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**AFFORDABLE HOUSING LOAN AGREEMENT
(Priority Sites Program— Treasure Island Stage 2 Infrastructure)**

between

THE BAY AREA HOUSING FINANCE AUTHORITY

and

**TREASURE ISLAND DEVELOPMENT AUTHORITY, a
CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION**

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	2
2. LOAN PROVISIONS.....	7
2.1 Loan	7
2.2 Cost Reductions or Increases	7
2.3 Permissible Use of Loan; Eligible Loan Expenses	7
2.4 Loan Funding Conditions	7
2.5 Disbursements of Loan	9
2.6 Repayment of Loan.....	10
2.7 Execution and Delivery of Documents	10
2.8 Additional Financing	10
2.9 Financial Statements and Reports.....	12
2.10 Books and Records	12
3. DEVELOPMENT OF THE PROJECT.	12
3.1 Scope of Development.....	12
3.2 Compliance with Permits and Laws	12
3.3 Monthly Progress Reports.....	12
3.4 Required Insurance	12
3.5 Right of Access	13
3.6 Borrower Responsible for Cost of Development.....	13
3.7 Indemnity	13
3.8 Survival of Indemnification and Defense Obligations.....	14
3.9 Indemnification Procedures	14
3.10 Prevailing Wage.....	15
3.11 Relocation	15
3.12 Signs.....	16
4. USE OF PROPERTY; AFFORDABILITY COVENANTS.	16
5. DEFAULTS AND REMEDIES.	16
5.1 Defaults-General	16
5.2 Institution of Legal Actions	17
5.3 Additional BAHFA remedies	17

TABLE OF CONTENTS

(continued)

	<u>Page</u>
5.4 Rights and Remedies are Cumulative	17
6. BORROWER REPRESENTATIONS.....	17
7. GENERAL PROVISIONS.	19
7.1 Attorneys' Fees	19
7.2 Notices	19
7.3 Notices to BAHFA.....	20
7.4 Assignment and Transfer by Borrower.....	20
7.5 Relationship Between BAHFA and Borrower.....	20
7.6 Binding on Successors	21
7.7 Entire Agreement, Waivers, and Amendments.....	21
7.8 Interpretation; Governing Law	21
7.9 Authority	21
7.10 Nonliability of BAHFA Officials and Employees.....	21
7.11 Enforced Delay; Extension of Times of Performance	21
7.12 Modifications	22
7.13 Severability	22
7.14 Contract Administration.....	22
7.15 Integration	22
7.16 Titles and Captions	22
7.17 No Waiver	22
7.18 Legal Advice.....	23
7.19 Execution in Counterpart; Digital Signatures	23
7.20 Attachments	23

ATTACHMENTS:

- 1 LEGAL DESCRIPTION OF PROPERTY
- 2 PROJECT DESCRIPTION
- 3 PROJECT BUDGET
- 4 INSURANCE AND FINANCIAL SECURITY (BOND) PROVISIONS
- 5 SUPPLEMENTAL CONDITIONS

TABLE OF CONTENTS

(continued)

Page

6	FORM OF UNSECURED PROMISSORY NOTE
7	FORM OF REPAYMENT GUARANTY
8	FORM OF REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS

AFFORDABLE HOUSING LOAN AGREEMENT

This AFFORDABLE HOUSING LOAN AGREEMENT (Priority Sites Program— Treasure Island Stage 2 Infrastructure) (“**Agreement**”) is dated as of _____, 20__ (“**Effective Date**”), for reference purposes only, and is entered into by and between the BAY AREA HOUSING FINANCE AUTHORITY (“**BAHFA**”), and the TREASURE ISLAND DEVELOPMENT AUTHORITY, a California non-profit public benefit corporation (“**Borrower**”). The BAHFA and the Borrower are sometimes referred to in this Agreement, each individually, as a “**Party**,” or collectively, as the “**Parties**.”

