1 as follows: (1) and (2) the project includes no off-street parking; (3) the project includes a restaurant space, a community room, residential entries and exits, and building operation space on the ground floor; (4) the project includes a floor-to-floor ground floor height of nearly twenty feet at the corner, but only provides a height of approximately 11 feet for the remainder of the space, resulting in a request for a ground floor height variance from the Zoning Administrator; (5) the project includes transparent windows at the ground floor active use; and, (6) the project includes no decorative railings or grillwork.*

- J. **Ground Floor Commercial Space.** Planning Code Section 145.4 requires that all ground floor spaces along 6<sup>th</sup> Street for the entirety of the SoMa NCT Zoning District include active commercial uses.

*Other than required egress and building mechanical space, the entirety of the 6<sup>th</sup> Street ground floor frontage of the proposed building is occupied by active commercial space (i.e. restaurant space).*

- K. **Street Trees.** Planning Code Section 138.1 requires properties proposing new construction to provide one street tree for every 20 feet of frontage.

*The project will provide the required number of street trees and/or pay the associated in-lieu fee as outlined in Section 138.1 if applicable.*

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

*The project is necessary and desirable because it will contribute to the urban revitalization of the neighborhood and 6<sup>th</sup> Street commercial corridor by adding 67 units of affordable housing and ground floor commercial space. The proposed project will be compatible with the surrounding community as the orientation and street frontage of the new building will be similar to the existing building (i.e. with*

*the residential entry on Howard Street), while the height and massing are similar to the structure immediately across 6<sup>th</sup> Street (The Plaza Apartments). The project will incorporate architectural features that relate to neighboring structures.*

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:
- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The subject property is a prominent corner lot on 6<sup>th</sup> Street that was up-zoned to 85 feet through the Eastern Neighborhoods planning process. The parcel is flat and has an area of 10,000 square feet, which is larger than typical lots in NC Zoning Districts. The project appropriately takes full advantage of the 85 foot height district and lot size and is designed to emphasize the corner, which is encouraged by the East SoMa Area Plan. The design also arranges the heights to respond appropriately to the adjacent buildings along 6<sup>th</sup> and Howard Streets. Additionally, the project was reviewed several times by the Historic Preservation Commission (HPC) and adequately responded to their comments regarding the proposed building's design.*

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

*The Planning Code does not require parking or loading for this project, and no existing off-street parking spaces will be removed by the project. The anticipated occupants of the project are low-income residents that are less likely to own cars than higher income tenants. The anticipated occupants are expected to primarily use walking, bicycling, and transit for transportation.*

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*The project will not be a source of significant noise, glare, dust, or odor. The project will comply with any and all applicable regulation and provision of the Building Code, Health Code, and Planning Code regarding noise, glare, dust, and odor. Demolition and construction activities will comply with the provisions of the Municipal Code to provide safeguards minimizing noise, dust, and odor that may be offensive to nearby businesses, residents, and visitors.*

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*The project will provide no off-street parking, loading areas, or setback areas for landscaping. All signs will meet the standards of Article 6 of the Planning Code. The open spaces in the rear yard and on the roof will be appropriately programmed and landscaped.*

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

*The Project requires a variance for open space, exposure, and ground floor commercial ceiling height, and a rear yard modification from the Zoning Administrator. It otherwise complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.*

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

*The SoMa NCT Zoning District is located along the 6th Street and Folsom Street corridors and is intended to be a corridor that provides a limited selection of convenience goods for the residents of the South of Market. Eating and drinking establishments contribute to the street's mixed-use character and activity in the evening hours. The SoMa NCT has a pattern of ground floor commercial and upper story residential units. Controls are designed to permit moderate-scale buildings and uses, protecting rear yards above the ground story and at residential levels. Active, neighborhood-serving commercial development is required at the ground story, curb cuts are prohibited and ground floor transparency and fenestration adds to the activation of the ground story. Continuous retail frontage is promoted by prohibiting drive-up facilities, some automobile uses, and new non-retail commercial uses. Above-ground parking is required to be setback or below ground. Active, pedestrian-oriented ground floor uses are required. Housing development in new buildings is encouraged above the ground story. Housing density is not controlled by the size of the lot or by density controls, but by bedroom counts. Given the area's central location and accessibility to the City's transit network, parking for residential and commercial uses is not required.*

*The proposal is consistent with the intent of the SoMa NCT Zoning District because it is a mid-rise building with a mix of active uses on the ground floor and residential uses above. Additionally, the project will provide no parking, which is consistent with the District's proximity to Market Street and downtown, and its prohibition of new curb cuts on 6<sup>th</sup> Street.*

8. **Development of Large Lot in NC Zoning Districts.** In order to promote, protect, and maintain a scale of development which is appropriate to each district and compatible with adjacent buildings, new construction or significant enlargement of existing buildings on lots of the same size or larger than 10,000 square feet in the SoMa NCT Zoning District shall be permitted only as conditional uses subject to the provisions listed below:

- A. The mass and facade of the proposed structure are compatible with the existing scale of the district.

*The mass and façade of the proposed building are similar to several buildings in the near vicinity, including 1) the Plaza Apartments (988 Howard Street), which is a 9-story building on a large lot of 8,400 square feet, 2) the Knox SRO (241 6<sup>th</sup> Street), which is an 8-story building on a large lot of*

8,000 square feet, and 3) the Dudley Apartments (172 6<sup>th</sup> Street) which is a 6-story building on a large lot of nearly 8,800 square feet. Additionally, the façade of the proposed building is compatible with the scale of the district because it will include higher floor-to-ceiling heights in the ground floor retail space and in the upper residential floors. Finally, the project was reviewed several times by the HPC and adequately responded to HPC comments regarding the proposed building's design, including issues of mass and façade design.

- B. The facade of the proposed structure is compatible with design features of adjacent facades that contribute to the positive visual quality of the district.

*The design of the proposed building was reviewed several times by the HPC and adequately responds to the Sixth Street Lodging House District. The design includes simple rectangular massing that is differentiated, with a taller element on Howard Street and one floor less on 6<sup>th</sup> Street relating to the adjacent structures on those streets. Both streets' façade include relatively symmetrical design with deep window reveals incorporated into the façade on Howard Street.*

9. **Demolition of Dwelling Units.** The demolition of residential units in the SoMa NCT Zoning District requires a conditional use authorization pursuant to Planning Code Section 735.38. Additionally, pursuant to Section 317(e), the Planning Commission shall consider the following additional criteria in the review of applications to demolish Residential Buildings:

- A. Whether the property is free of a history of serious, continuing Code violations;

*The property is not free of a history of serious, continuing Code violations. The existing building has been vacant for more than 20 years due to the previous owner's unwillingness to address code violations. The building was purchased by the former San Francisco Redevelopment Agency through eminent domain due in part to the previous owner's unwillingness to address code violations.*

- B. Whether the housing has been maintained in a decent, safe, and sanitary condition;

*The dwelling units have not been habitable since approximately 1987.*

- C. Whether the property is an "historical resource" under CEQA;

*The existing building is a historical resource under CEQA as a contributor to the proposed Sixth Street Lodging House District.*

- D. Whether the removal of the resource will have a substantial adverse impact under CEQA;

*Removing the existing building will have a substantial adverse impact under CEQA. The Planning Commission certified the focused EIR for this project and adopted the related CEQA findings and Mitigation Monitoring and Reporting Program, which included a Statement of Overriding Considerations for the demolition of a historic resource.*

- E. Whether the project converts rental housing to other forms of tenure or occupancy;

*The building was used as rental housing when last occupied more than 20 years ago. The proposed new units will be rental units affordable to lower income residents. The property under the proposed project will be ground leased to the developer from the Mayor's Office of Housing and Community Development (MOHCD), the Housing Successor Agency to The San Francisco Redevelopment. The Successor Agency will provide a long term (67 years or more) ground lease and require that the improvements be leased to lower income (50% of AMI or lower) households.*

- 
- F. Whether the project removes rental units subject to the Rent Stabilization and Arbitration Ordinance;

*Although there are no existing habitable units in the existing building, if there were any habitable units they would likely be subject to the Rent Stabilization and Arbitration Ordinance.*

- G. Whether the project conserves existing housing to preserve cultural and economic neighborhood diversity;

*The project will provide 67 units of affordable housing, which is in keeping with the cultural and economic diversity of the 6<sup>th</sup> Street corridor and the larger SoMa neighborhood.*

- H. Whether the project conserves neighborhood character to preserve neighborhood cultural and economic diversity;

*The project will provide 67 units of affordable housing, a ground floor community room, and a ground floor restaurant space, all of which are in keeping with the cultural and economic diversity of the 6<sup>th</sup> Street corridor and the larger SoMa neighborhood.*

- I. Whether the project protects the relative affordability of existing housing;

*The project will replace dwelling units that are not habitable with 67 permanently affordable housing units.*

- J. Whether the project increases the number of permanently affordable units as governed by Section 415;

*The project will increase the number of permanently affordable dwelling units. The new units will be governed by the Ground Lease by the Successor Agency and Regulatory Agreements by the MOHCD, the Housing Successor Agency to The San Francisco Redevelopment, and the California Tax Credit*

*Allocation Committee requiring that the units be leased to very low income (50% of AMI maximum) households.*

- K. Whether the project locates in-fill housing on appropriate sites in established neighborhoods;

*The subject property was up-zoned to 85 feet by the Eastern Neighborhoods planning effort and density limits were removed. Considering this, and the fact that the existing building has been vacant for more than 20 years, the project represents an appropriate in-fill development in an established, high-density neighborhood adjacent to downtown.*

- ~~L. Whether the project creates Quality, new family housing;~~

*The project is designed to maximize quality while providing much needed affordability for very low income households. Additionally, it will include 25 two-bedroom units and 8 three-bedroom units, representing 49 percent of the total units.*

- M. Whether the project creates new supportive housing;

*The project will employ staff to provide supportive services on-site. Those services will include information and referral to services available in the community, after school educational enrichment programming, and community building activities. However, the project will not be targeted to formerly homeless households or households with specific special needs requiring intensive on-site support services.*

- N. Whether the project promotes construction of well-designed housing to enhance existing neighborhood character;

*The project will provide high quality design that was reviewed several times by the HPC and adequately responded to HPC comments regarding the proposed building's design.*

- O. Whether the project increases the number of on-site dwelling units;

*The project will increase the number of on-site dwelling units from the estimated 23 that were in the existing building to 67 dwelling units in the new building.*

- P. Whether the project increases the number of on-site bedrooms.

*The existing building is estimated to have had 23 two-room dwelling units. The proposed project will include 67 dwelling units and far larger number of bedrooms than the existing building.*

10. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

## COMMERCE AND INDUSTRY

### Objectives and Policies

#### OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

#### Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

#### Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

#### OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

#### Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

#### OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

#### Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

*The project will not displace any commercial uses, but instead will introduce active ground floor commercial use to a site that has been vacant for more than 20 years. The proposed restaurant will provide a needed service to the neighborhood and will be subject to the standard operating conditions for restaurants.*

The following guidelines, in addition to others in this objective for neighborhood commercial districts, should be employed in the development of overall district zoning controls as well as in the review of individual permit applications, which require case-by-case review and City



Planning Commission approval. Pertinent guidelines may be applied as conditions of approval of individual permit applications. In general, uses should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

#### **Eating and Drinking Establishments**

Eating and drinking establishments include bars, sit-down restaurants, fast food restaurants, self-service restaurants, and take-out food. Associated uses, which can serve similar functions and create similar land use impacts, include ice cream stores, bakeries and cookie stores. Guidelines for eating and drinking establishments are needed to achieve the following purposes:

- Regulate the distribution and proliferation of eating and drinking establishments, especially in districts experiencing increased commercial activity;
- Control nuisances associated with their proliferation;
- Preserve storefronts for other types of local-serving businesses; and
- Maintain a balanced mix of commercial goods and services.
- The regulation of eating and drinking establishments should consider the following:
  - Balance of retail sales and services;
  - Current inventory and composition of eating and drinking establishments;
  - Total occupied commercial linear frontage, relative to the total district frontage;
  - Uses on surrounding properties;
  - Available parking facilities, both existing and proposed;
  - Existing traffic and parking congestion; and
  - Potential impacts on the surrounding community.

*There is a concern with the potential over-concentration of food-service establishments. The Commerce and Industry Element of the General Plan contains Guidelines for Specific Uses. For eating and drinking establishments, the Guidelines state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage." Planning staff has performed a site survey of the SoMa NCT Zoning District which contains the proposed building. With the proposed restaurant use, approximately 17% of the frontage of the District is attributed to eating and drinking establishments.*

#### **Policy 6.2:**

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to the economic and technological innovation in the marketplace and society.

*The proposed restaurant space does not yet have a tenant, but the eventual tenant will not be a Formula Retail use.*

## **EAST SOMA AREA PLAN**

### **Objectives and Policies**

#### **OBJECTIVE 1:**

ENCOURAGE PRODUCTION OF HOUSING AND OTHER MIXED-USE DEVELOPMENT IN EAST SOMA WHILE MAINTAINING ITS EXISTING SPECIAL MIXED-USE CHARACTER.

**6th Street Neighborhood Commercial Transit District**

This new neighborhood commercial district is proposed along 6th Street. The intent of this district is to encourage more small-scale neighborhood-serving uses with housing encouraged above the ground floor.

**Policy 1.1.3**

Encourage housing development, especially affordable housing, by requiring housing and an increased inclusionary requirement in the area between 5th and 6th and Folsom and Howard Streets, extending along Folsom to 3rd Street.

---

**Policy 1.1.9**

Require active commercial uses and encourage a more neighborhood commercial character along 4th and 6th Streets.

**OBJECTIVE 1.2**

MAXIMIZE HOUSING DEVELOPMENT POTENTIAL IN KEEPING WITH NEIGHBORHOOD CHARACTER.

**Policy 1.2.1**

Encourage development of new housing throughout East SoMa.

**Policy 1.2.2**

Ensure that in-fill housing development is compatible with its surroundings.

**Policy 1.2.3**

For new construction, and as part of major expansion of existing buildings, encourage housing development over commercial.

**OBJECTIVE 2.1**

ENSURE THAT A SIGNIFICANT PERCENTAGE OF NEW HOUSING CREATED IN THE EAST SOMA IS AFFORDABLE TO PEOPLE WITH A WIDE RANGE OF INCOMES.

**OBJECTIVE 2.3**

ENSURE THAT NEW RESIDENTIAL DEVELOPMENTS SATISFY AN ARRAY OF HOUSING NEEDS WITH RESPECT TO TENURE, UNIT MIX and COMMUNITY SERVICES.

**Policy 2.3.1**

Target the provision of affordable units for families

**Policy 2.3.2**

Prioritize the development of affordable family housing, both rental and ownership, particularly along transit corridors and adjacent to community amenities.

**OBJECTIVE 3.1**

PROMOTE AN URBAN FORM THAT REINFORCES EAST SOMA'S DISTINCTIVE PLACE IN THE CITY'S LARGER FORM AND STRENGTHENS ITS PHYSICAL FABRIC AND CHARACTER.

**Policy 3.1.3**

Relate the prevailing heights of buildings to street and alley width throughout the plan area.

~~Generally, the height of buildings is set to relate to street widths throughout the plan area. An important urban design tool, in specific applications, is to frame streets with buildings or cornice lines that roughly reflect the street's width. A core goal of the height districts is to create an urban form that will be intimate for the pedestrian, while improving opportunities for cost-effective housing and allowing for pedestrian-supportive ground floors.~~

**Policy 3.1.6**

New buildings should epitomize the best in contemporary architecture, but should do so with full awareness of, and respect for, the height, mass, articulation and materials of the best of the older buildings that surrounds them.

**Policy 3.1.7**

Attractively screen rooftop HVAC systems and other building utilities from view.

**OBJECTIVE 3.2**

PROMOTE AN URBAN FORM AND ARCHITECTURAL CHARACTER THAT SUPPORTS WALKING AND SUSTAINS A DIVERSE, ACTIVE AND SAFE PUBLIC REALM.

**Policy 3.2.5**

Building form should celebrate corner locations.

11. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*The proposal will not displace any existing buildings or residents and will enhance economic and employment opportunities by serving low income residents and creating new ground floor commercial space.*

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The project will not displace any existing housing, but instead will replace a deteriorated, vacant building with a new building that will enliven the street with new commercial space and provide affordable housing for lower income persons. The proposed building will be compatible in scale and design with the surrounding neighborhood and the Sixth Street Lodging House District.*

- C. That the City's supply of affordable housing be preserved and enhanced,

*The project will enhance the City's supply of affordable housing by providing 67 new affordable housing units.*

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The project will not remove or create any off-street parking spaces. The location is well served by pedestrian, bicycle, and transit facilities. Lower income tenants are expected to occupy all of the units, and they typically have lower rates of vehicle use and ownership, and are expected to primarily use walking, bicycling, and transit for transportation. The location is within easy walking distance to the Civic Center and Powell Street MUNI and BART stations, the 14, 14L, 14X, 27, 30, 45, 8X, 12, 19, 6, and 71 MUNI bus lines, and a Golden Gate Transit bus line.*

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

*The Project will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.*

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The existing building proposed to be demolished is severely debilitated and unable to be occupied in its current condition. The proposed building will meet all requirements of the San Francisco Building Code.*

- G. That landmarks and historic buildings be preserved.