RECITALS

A. BAHFA is a public agency established by the San Francisco Bay Area Regional Housing Finance Act (the “**Act**”), which added Title 6.8 (commencing with Section 64500) to the Government Code to raise, administer and allocate funding and provide technical assistance at a regional level in the San Francisco Bay area for tenant protection, affordable housing preservation and new affordable housing production.

B. Pursuant to Government Code Section 64520(j), BAHFA utilizes the staff of the Metropolitan Transportation Commission (“**MTC**”).

C. In implementing its goals and responsibilities under the Act, BAHFA is authorized to make loans to finance affordable housing development, preserve and enhance existing affordable housing, and fund tenant protection programs.

D. Pursuant to Chapter 3.15 of Part 2 of Division 31 of the California Health and Safety Code, the State of California established the Regional Early Action Planning Grant Program of 2021 (“**REAP 2.0**”) to fund eligible transformative planning and implementation activities that enable meeting housing goals and also result in per capita vehicle miles traveled reductions, including but not limited to accelerating infill development through a variety of means including establishing and funding an affordable housing catalyst fund, trust fund, or revolving loan fund for location efficient projects.

E. REAP 2.0 is administered by the California Department of Housing and Community Development (“**HCD**”). HCD has allocated REAP 2.0 funds to MTC to be used in furtherance of the REAP 2.0 program goals. On March 22, 2023, MTC adopted Resolution No. 4565 authorizing the grant of a portion of the REAP 2.0 funds to BAHFA, and BAHFA adopted Resolution No. 28, accepting those funds to establish a revolving loan fund that will be used for the acquisition and rehabilitation of existing residential properties for use as affordable housing, and for predevelopment costs associated with the development of affordable housing on priority sites throughout the region, as these programs are set forth in BAHFA Resolution No. 28.

F. In furtherance of its goals as set forth in BAHFA Resolution No. 28, BAHFA issued a Letter of Interest/Funding Application Notice (“**Notice**”) on November 17, 2023 to solicit letters of interest and subsequent funding applications from the established revolving loan fund for costs

associated with the development of affordable housing including infrastructure development on priority sites throughout the region.

G. Borrower submitted a letter of interest and subsequent funding application for funding in response to the Notice, and BAHFA approved Borrower's application for funding and desires to make a loan for the Project as more specifically defined in this Agreement.

H. BAHFA and Borrower desire to enter into this Agreement to commemorate the terms and conditions pursuant to which BAHFA will make the Loan as defined herein to Borrower to be used in furtherance of the infrastructure, development, preservation and enhancement of affordable housing in accordance with BAHFA's statutory responsibilities and the conditions placed on all funding sources utilized to make the Loan.

I. The California Environmental Quality Act (Public Resources Code Sections 21000 *et seq.*) ("CEQA"), imposes no conditions on BAHFA'S consideration and approval of this Agreement, because pursuant to CEQA Guidelines Sections 15060(c), 15061(b)(2) and (3), 15273, 15378, Public Resources Code Section 21065 and Government Code Section 64523, funding of a proposal is not subject to environmental review under CEQA as it does not constitute a "project," does not commit BAHFA or Borrower to a definite course of action, does not constitute discretionary approval of a specific project, and will not result in a direct or reasonably foreseeable indirect physical change in the environment, and in the alternative is exempt from CEQA.

AGREEMENT

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BAHFA and Borrower hereby agree as follows:

1. DEFINITIONS.

The following terms as used in this Agreement shall have the meanings given below unless expressly provided to the contrary:

1.1 "Act" shall mean the San Francisco Bay Area Regional Housing Finance Act, which added Title 6.8 (commencing with 64500) to the Government Code.

1.2 "Affordable Housing Developer" shall mean Mercy Housing **CALIFORNIA 111, L.P.**, a California limited partnership.

1.3 "Affordable Housing Project" shall mean that certain project undertaken by the Affordable Housing Developer in furtherance of the development, preservation or enhancement of affordable housing on the Affordable Housing Property

1.4 "Affordable Housing Property" shall mean that certain real property, located at the eastern portion of TI Parcel E1.2 (and more specifically described in Attachment No 1, which is

owned and controlled by the Borrower and subject to a ground lease between the Borrower and the Affordable Housing Developer, which will be executed at the time of construction loan closing for the Affordable Housing Project.