*The existing building to be demolished is not a designated City Landmark, but it is identified as a contributor to the Sixth Street Lodging House District. Required mitigation measures for demolishing the historic resource are included in the Mitigation Monitoring and Reporting Program as part of the CEQA findings adopted by the Planning Commission for this project.*

H. That our parks and open space and their access to sunlight and vistas be protected from development.

*The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on open spaces.*

12. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

~~13. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.~~

### DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2011.0119C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated July 25, 2013, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth, and adopts the Mitigation Monitoring and Reporting Program included as Exhibit A of Motion No. 18937.

~~APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18938. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.~~

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on August 1, 2013.

Jonas P. Ionin  
Acting Commission Secretary

AYES: Commissioners Antonini, Borden, Fong, Hillis, Moore, Sugaya, and Wu

NAYS:

ABSENT:

ADOPTED: August 1, 2013

## EXHIBIT A

### AUTHORIZATION

This authorization is for a conditional use to allow the demolition of the existing residential building and construction of a 9-story, 85-foot tall mixed use building containing 67 permanently affordable dwelling units and an approximately 2,550 ground floor restaurant space located at 200 6<sup>th</sup> Street, Block 3731, and Lot 001 pursuant to Planning Code Section(s) 121.1, 249.40A, 303, 317, and 735.38 within the SoMa NCT (Neighborhood Commercial Transit) Zoning District, the SoMa Youth and Family Special Use District, and 85-X Height and Bulk District.; in general conformance with plans, dated July 25, 2013, and stamped "EXHIBIT B" included in the docket for Case No. 2011.0119C and subject to conditions of approval reviewed and approved by the Commission on August 1, 2013 under Motion No. 18938. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on August 1, 2013 under Motion No. 18938.

### PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18938 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

## Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*
2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*
3. **Diligent pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*
4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*
5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*
6. **Additional Project Authorization.** The Project Sponsor must obtain a variance and rear yard modification under Sections 134(e) and 305 for providing a rear yard, residential open space,



dwelling unit exposure, and commercial ground floor ceiling height that do not meet all relevant Planning Code requirements, and satisfy all the conditions thereof. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.  
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

7. **Mitigation Measures.** Mitigation measures described in the MMRP (Exhibit A of CEQA Findings Motion No. 18937) are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

## DESIGN

8. **Street Trees.** Pursuant to Planning Code Section 138.1 (formerly 143), the Project Sponsor shall submit a site plan to the Planning Department prior to Planning approval of the building permit application indicating that street trees, at a ratio of one street tree of an approved species for every 20 feet of street frontage along public or private streets bounding the Project, with any remaining fraction of 10 feet or more of frontage requiring an extra tree, shall be provided. The street trees shall be evenly spaced along the street frontage except where proposed driveways or other street obstructions do not permit. The exact location, size and species of tree shall be as approved by the Department of Public Works (DPW). In any case in which DPW cannot grant approval for installation of a tree in the public right-of-way, on the basis of inadequate sidewalk width, interference with utilities or other reasons regarding the public welfare, and where installation of such tree on the lot itself is also impractical, the requirements of this Section 428 may be modified or waived by the Zoning Administrator to the extent necessary.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org).*

## PARKING AND TRAFFIC

9. **Bicycle Parking.** The Project shall provide no fewer than XXX Class 1 bicycle parking spaces as required by Planning Code Sections 155.1 and 155.5.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

## PROVISIONS

10. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.

*For information about compliance, contact the First Source Hiring Manager at 415-581-2335, [www.onestopSF.org](http://www.onestopSF.org).*

11. **Inclusionary Affordable Housing Program.** Section 415 of the Code set forth the requirements and procedures for the Residential Inclusionary Affordable Housing Program (hereinafter "Program"). As currently proposed, the Project will be 100 percent affordable, with 67 dwelling units. In the event that the Project changes and some or all of the units become market-rate, the Project shall comply with the inclusionary housing requirements set forth in Section 415 of the Code. This condition of approval shall constitute the written determination and notice of the inclusionary housing requirement pursuant to the procedures set forth in Code Section 415.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

12. **Eastern Neighborhoods Infrastructure Impact Fee.** Pursuant to Planning Code Section 423 (formerly 327), the Project Sponsor shall comply with the Eastern Neighborhoods Public Benefit Fund provisions through payment of an Impact Fee pursuant to Article 4.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org).*

## MONITORING

13. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

14. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

## OPERATION

15. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>.*

16. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>.*

17. **Community Liaison.** Prior to issuance of a building permit to construct the project and ~~implement the approved use, the Project Sponsor shall appoint a community liaison officer to~~ deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*



**EXCLUSIVE NEGOTIATIONS AGREEMENT**  
**200 Sixth Street**  
**South of Market Redevelopment Project Area**

THIS EXCLUSIVE NEGOTIATIONS AGREEMENT (hereinafter "ENA" or "Agreement") dated as of November 16, 2010, is between the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California (the "Agency") and Mercy Housing California 51, a California limited partnership (the "Developer").

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

1. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 *et seq.*, the "Law"), the Agency undertakes programs for the reconstruction and construction of slums and blighted areas in the City and County of San Francisco.

2. In accordance with the Law, the City and County of San Francisco (the "City"), acting through its Board of Supervisors, originally approved as the Redevelopment Plan for the South of Market Earthquake Recovery Redevelopment Project Area (the "Project Area") by Ordinance No. 234-90 adopted on June 11, 1990, and amended by Ordinance No. 276-05 on December 6, 2005. The Redevelopment Plan is referred to as the "South of Market Redevelopment Plan." In cooperation with the City, the Agency is responsible for implementing the South of Market Redevelopment Plan.

3. The South of Market Redevelopment Plan provides for the redevelopment, construction and revitalization of the area generally bounded by the Seventh Street, Mission Street, Fifth Street, and Harrison Street.

4. The Agency acquired the land and existing building at 200 Sixth Street (the "Site"), formerly known as the Hugo Hotel, through an eminent domain action. Redevelopment Agency v. Branch Limited Partnership (Superior Ct. San Francisco, No. CGC-08-475882) final order of condemnation filed October 30, 2009.

---

5. In acquiring the Site, the Agency used tax exempt bond proceeds to compensate the previous owner.

6. For several years, the building at the Site has been the location of a Defenestration Sculpture, which remains attached to the building by virtue of a Permit to Enter between the Agency and Brian Goggin, Permittee, and which is subject to termination upon ninety (90) day notice to the permittee and other conditions as described in the Permit to Enter. Agency Resolution No. 137-2009 (Dec. 1, 2009).

7. On May 27, 2010, the Agency issued a Housing Development Request for Proposals (the "RFP") for the development and management of very low-income, rental housing and ground

floor uses at the Site. Agency staff made extensive outreach efforts to attract submittals from qualified developers by the June 29, 2010 deadline. The RFP set forth specific submission requirements to be met in order to be fully reviewed by Agency staff. The RFP also set forth that the Agency would seek to enter into an exclusive negotiations agreement for development rights on the Site.

8. The Agency received five submittals, all of which met the minimum threshold requirements defined in the RFP. After a thorough review of the submittals, an interview with an interdisciplinary selection panel, and presentation to the South of Market Project Area Committee, the selection panel unanimously determined the development team lead by the Developer had the strongest submittal and was well-suited to enter into an ENA with the Agency. Subsequently, the Agency Executive Director recommended that the Agency Commission select the Developer and enter into the ENA.

9. At its meeting on November 2, 2010, the Agency Commission authorized the Agency Executive Director to execute an ENA with the Developer to enable the Developer to pursue predevelopment activities for the construction and management of affordable, rental, family housing ("**Project**"). The Agency and Developer are contemplating entering into a ground lease and other agreements. The ENA will further define a series of milestones that will result in the execution of a ground lease agreement ("**Ground Lease**") for consideration by the Agency Commission after a public hearing, as required by law.

10. The Developer and Agency anticipate that various regulatory approvals and permits are required for the development of the Project, which may include without limitation, environmental review pursuant to the California Environmental Quality Act ("**CEQA**") and compliance with the City Planning Code. The Agency has delegated the administration of land use controls to the Planning Department, which will review and approve the Project.

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

1. **Exclusive Right.**

For the Exclusive Negotiations Period set forth in Section 2 below and subject to the terms and conditions of this Agreement, the Agency and the Developer, acknowledging that time is of the essence, agree to negotiate diligently and in good faith with each other to enter into the Ground Lease and any necessary financing agreements leading to the conveyance, redevelopment and management of the Site (collectively, the "**Agency Agreements**"). The Agency grants to the Developer the exclusive right to negotiate the Ground Lease (the "**Exclusive Right**") during the exclusive negotiations period. The Agency agrees not to solicit any other proposals or negotiate with any other developer with respect to the subject of the negotiations set forth herein. The negotiations conducted under this Agreement shall be based on the development opportunity described in the RFP and the Schedule of Performance attached as Attachment 2 hereto.