1.5 “Affordable Rent” shall mean the maximum rent, with allowance for utilities, for the applicable household income as published by the California Tax Credit Allocation Committee annually as the Maximum Multi-Family Tax Subsidy Rents for Low Income Housing Tax Credit Projects. For purposes of the calculation of Affordable Rent “adjusted for household size” shall be the federally-mandated household size assumptions as set forth in federal statutes or regulations for the Tax Credit program.

1.6 “Agreement” shall mean this Affordable Housing Loan Agreement between BAHFA and Borrower, including all exhibits and other documents attached hereto. “Agreement” shall mean this Affordable Housing Loan Agreement between BAHFA and Borrower, including all exhibits and other documents attached hereto.

1.7 “Approved Lender” means a bank (State, Federal or foreign), trust company (in its individual or trust capacity), credit union, savings bank (State or Federal), venture capital fund or similar financial institution that is duly certified as a Community Development Financial Institution by the Community Development Financial Institutions Fund of the U.S. Department of Treasury.

1.8 “BAHFA” shall mean the Bay Area Housing Finance Authority, established by Government Code Section 64510 and having its offices at Bay Area Metro Center, Suite 800, 375 Beale Street, San Francisco, California 94105.

1.9 “BAHFA Affiliate” shall mean any one of the entities included in BAHFA Affiliates and its respective officials, employees, contractors, invitees, volunteers and agents.

1.10 “BAHFA Affiliates” shall mean BAHFA, the Metropolitan Transportation Commission, the Association of Bay Area Governments, including its Executive Board as the Executive Board to BAHFA, and each of the aforementioned entity’s respective officials, employees, contractors, invitees, volunteers and agents.

1.11 “Borrower” shall mean Treasure Island Development Authority, a California non-profit public benefit corporation . The term “Borrower” includes any legally permissible assignee or successor to the rights, powers, and responsibilities of Borrower hereunder, in accordance with Section 7.4 of this Agreement.

1.12 “Claim” means any claim, loss, cost, damage, expense, liability, Lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind.

1.13 Intentionally omitted.

1.14 “County” is the County in the State of California in which the Property is located.

1.15 Intentionally omitted.

1.16 “Draw Request” shall mean a request for Loan funds from the Borrower to BAHFA, which shall include the information required pursuant to Section 2.5.3 of this Agreement.

1.17 “Effective Date” shall mean the date this Agreement is effective, which date shall be inserted in the preamble to this Agreement.

1.18 “Eligible Loan Expenses” shall mean the expenses for which proceeds from the Loan may be used as set forth in the Project Budget pursuant to this Agreement.

1.19 “Environmental Claim” shall mean any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including reasonable attorney’s fees and costs and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.20 “Environmental Law” shall mean any Federal or California law regarding any of the following at, in, under, above, or upon the Property: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, remediation, control, disposal, generation, storage, release, discharge, transportation, use of, or liability or standards of conduct concerning, Hazardous Substances, as now or may, at any later time, be in effect.

1.21 “Funding Conditions” shall mean the conditions set forth in Section 2.4 of this Agreement that must be satisfied prior to BAHFA disbursing the Loan to Borrower, and shall include any Supplemental Conditions listed in Attachment No. 5 to this Agreement that are conditions precedent to disbursement of Loan funds.

1.22 “Funding Conditions Satisfaction Date” shall mean the date on which all of the Funding Conditions are actually satisfied.

1.23 “Governmental Requirements” shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the state, the county or city where the Project is located, or any other political subdivision in which the Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over BAHFA, Borrower or the Property.

1.24 “Guarantor” shall mean Treasure Island Development Authority, a California non-profit public benefit corporation which has been approved by BAHFA as Guarantor for the Loan and which shall execute the Repayment Guaranty, as defined herein.