The Developer acknowledges and agrees that under this Agreement the Agency is not committing itself or agreeing to enter into the Agency Agreements or undertake any exchange or transfer of real property, any disposition of any real property interests to the Developer, approve

any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Agency or any agency, commission or department of the City. This Agreement does not constitute the disposition of property.

## 2. Term.

(a) The term of the Agreement shall be from November 5, 2010 until November 30, 2011, unless extended pursuant to Section 4 below or terminated pursuant to subsection 2(b) below ("**Exclusive Negotiations Period**").

(b) This ENA shall automatically terminate upon the occurrence of any of the following events: (i) the expiration of the Exclusive Negotiations Period; (ii) Developer's breach under the terms of the ENA unless such breach is cured within the period allowed or such default is expressly waived by the Agency in its sole discretion; (iii) Developer's default under the terms of the Agency Agreements unless such default is cured within the period allowed or such default is expressly waived by the Agency in its sole discretion; or (iv) the Agency's execution of a Ground Lease approved by the Agency Commission.

(c) Upon termination, neither party shall have any further rights or obligations except with respect to those matters that survive termination under Section 11.14.

## 3. Negotiation Deposits; Agency/City Costs.

### 3.1 Performance Deposit.

In connection with its selection by the Agency Commission as the Developer of the Site in response to the RFP, the Developer has paid to the Agency the cash sum of One Thousand Dollars (\$1,000) as an earnest money deposit (the "**Deposit**"). The Developer will pay to the Agency an additional sum of Nine Thousand Dollars (\$9,000) in cash (the "**Additional Deposit**") at the time it executes the ENA. The Additional Deposit shall be combined with the Deposit to form the performance deposit ("**Performance Deposit**"). Except as provided in Sections 3.1(a) and 3.1(b), the Agency shall hold the Performance Deposit until completion of the development, which is defined as the Developer having completed all project construction, achieved 100% lease up of the project, and submitted IRS form 8609 as required by the California Tax Credit Allocation Committee "**Project Completion**".

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

(b) The parties agree that the Agency's actual damages for unreimbursed administrative expenses (exclusive of any transaction costs covered by Section 3.2 below), in the event of Developer's default would be extremely difficult or impracticable to determine. The parties agree that, considering all the circumstances existing on the date of this Agreement, the amount of the Performance Deposits together with all accrued interest thereon as herein provided

is a reasonable estimate of the damages for unreimbursed administrative expenses that the Agency would incur in such event.

IF THE PARTIES DO NOT REACH AGREEMENT ON THE AGENCY AGREEMENTS OR IF THE AGENCY AGREEMENTS ARE NOT APPROVED, EXECUTED AND DELIVERED AS CONTEMPLATED HEREBY DUE, IN EITHER INSTANCE, TO ANY DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT, THEN, WITHOUT LIMITING ANY OF ITS OTHER REMEDIES HEREUNDER, AT LAW OR IN EQUITY, THE AGENCY SHALL BE ENTITLED TO RETAIN THE PERFORMANCE DEPOSIT, TOGETHER WITH ALL INTEREST THEREON AS HEREIN PROVIDED, AS LIQUIDATED DAMAGES FOR THE UNREIMBURSED ADMINISTRATIVE EXPENSES OF THE AGENCY. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: Agency AR Developer va

**3.2 Agency/City Costs.**

Entitlement Costs. The Developer shall pay or cause to be paid all costs associated with applying for, obtaining and maintaining any necessary or appropriate entitlements for the development of the Site. The Agency will reimburse the Developer for all Project-related expenses approved by the Agency in its sole discretion, and will endeavor to make such reimbursement within thirty (30) days of Developer's reimbursement request.

**4. Extension of Exclusive Negotiations Period.**

The Agency's Executive Director may extend the Exclusive Negotiations Period for an additional two (6) month periods beyond the initial term in his/her sole discretion to permit the completion of the negotiations or to comply with statutory public notice requirements.

**5. Developer's Obligations.**

During the Exclusive Negotiations Period, the Developer agrees that:

**5.1 Schedule of Performance**

The Developer shall comply with the requirements of the Schedule of Performance, which is attached as Attachment 2, by completing the identified tasks by the deadlines ("Performance Milestones").

**5.2 Other Obligations.**

(a) The Developer shall comply with the requirements of all applicable City and Agency ordinances, resolutions, regulations or other Regulatory Approvals in all aspects (planning, design, construction, management and occupancy) of developing the Site, including, without limitation, the South of Market Redevelopment Plan and any amendments thereto, the City Planning Code, the Agency's Small Business Enterprise Program (including, but not limited to, the selection of consultants during the pre-development period), Labor Standards and



Prevailing Wages Provisions, Minimum Compensation Policy, and Health Care Accountability Policy.

(b) At the request of the Agency and/or the City and at the Developer's sole expense, which funds may come from a predevelopment loan if provided by the Agency, the Developer shall prepare (or cause expert consultants approved by the Agency to prepare) and submit all reports, studies or other information reasonably necessary to obtain Regulatory Approvals. Such expenses may be paid with proceeds from the predevelopment loan.

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

(d) In making any entry onto the Site, the Developer shall not cause a release or migration of any Hazardous Materials defined in Section 5.3.2 below and shall not cause the Incidental Migration of any Hazardous Material. For purposes of this section, the term "Incidental Migration" shall mean any non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of any Hazardous Substance existing at, on or under the Site prior to the effective date of the Agreement.

(e) In making any entry onto the Site, neither the Developer nor any of its agents, contractors or representatives shall interfere with or obstruct the permitted, lawful use of the Site, including the Interim Use permitted for the display of the Defenestration sculpture, as authorized under the Permit to Enter between Brian Goggin, Permittee, and the Agency (Dec. 1, 2009), attached as Attachment 4.

(f) The Developer shall notify the Agency within five (5) days of any event or circumstance that occurs during the Exclusive Negotiations Period and that causes a material breach of any representation and warranty made by the Developer under Section 9 or any other provision of this Agreement. Material breaches include, but are not limited to, events or circumstances that cause the representations and warranties in this Agreement to be inaccurate or misleading.

### **5.3 Indemnity.**

5.3.1 The Developer shall indemnify and defend the Agency, the City and their ~~respective commissioners, officers, agents and employees (individually or collectively, an~~ "Indemnified Party") from and against any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable Attorneys' Fees and Costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise ("Losses") arising out of (a) any default by the Developer in the observance or performance of any of the Developer's obligations under the ENA (including, without limitation, those obligations set forth in Section 5.2 above), (b) any failure of any representation by the Developer to be correct in all respects when made, (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Site, caused by the negligence or any other act or omission of the Developer and its officers, agents and employees, (d) (any claim, demand or

cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnified Party that relates to or arises out of the Agency Agreements or any transaction contemplated by, or the relationship between the Developer and the Agency under this Agreement, (e) any failure of the Developer or its agents or contractors to comply with all applicable environmental requirements relating to the development of the Site, (f) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency, whether meritorious or not, which directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (e) above, provided that no Indemnified Party shall be entitled to indemnification under this Section for matters caused solely by such Indemnified Party's gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnified Party by reason of a claim arising out of any loss for which the Developer has indemnified the Indemnified Party, and upon written notice from such Indemnified Party, the Developer shall at its sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnified Party. The Indemnified Party shall have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnified Party in connection with the matters covered by this Agreement. The provisions of this paragraph shall survive the termination of this Agreement.

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

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

#### 5.4 Insurance.

5.4.1 Developer's Insurance. Without in any way limiting Developer's indemnification obligations under this Agreement, and subject to approval by the Agency's Risk Manager of the insurers and policy forms, the Developer shall obtain and maintain, at the

Developer's expense, the following insurance and bonds throughout the Term of this Agreement, unless otherwise provided in this Agreement:

5.4.2 Minimum Scope of Insurance. Coverage shall be at as broad as:

(a) Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).

(b) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01 covering-any auto).

(c) Workers' Compensation insurance as required by the State of California and Employers Liability insurance.

(d) Professional Liability insurance covering all negligent acts, errors and omissions in Developer's Architectural and Engineering Professional Design Services. As an alternative to Developer's providing said Professional Liability insurance, Developer shall require that all professional consultants for the Project have liability insurance covering negligent acts, errors and omissions.

5.4.3 Minimum Limits of Insurance. Developer shall maintain limits no less than:

(a) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit.

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

(c) Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the State of California and Employers Liability limits of \$1,000,000 for each accident, injury, or illness.

(d) Professional Liability: \$1,000,000 per claim and in the annual aggregate ~~covering Developer's Architectural and Engineering design team members including all~~ architects, engineers and surveyors. As a preferred alternative, Developer may provide project specific Professional Liability coverage with limits of \$1 Million per claim and \$2 Million in the policy aggregate. Developer shall maintain or cause to be maintained, insurance required under this subsection for at least three (3) years beyond completion of construction. Developer shall provide evidence of such required insurance for three (3) years after completion of construction.

5.4.4 Deductibles and Self-Insured Retentions. Any deductibles or self insured retentions over \$25,000 must be declared to and approved by the Agency's Risk Manager. At the option of the Agency's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the "San Francisco Redevelopment Agency, the City and their respective commissioners, members, officers, agents, and employees", or

Developer shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

5.4.5 Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions.

(a) General Liability and Automobile Coverages.

(i) "The San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees" are to be covered as additional insureds as respects: liability arising out of activities performed for or on behalf of Developer related to the Project; products and completed operations of Developer, premises owned, occupied or used by Developer; or automobiles owned, leased, hired or borrowed by or on behalf of the Borrower. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, the City and their respective commissioners, members, officers, agents, and employees.

(ii) For claims related to this project, Developer's insurance coverage shall be primary insurance with respect to "the San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees". Any insurance or self-insurance maintained by the Agency, the City and their respective commissioners, members, officers, agents, and employees shall be in excess of Developer's insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, the City and their respective commissioners, members, officers, agents, and employees.

(iv) Developer's insurance shall apply separately to each insured against whom a claim is made or suit is brought in relation to this project, except with respect to the limits of the insurer's liability.

(b) All Coverages. Developer is precluded from suspending, cancelling, terminating, or reducing the coverage or limits of, each insurance policy required by this Section without the prior written consent of the Agency at least thirty (30) days prior to its effective date. Developer shall e-mail a copy of any cancellation notice it receives for any insurance policy required by this Section to the Agency's Risk Manager within two (2) days of receipt from the insurance carrier.

5.4.6 Acceptability of Insurers. Insurance is to be placed with insurers with a Current Best's rating of no less than A:VII, unless otherwise approved by the Agency's Risk Manager.

5.4.7 Verification of Coverage. Developer shall furnish the Agency with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Agency's Risk Manager before work commences and prior to

any disbursement of funds. The Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

5.4.8 Subcontractors and Consultants. Developer shall include all subcontractors and consultants as insureds under its policies or shall cause each to furnish separate certificates and endorsements. All coverages for subcontractors and consultants shall be subject to all of the requirements stated herein, unless otherwise approved by the Agency's Risk Manager.

5.4.9 Review. The Agency's Risk Manager shall evaluate the insurance coverage required under this Section for adequacy if and when the Exclusive Negotiations Period is extended. The Agency may require the Developer to increase the insurance limits and/or forms of coverage in the reasonable discretion of the Agency's Risk Manager.

### 5.5 Force Majeure

The occurrence of any of the following events shall excuse performance of such obligations of Developer as are rendered impossible to perform while such event continues: acts of God; strikes; lockouts; labor disputes;; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotions; fire or other casualty; nonperformance by Agency which prevents the performance of Developer; and other causes beyond the control of the Developer. The occurrence of such events shall excuse performance only in the event that the Developer has provided written notice to the Agency within thirty (30) days after the occurrence or commencement of the event of force majeure and such excuse shall terminate thirty (30) days after the termination of the event giving rise to the delay. However, under no circumstances shall this force majeure provision apply to Developer's indemnification and defense obligations under Section 5.3 and/or Developer's insurance obligations under Section 5.4 above.

### 6. Agency's Obligations.

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

- (a) Subject to environmental review under CEQA and the National Environmental Protection Act (NEPA) as applicable, the public review process and all required governmental approvals, as further provided in this Agreement, the Agency shall use good faith efforts to diligently negotiate, prepare and submit for approval the Agency Agreements.
- (b) The Agency shall make available all public record studies and other documents in the Agency's possession or control as necessary to perform the Developer's due diligence investigations of the Site, provided that the Agency makes no representations or warranties whatsoever regarding the completeness or accuracy of such information and the Developer must perform its own independent analysis.
- (c) The Agency shall reasonably cooperate with the Developer in providing access to the Site for the purpose of performing tests, surveys and

inspections, and obtaining data necessary or appropriate to negotiate the Agency Agreements provided, however, the Developer shall give prior written notice to the Agency of any such entry and shall, if the Agency requires, obtain a Permit to Enter from the Agency for such entry and comply with such insurance and indemnification requirements as the Agency may impose with respect to such inspections as contained in the Permit to Enter. In the case of invasive tests under any permit to enter required and granted by the Agency, the Agency may impose such insurance, indemnification, guaranty and other requirements as the Agency determines appropriate, in its reasonable discretion as contained in the Permit to Enter.

- (d) The Agency shall reasonably cooperate with the Developer in the provision of information and assistance in the filing, processing and obtaining of land use entitlements and regulatory approvals for the Developer's proposed development and operation of the Site, but neither the Agency nor the City shall be required to satisfy any conditions for any approval, except as may be specifically agreed to by the Agency or the City, as applicable, in its respective sole and absolute discretion.

7. **Non-Assignment.**

7.1 **Definitions.**

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

“Affiliate” means any person that directly or indirectly Controls, is Controlled by or is under Common Control with, the Developer (or a managing or other member of the Developer, as the case may be).

“Control” means the ownership (direct or indirect) by one Person of (i) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of equity interests (including rights to acquire such interests), or (ii) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of interests that have a right to nominate, vote for or otherwise select the members of the board or other governing body that directs or causes the direction of substantially all of the management and policies of that Person.

“Controlled,” “Controlling Interest” and “Controlling” have correlative meanings.

“Common Control” means that two Persons are both Controlled by the same other Person.

“Person” means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or federal, state or political subdivision thereof.

“Significant Change” means any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in the Developer.

## 7.2 Non-Assignment.

The Agency and the Developer acknowledge and agree that the Agency is entering into this Agreement and granting the Exclusive Right to the Developer on the basis of the particular experience, financial capacity, skills and capabilities of the Developer and its members. The Exclusive Right is personal to the Developer and is not assignable and no Significant Change may occur under any circumstance (whether by agreement or operation of law) without the prior written consent of the Agency, which may be given, withheld or conditioned in the Agency's sole and absolute discretion.

## 8. Default and Remedies.

### 8.1 Developer's Event of Default.

The occurrence of any of the following (each an "Event of Default") shall constitute a default by the Developer after the Agency gives notice of the default specifying in reasonable detail the basis for the determination of the default and after expiration of the applicable cure period:

- (a) Failure to pay any sums due under this Agreement within thirty (30) days after written notice by the Agency.
- (b) Failure to meet a Performance Milestone contained in the ENA Schedule of Performance.
- (c) Failure of Developer to comply with the terms and conditions set forth in any written notice of default delivered by the Agency to the Developer as a result of the failure by Developer to abide by the terms and conditions of this Agreement.
- (c) Any material breach of any representation and warranty made by the Developer under Section 9 or any other provision of this Agreement unless the Developer notifies the Agency within five (5) business days of the material breach and cures such breach within ten (10) days from the date on which the Developer was obligated to notify the Agency.
- (d) Any assignment, attempted assignment or Significant Change in violation of Section 7.2.
- (e) Any filing of a petition to have the Developer adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization liquidation or arrangement under any bankruptcy or insolvency law, or any assignment for the benefit of creditors, or seeking appointment of a trustee, receiver, liquidator of the Developer or any substantial part of the Developer's assets, if such petition is not dismissed within sixty (60) days.
- (f) The debarment or prohibition of the Developer from doing business with any federal, state or local governmental agency, or any debarment or prohibition of any Affiliate of the Developer from doing business with any federal, state or local governmental agency to the extent such debarment or prohibition of the Affiliate could affect the redevelopment of the Site as contemplated hereby.

- (g) Failure to procure or maintain any of the insurance coverage required hereunder so that there is a lapse in required coverage and such breach is not cured within two (2) business days.
- (h) The occurrence of an uncured default under the terms of any of the Agency Agreements.

## 8.2 Agency's Remedies.

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

(a) If, after the time provided in Section 8.2 above, Developer has not cured the Event of Default, the Agency may, in its sole and absolute discretion, terminate this Agreement and the Exclusive Right. This remedy is not exclusive, but shall be cumulative with any and all remedies available to it at law or in equity and under this Agreement, including but not limited to specific performance. If the Agency chooses to terminate the ENA, the ENA shall be terminated and neither party shall have any rights against or liability to the other, except those provisions that are specified to survive such termination shall remain in full force and effect. Upon any such termination, the Agency shall have the right to retain the Performance Deposit.