1.25 “Hazardous Substance” shall mean any flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) substances designated as “hazardous substances” pursuant

to 33 U.S.C. § 1321; (c) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (d) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called ‘superfund’ or ‘superlien’ law; (e) defined as a “pollutant” or “contaminant” under 42 U.S.C. § 9601(33); (f) defined as “hazardous waste” under 40 C.F.R. Part 260; (g) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; (h) any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, *et seq.*]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; (k) those substances listed in the United States Department of Transportation (DOT) Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) any matter, waste or substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code; (n) any substance defined as a “hazardous substance” in Section 25316 of the California Health and Safety Code; (o) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under law or in the regulations adopted pursuant to said law, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material. Notwithstanding the foregoing, “Hazardous Substances” shall not include such products in quantities as are customarily used in the construction, maintenance, development or management of residential developments or associated buildings and grounds, or typically used in residential activities in a manner generally used in other comparable residential developments, or substances commonly ingested by a significant population living within the Project including, without limitation, alcohol, aspirin, tobacco and saccharine.

1.26 “Hazardous Substance Discharge” shall mean any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property, or that arises at any time from the construction, use or operation of the Project or any activities conducted at on, under or from the Property, whether or not caused by a Party.

1.27 “HCD” shall mean the California Department of Housing and Community Development.

1.28 “HUD” shall mean the federal Department of Housing and Urban Development.

1.29 “Loan” shall mean the loan in the amount not to exceed the sum of Three Million Dollars (\$3,000,000.00) to be provided by BAHFA to Borrower for Borrower’s payment of the Eligible Loan Expenses, as more specifically set forth in Section 2 of this Agreement.

1.30 “Loan Documents” means the documents, instruments and agreements evidencing and securing the Loan including, but not limited to, this Agreement, the Promissory Note

Unsecured, the Repayment Guaranty, and at such time that the Affordable Housing Developer acquires its interest in the Affordable Housing Property, the Regulatory Agreement.

1.31 “Outside Date” shall mean the date by which Borrower is required to have satisfied the Funding Conditions set forth in this Agreement. For purposes of this Agreement, the Outside Date is July 1, 2025.

1.32 “Permitted Encumbrances” shall have the meaning set forth in Section 2.8.1 of this Agreement.

1.33 “Prevailing Wage Action” shall mean any of the following: (a) any determination by the California Department of Industrial Relations that prevailing wage rates should have been paid, but were not; (b) any determination by the California Department of Industrial Relations that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with the Federal Davis-Bacon Act (codified as 40 U.S.C. §§ 3141 *et seq.*) or California Labor Code Sections 1720 through 1781, as amended from time to time, regarding prevailing wages, including but not limited to maintaining certified payroll records, employment of apprentices, hours of labor and debarment of contractors or subcontractors; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity.

1.34 “Project Budget” shall mean the costs estimates for Borrower’s development of the Project set forth in Attachment No. 3 to this Agreement approved by BAHFA. The expense line items listed in the Project Budget shall constitute Eligible Loan Expenses up to the amount for each such line item as listed in the Project Budget. Any changes to the Project Budget, whether or not requiring the approval of BAHFA, shall be submitted to BAHFA. If the Project Budget is revised as permitted herein, all references herein to the “Project Budget” shall be deemed to refer to the revised Project Budget.

1.35 “Promissory Note” shall mean the Promissory Note, in the form attached hereto as Attachment No. 6 which sets forth the terms for Borrower’s repayment of the Loan to BAHFA.

1.36 “Property” shall mean the real property defined as “SIP Stage 2” and more specifically described and mapped in Attachment No. 1. “Regulatory Agreement” shall mean 1) the Regulatory Agreement and Declaration of Covenants and Restrictions between BAHFA and Borrower regulating the operation of the Affordable Housing Project, to be recorded against the Borrower’s fee simple interest in the Affordable Housing Property, in the form attached hereto as Attachment No. 8, OR 2) or incorporated into the City of San Francisco’s Declaration of Restrictions recorded against the Affordable Housing Developer’s leasehold interest in the Affordable Housing Property, in which BAHFA is made a third-party beneficiary, subject to written approval by BAHFA, OR 3) BAHFA’s restrictions incorporated into the Borrower’s ground lease with the Affordable Housing Developer.