(b) Plans, Specifications, Reports and Studies. If the Agency terminates this ENA, then subject to the proprietary rights of their authors and any confidentiality agreements and privileges recognized by applicable law, the Developer shall deliver to the Agency copies of any and all reports, studies, document lists and plans regarding the redevelopment of the Site in the Developer's possession or prepared by or on behalf of the Developer (the Developer's "**Work Product**"), but without any representation as to the accuracy of the Work Product. The Developer shall deliver its Work Product within ten (10) days after written demand from the Agency, which obligation shall survive the termination of this Agreement. The Agency may use the Work Product for any purpose relating to the Site, provided that the Agency shall release the Developer and the Developer's contractor, architect, engineer and other consultants ("Developer's Consultants") from any Losses arising out of the Agency's use of such documents, except to the extent that the Agency retains any of the Developer's Consultants and they agree to such continued liability.

---

## 8.3 Termination and Developer's Risk.

(a) Developer's Risk. The Developer acknowledges and agrees that it is proceeding at its own risk and expense until such time as the Agency Agreements are approved and without any assurance that the Agency Agreements will be approved.

## 9. Representations and Warranties of the Developer.

### 9.1 Representations and Warranties.

The Developer represents, warrants and covenants as follows:

(a) Valid Existence; Good Standing; Joint Venture Relationships. The Developer is a California limited partnership duly organized and validly existing under the laws



which prohibits former Agency employees and consultants from working on behalf of another party on a matter in which they have participated personally and substantially unless the Agency consents to such scope of work. As to the provisions referred to in clause (i), the Developer does not know of any facts that constitute a violation of such provisions. As to the policy in clause (ii), the Developer has disclosed to the Agency in writing any and all personnel or consultants covered by such policy as of the date of this Agreement, and concurrently herewith the Agency Commission has elected to waive or not to waive the conflict as to such specific personnel or consultants.

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

(i) Consultants. As of the date of this Agreement, the Developer has retained the following consultants in connection with the proposed redevelopment of the Site: Kennerly Architecture and Planning. The Developer shall promptly notify the Agency of the termination of any consultant previously approved by the Agency, and the Developer shall, to the extent required to fulfill its obligations under this Agreement, replace such consultant with a new consultant reasonably approved by the Agency. In addition, the Developer shall promptly notify the Agency of the addition of any new consultant associated with the Project. Nothing herein shall limit the provisions of subsection (g) above regarding conflicts of interest.

(j) Not Prohibited from Doing Business. Neither the Developer (nor any Affiliates of the Developer) have been debarred or otherwise prohibited from doing business with any local, state or federal governmental agency.

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

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

---

## 9.2 Survival.

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

## 10. Notices.

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

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

of the State of California. The Developer has all requisite power and authority to own its property and conduct its business as presently conducted. The Developer has made all filings and is in good standing in the jurisdiction of the State of California.

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

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

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

(e) Defaults. The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which the Developer may be bound or affected, (B) any law, statute, ordinance, regulation, or (C) the partnership agreement of the Developer

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

(g) Conflicts of Interest. The Developer is familiar with (i) Section 87100 etseq. of the California Government Code, which provides that no member, official or employee of the Agency, may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly and (ii) the Agency's Personnel Policy,

## **11. General Provisions.**

### **11.1 Amendments.**

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

### **11.2 Severability.**

If any provision of this Agreement, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement. Without limiting the foregoing, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this Agreement, the parties shall promptly modify, amend or suspend this Agreement, or any portion of this Agreement, to the extent necessary to comply with such provisions in a manner which preserves to the greatest extent possible the benefits to each of the parties to this Agreement and to the Developer before such conflict with federal or state law. However, if such amendment, modification or suspension would deprive the Agency or the Developer of the substantial benefits derived from this Agreement or make performance unreasonably difficult or expensive, then the affected party may terminate this Agreement upon written notice to the other party. In the event of such termination, neither party shall have any further rights or obligations under this Agreement except as otherwise provided herein.

### **11.3 Non-Waiver.**

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

### **11.4 Non-Liability.**

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

### **11.5 Successors and Assigns; Third Party Beneficiary.**

This Agreement shall inure to the benefit of and bind the respective successors and assigns of the Agency and the Developer, subject to the limitations on assignment by the Developer set forth in Section 7 above. The City is an intended third party beneficiary of this Agreement, provided that no approval of the City shall be required to amend this Agreement.

San Francisco Redevelopment Agency  
1 South Van Ness Ave., Fifth Floor  
San Francisco, CA 94103  
Attn: Executive Director  
Reference: 200 Sixth Street  
Telefacsimile: (415) 749-2590  
Telephone: (415) 749-2400

With a copy to:  
San Francisco Redevelopment Agency  
1 South Van Ness Ave., Fifth Floor  
San Francisco, CA 94103  
Attn: General Counsel  
Reference: 200 Sixth Street  
Telefacsimile: (415) 749-2575  
Telephone: (415) 749-2400

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

Regional Director  
Mercy Housing California 51  
1360 Mission Street, Suite 300  
San Francisco, CA 94103  
Telefacsimile: (415) 355- 7101  
Telephone: (415) 355- 7100

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

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

- (a) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if approval is being requested, shall be clearly marked "Request for Approval under South of Market Redevelopment Project Area, 200 Sixth Street, Exclusive Negotiations Agreement"; and
- (d) if a notice of a disapproval or an objection, which requires reasonableness, shall specify with particularity the reasons therefor.

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

Except as provided above with respect to the City, this Agreement is for the exclusive benefit of the parties hereto and not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

#### **11.6 Governing Law.**

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

#### **11.7 Attorneys' Fees and Costs.**

If either party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable Attorneys' Fees and Costs (as defined below). Any such Attorneys' Fees and Costs incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be several from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Agency's General Counsel shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Agency's General Counsel'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. "Attorneys' Fees and Costs" means any and all attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, attachment preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

#### **11.8 Interpretation of Agreement.**

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

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles

and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

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

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

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

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

#### **11.9 Entire Agreement.**

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

#### **11.10 Time for Performance.**

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

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

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

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

#### **11.11 Counterparts.**

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

#### **11.12 Approvals and Consents.**

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

#### **11.13 Real Estate Commissions.**

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

#### **11.14 Survival.**

Notwithstanding anything to the contrary in this Agreement, any indemnity or other obligation that arises and was not satisfied before termination shall survive any termination of this Agreement, except to the extent otherwise provided herein. In the event of any termination of this Agreement (other than a termination due to a default by the Agency), the Developer shall furnish copies of plans, specifications, studies and reports to the Agency as provided in Section 8.2(b).

#### **11.15 Nondiscrimination and Small Business Enterprise Policy.**

(a) The Developer covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, religion, creed, national origin, ancestry, sex, gender identity, age, marital or domestic partner status, familial status, lawful source of income (as defined in Section 3304 of the San Francisco Police Code) sexual orientation or disability (including HIV or AIDS status) against any employee or applicant for employment with Developer, in any of the Developer's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social, or other establishments or organizations operated by the Developer.

(b) The Developer shall include in all subcontracts relating to this Agreement a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above

(c) The Developer does not as of the date of this Agreement and will not during the Exclusive Negotiations Period, in any of its operations or in San Francisco or with respect to its operations under this Agreement 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 the Agency's Non-Discrimination in Contracts and Benefits Policy, adopted September 9, 1997, as amended February 4, 1998.

(d). If the Developer intends to utilize subcontractors in the provision of services under this Agreement, it must consult with the Agency's Contract Compliance Division and comply with all the applicable provisions of the Agency's Purchasing Policy and Procedures in regard to subcontracting pursuant to the Small Business Enterprise Policy, which is attached as Attachment 5.

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

**11.17 Relationship of the Parties.**

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

**11.18 Cooperation.**

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

---


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the Agency and the Developer have duly executed and delivered this Agreement as of the date first written above.

**AGENCY**

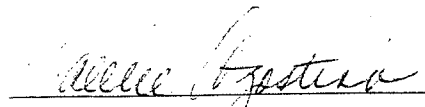
REDEVELOPMENT AGENCY OF THE CITY  
AND COUNTY OF SAN FRANCISCO,  
a public body, corporate and politic

By   
Amy Lee  
Deputy Executive Director  
Finance and Administration


**DEVELOPER**

MERCY HOUSING CALIFORNIA 51,  
a California limited partnership

By: Mercy Housing Calwest,  
a California nonprofit public benefit  
corporation, its general partner

By   
Valerie Agostino, Vice President

**APPROVED AS TO FORM:**

By   
James B. Morales  
Agency General Counsel

Authorized by Agency Resolution No. 137-2010, adopted Nov 16, 2010.

EXCLUSIVE NEGOTIATIONS AGREEMENT

LIST OF ATTACHMENTS

ATTACHMENT 1	Site Legal Description
ATTACHMENT 2	ENA Schedule of Performance
ATTACHMENT 3	ENA Scope of Development
ATTACHMENT 4	Permit to Enter between Brian Goggin and Agency (Dec. 1, 2009)
ATTACHMENT 5	Small Business Enterprise Policy

ATTACHMENT 1  
Site Legal Description  
(200 Sixth Street)

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

Beginning at the point of intersection of the Southwesterly line of Sixth Street and the Southeasterly line of Howard Street; running thence Southwesterly and along said line of Howard Street 80 feet; thence at a right angle Southeasterly 125 feet; thence at a right angle Northeasterly 80 feet to the Southwesterly line of Sixth Street; thence at a right angle Northwesterly along said line of Sixth Street 125 feet to the point of beginning.

Being part of 100 Vara Block No. 395.

**Assessor's Parcel Number:** Lot 1, Block 3731

ATTACHMENT 2

200 Sixth Street

ENA Schedule of Performance

No.	Task	Deadline
1.	<b>Submit initial design concept drawings acceptable to the Agency</b> as described in Attachment 3.	By no later than June 30, 2011
2.	<b>Submit historic resource evaluation strategy and plan acceptable to the Agency</b>	By no later than April 31, 2011
2.	<b>Submit a preliminary financing plan acceptable to the Agency.</b>	By no later than October 31, 2011
3.	<b>Submit preliminary marketing plan approved by Agency.</b>	By no later than December 31, 2011
4.	<b>Submit schematic design drawings acceptable to the Agency.</b> The submission shall include the items specified in Attachment 3.	By no later than August 31, 2011
5.	<b>Identify a general contractor and obtain a cost estimate based on the schematic design acceptable to the Agency.</b>	By no later than December 31, 2011
6.	<b>Execution of Ground Lease Agreement.</b>	March 31, 2012

ATTACHMENT 3

200 Sixth Street

ENA Scope of Development

**I. GENERAL DESCRIPTION OF DEVELOPMENT**

The Site consists of one parcel located in the South of Market Redevelopment Project Area, at 200 Sixth Street at the corner of Sixth and Howard Streets in San Francisco, further described in Attachment 1, "Site Legal Description." The Developer has proposed a development program ("Project"), dated July 29, 2010, that is the basis for Agency approval of the Agreement. The Project shall include the following:

Construction of at least 56 units of affordable housing for very low-income families, including nine floors (eight residential floors and one floor at ground level), common areas, parking and open space. The unit distribution shall be approximately 17 one-bedroom (30%), 22 two-bedroom (40%), 17 three-bedroom (30%) apartments, with units affordable up to 50% of area median income. Affordability levels for all units must be approved by the Agency and will be set pursuant to limits required by selected financing sources.

**II. GENERAL DESIGN OBJECTIVES**

The intent of this Scope of Development is to provide a general direction to the development of the Site in order to insure the following design objectives:

- A. Building(s) shall comply with the objectives of the South of Market Redevelopment Plan ("Redevelopment Plan").
- B. Building(s) shall comply with the objectives and policies of the General Plan, the City Planning Code, and to all applicable codes and ordinances of the City and County of San Francisco as modified by the express provisions of the Redevelopment Plan.
- C. Design and scale of the building façades should be compatible with the ~~surrounding neighborhood context of lodging houses and other~~ residential/commercial mixed-use buildings. As the development is anticipated to approach the 85-foot height limit, the design must be modulated and articulated to break down the apparent mass of the building.
  - C.1 Create an attractive and appropriately sized retail space along Sixth Street at Howard Street.
  - C.2 Maximize active frontages along both streets and minimize the presence of parking, egress, mechanical, and electrical appurtenances along street frontages at the ground floor.

- C.3 Respect the existing pattern of mid-block open space of adjacent parcels.
- D. Any provided parking should be concealed with retail space or other active uses at the ground floor.
- E. Building massing and design should consider privacy, safety, views, and solar access for residences and associated open space(s).
- F. The development shall incorporate sustainable building methods and materials. Use the most feasible cost-effective energy efficient measures, with a minimum requirement of a score of 100 as set forth in the Green Point Rated Program and at a minimum, standards as specified in the City of San Francisco, Department of Building Inspection, Administrative Bulletin No. AB-093. Due to State and local Green Building ordinances, the Agency anticipates the project will greatly exceed this minimum score.

### III. DEVELOPMENT STANDARDS

The Development of the Site shall comply with all Redevelopment and Planning Code requirements including but not limited to the following Land Use and Development Standards:

#### A. Site

- 1. General. It is the intent of the agency, in evaluating the development, to insure a compatible balance of land coverage, open spaces and architectural design in order to provide a development consistent with the goals and objectives of the redevelopment plan.

#### B. Architectural

- 1. General. The development shall be of high architectural quality and appearance, contributing to the surrounding community.
- 2. Design. The development shall be of a distinctive design and visually ~~interesting as seen from Sixth, Howard and Harriet Streets.~~
- 3. Height Limitations. The development shall comply with current City height limits (85').
- 4. Roof Tops. Any appurtenances occurring on the roof shall be carefully grouped and screened from view in a manner approved by the Agency.
- 5. Utilities. All utility services on the Site shall be underground or concealed within buildings. Mechanical equipment, meters, and other items shall not be left exposed on building walls, in yard areas or on roofs.

C. Signs

1. All signs on the Site shall be designed and constructed to be complementary elements in a total environment. Each sign shall be of size, shape, material, color, type of construction, method and intensity of lighting, and location to be in scale with and harmonious with the development of the Site and with adjacent sites in the Project Area.
2. No roof signs shall be permitted. No sign shall move or have any moving parts.
3. Signs for commercial portions of the development (including any occupants of storefront/retail spaces at the ground floor facing Sixth or Howard Streets) should be located below the first level of residential windows immediately above the occupancy's storefront.
4. Signs including directional signage for the non-commercial portions of the development shall identify only the development name, logo and/or addresses.
5. All signs visible from public rights-of-way to be located on the Site shall be reviewed and approved by the Agency for design, location, and compatibility with site development prior to submission to other City agencies for approval.

D. Construction

1. General. The construction of the development on the Site shall be performed in a manner which insures minimal disturbance to the adjoining property as well as to the neighborhood as a whole.
2. Dust and Disturbance. During construction of the development of the Premises the Contractor shall take all reasonable precautions to minimize dust and disturbance to adjacent properties.
3. Construction Barricade. During construction the Contractor shall erect ~~and maintain a construction barricade at the perimeter of the Site, not less~~ than 8 feet in height and of a design approved by the Agency.
4. Pile driving. Pile driving, as required, shall only be allowed from 8 a.m. to 5 p.m., Monday through Friday.

IV. DEVELOPER RESPONSIBILITIES

- A. In addition to the other Developer responsibilities set forth elsewhere in this Agreement, the Developer shall be responsible, at its sole expense, for the development of the Site and the installation and/or coordination of all public

improvements required for the development of the Site. Such public improvements, whether within the Site or in the adjacent public right-of-way, including, but shall not be limited to, the following:

1. Completion of an evaluation of the existing building, through an environmental impact review process as needed, as a potential historic resource.
2. All site preparation activities on the Site, including demolition as required.
3. All utility services required for the development either within the Site or the adjacent public right-of-way including, but not limited to, the following:
  - (a) Water
  - (b) Power
  - (c) Sewer
  - (d) Storm Drain
  - (e) Natural Gas
  - (f) Telephone

The above items shall be performed in accordance with City requirements.

#### V. SUBMITTALS

This project is subject to review by various other authorities, including but not limited to the San Francisco Planning Department and Department of Building Inspection, whose requirements are not included in this document. The Developer shall submit Design and Construction Documents to the Agency which shall include, but not be limited to, the following:

##### A. Basic Design Concept(5 sets of drawings)

---

The following documentation is required:

1. Written statement of program to indicate the size and uses of the proposed project, number of parking and loading spaces, structural system, sustainability ("green" building) strategies, and principal building materials.
2. Site plan showing adjacent buildings as well as the ground floor of the proposed development including square footages. Scale: minimum 1/16"=1'0



3. Site sections showing all proposed buildings, amenities, and adjacent streets and buildings. Scale: minimum 1/16"=1'0
4. Building plans and sections of all proposed buildings at 1/16" scale.
5. Typical unit plans at 1/8" scale.
6. Roof plan(s) showing proposed mechanical equipment zones.
7. Sketches or perspective renderings to illustrate the character of the proposed development.

**B. Schematic Design (5 sets of drawings)**

The following documentation is required, and shall be presented to the Agency Commission for review:

1. Written statement of program to indicate the size and uses of the proposed project, number of parking and loading spaces, structural system, sustainability ("green" building) strategies, and principal building materials.
2. Site Plan showing buildings, landscaped areas, parking areas, loading areas, roads and sidewalks. All land uses shall be designated. Streets and points of vehicular and pedestrian access shall be shown. Scale: minimum 1/8"=1'0
3. Site sections showing all buildings and streets. Scale: minimum 1/8"=1'0
4. All building plans. Scale: minimum 1/8"=1'0
5. All building elevations. Scale: minimum 1/8"=1'0
6. Principal building sections (two to four sections as required to illustrate design). Scale: minimum 1/8"=1'0
7. Typical unit plans at 1/4" = 1'-0" scale.
8. Three dimensional building perspectives or renderings
9. Schematic exterior signage drawings (and perspectives as required by Agency staff) indicating locations and types of the proposed exterior signs.
10. Exterior materials and colors sample board.