1.38 “Relocation Laws” shall have the meaning set forth in Section 3.11 of this Agreement.

1.39 “Senior Lender” shall mean an Institutional Lender or governmental entity that requires as a condition of making a Senior Loan that the security interest for the Senior Loan be recorded in a lien position senior to the Regulatory Agreement and subject to a subordination agreement entered into by and between BAHFA and Senior Lender.

1.40 “Repayment Guaranty” shall mean the Repayment Guaranty in the form attached hereto as Attachment No. 7 pursuant to which the Guarantor, as defined herein, absolutely and unconditionally guarantees repayment of the Loan to BAHFA

1.41 “Senior Loan” shall mean a loan from a Senior Lender for construction and/or permanent financing for the Project in an amount and pursuant to terms that are approved by BAHFA in its reasonable discretion, which Senior Lender requires to be secured by a security interest against the Property in a lien position senior to the Regulatory Agreement and subject to a subordination agreement entered into by and between BAHFA and Senior Lender.

1.42 “Supplemental Conditions” shall mean the Supplemental Conditions to the Loan that are set forth in Attachment No. 5, attached hereto and incorporated herein by this reference. Borrower shall comply with all Supplemental Conditions at the time and in the manner as set forth in Attachment No. 5.

2. LOAN PROVISIONS.

2.1 Loan. In order to assist in the development, preservation or enhancement of affordable housing in implementation of the Act and BAHFA’s responsibilities thereunder, BAHFA shall, subject to the terms and conditions set forth herein, and provided Borrower is not in default of this Agreement, provide Borrower financial assistance in the form of a loan not to exceed the sum of Three Million Dollars (\$3,000,000.00) (“**Loan**”).

2.2 Cost Reductions or Increases. The parties acknowledge and agree that the Loan is intended to partially finance certain expenses in furtherance of the Project and BAHFA makes no representations as to additional funding commitments necessary for the Project. BAHFA will not provide Borrower with more than the Loan pursuant to this Agreement and the terms contained herein except by written amendment of this Agreement or a separate agreement for additional loan funds from another source of funds.

2.3 Permissible Use of Loan; Eligible Loan Expenses. Pursuant to all of the terms and conditions of this Agreement, Borrower shall be permitted to use the Loan proceeds only for the Eligible Loan Expenses that are actually and reasonably incurred by Borrower with respect to the Project and approved by BAHFA, and for no other purpose.

2.4 Loan Funding Conditions. Notwithstanding any other provision of this Agreement to the contrary, BAHFA shall have no obligation to disburse any of the Loan proceeds to Borrower unless all of the following conditions precedent (collectively the “Funding Conditions”) are satisfied:

(a) *Control of Property.* Borrower shall have demonstrated to the reasonable satisfaction of BAHFA that Borrower has entered into a valid, current and binding (i) disposition and development agreement with a public agency owner of the Property; (ii) a purchase and sale

agreement or option agreement that grants the Borrower with transactional control over acquisition of the Property; (iii) an Exclusive Negotiating Rights Agreement that includes terms within the control of Borrower and a milestone schedule that the Executive Director for BAHFA or designee has determined reasonably enables commencement of construction of the Project within 5 years; or (iv) Borrower has a fee simple interest in the Property.

(b) *Project Budget.* Borrower has submitted, and BAHFA has approved the Project Budget as attached hereto as Attachment No. 3, or as may be amended in accordance with the terms of this Agreement.

(c) *Execution and Delivery of Documents.* Borrower shall have executed and delivered to BAHFA the documents referred to in Section 2.7 of this Agreement.

(d) Intentionally omitted.

(e) Intentionally omitted.

(f) *Insurance.* Borrower shall have provided to BAHFA evidence of the insurance required under Section 3.4 of this Agreement.

(g) *Article 34 Compliance.* Borrower has submitted evidence satisfactory to