C. Design Development

Upon approval by the Agency of Basic Design Concepts Drawings and Schematic Drawings, the following documentation is required (scale to be agreed upon):

1. Site Plan or Plans showing: building(s), landscaped areas, parking areas, loading areas, roads and sidewalks. All land use shall be designated. All landscaping and Site development details, including walls, fences, planting, outdoor lighting, street furniture, and ground surface materials, shall be indicated. Streets and points of vehicular and pedestrian access shall be shown, indicating proposed new paving, planting and lighting by the City. All utilities, easements or service facilities, insofar as they relate to work by the City or by "others," shall be shown.

Those areas of the Site proposed to be developed "by others" or easements to be provided for others shall be clearly indicated.

In addition, Site Plans shall indicate (1) existing and finish contours; (2) yard drainage and roof drainage; (3) an acceptable transition of overhead utilities to underground system within the Site; (4) the required connections to existing utilities; (5) the utilization of public utility easements relative to electric, gas, telephone and water requirements of buildings within the Site; (6) the planned use of modification of existing public right of way improvements; and (7) all existing structures around the Site.

2. All building plans and elevations.
  3. Building Sections showing cross sections as required to illustrate building design.
  4. Conceptual project details illustrating structural, mechanical and plumbing systems; principal building systems (exterior envelope, foundations, and party wall, floor/ceiling and roof/ceiling assemblies); key design details; and bathroom and kitchen interior elevations. These details may be supplemented and complemented by the written statement (below).
- 
5. Exterior sign locations and sizes.
  6. Perspective sketches (at eye level) and/or model showing the architectural character of the proposed design.
  7. Outline Specifications for materials and methods of construction.
  8. Written statement to indicate the size and uses of the proposed project, number of parking and loading spaces, structural system, mechanical and plumbing systems, sustainability ("green" building) methods, and principal building systems (exterior envelope, foundations, and party wall,

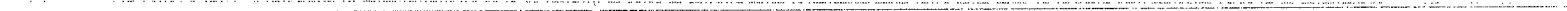
floor/ceiling and roof/ceiling assemblies). Statement is to include the major building dimensions and gross area of buildings.

9. Where variances, waivers, or deviations from existing Agency, City, State, or Federal regulations are proposed, they shall be listed and progress toward obtaining such variances shall be stated.
10. Preliminary structural plans and sections.
11. Preliminary Cost Estimates provided by the general contractor selected by the Developer in compliance with the Agency's Contract Compliance requirements.

**D. Construction Documents**

Upon acceptance by the Agency of the Design Development documentation, the following documentation will be required:

1. Completed Site Plans for the final parcel development to working drawing level of detail.
2. Completed Working Drawings and Specifications ready for bidding.
3. Complete presentation of all exterior materials and color schedules including samples, if appropriate.
4. Complete designs for all exterior signs and graphics.
5. Final cost estimates.



## Wong, Linda (BOS)

---

**From:** Kitchingham, Kevin (MYR)  
**Sent:** Tuesday, September 09, 2014 12:37 PM  
**To:** Wong, Linda (BOS)  
**Subject:** Bill Sorro Community - aka 1009 Howard Street (formerly 200 6th Street) - Executed Quitclaim  
**Attachments:** BSC\_quitclaim\_executed.pdf

Hi Linda,

Thanks for you call. Attached is the executed quitclaim deed for this project. Below is the email from the developer on the address issue. ☺

Thanks,  
Kevin

Kevin Kitchingham  
San Francisco Mayor's Office of Housing and Community Development  
415-701-5523

---

**From:** Sharon Christen [<mailto:SChristen@mercyhousing.org>]  
**Sent:** Tuesday, September 09, 2014 12:32 PM  
**To:** Kitchingham, Kevin (MYR)  
**Cc:** Barbara Gualco  
**Subject:** 200 6th Street - addresses

Kevin,

We have been using the old 200 6<sup>th</sup> Street address as project name for this project during predevelopment. The SFRA issued the NOFA for this project under this address. Although 200 6<sup>th</sup> Street is a valid address of the existing and new building, it will be a possible retail address for the new building given the location of the new building's uses and entry doors. The new building's residential entry is located on Howard Street. Given the location of the entry door, we requested that we use 1009 Howard Street as the address from DBI and that address was approved.

thanks  
Sharon

Sharon Christen  
Housing Developer



Mercy Housing California  
1360 Mission Street, Ste 300  
San Francisco, CA 94103  
Phone: (415) 355-7111  
Fax: (415) 355-7101

**RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:**

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

**MAIL TAX STATEMENTS TO:**

Mayor's Office of Housing and  
Community Development  
1 South Van Ness 5<sup>th</sup> Floor  
San Francisco, CA. 94103  
Attn: Kevin Kitchingham

The undersigned hereby declares this instrument to be  
exempt from Recording Fees (CA Govt. Code § 27383)  
and Documentary Transfer Tax (CA Rev. & Tax Code  
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

(Space above this line reserved for Recorder's use only)

**QUITCLAIM DEED**

(Assessor's Parcel No. 3731, Block 001)

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body organized and existing under the laws of the State of California ("OCII"), pursuant to Resolution No. 31-2014, adopted by the Commission on Community Investment and Infrastructure ("OCII Commission") on May 6, 2014, hereby **RELEASES, REMISES AND QUITCLAIMS TO THE CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, any and all right, title and interest OCII may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof.

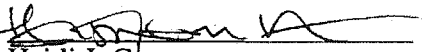
Executed as of this 28<sup>th</sup> day of August, 2014.

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

By   
**TIFFANY BOHRER**  
Executive Director

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By:   
Heidi J. Gewertz  
Deputy City Attorney

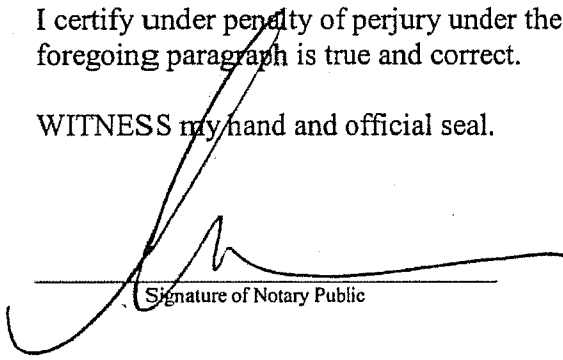
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

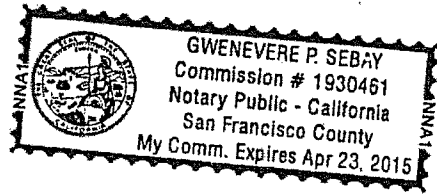
STATE OF CALIFORNIA }  
 } ss.  
COUNTY OF SAN FRANCISCO }

On August 28, 2014, before me, Gwenevere P. Sebay, Notary Public, personally appeared Tiffany Bohee, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature of Notary Public



**OPTIONAL**

Description of Attached Document: 200 Sixth Street

Title of Type of Document: Quitclaim Deed

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Tiffany Bohee

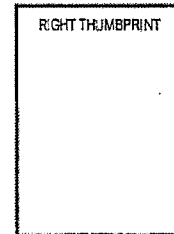
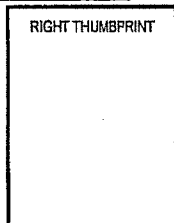
Signer's Name: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_





**EXHIBIT A**

Legal Description of the Property

(1009 Howard Street)

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

Beginning at the point of intersection of the Southwesterly line of 6th Street and the Southeasterly line of Howard Street; running thence Southwesterly and along said line of Howard Street 80 feet; thence at a right angle Southeasterly 125 feet; thence at a right angle Northwesterly 80 feet to the Southwesterly line of 6th Street; thence at a right angle Northwesterly along said line of 6th Street 125 feet to the point of beginning.

Being part of 100 Vara Block No. 395.

Assessor's Lot 001; Block 3731

Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

SEP - 2 11:40  
Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

**Sponsor(s):**

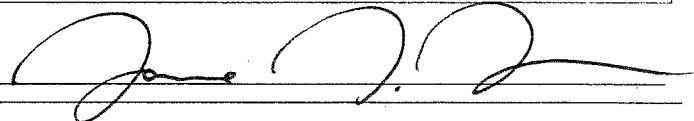
Jane Kim

**Subject:**

Property Conveyance and Ground Lease with Mercy Housing California 51 for Affordable Housing at the Property Located at 1009 Howard Street.

**The text is listed below or attached:**

See attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: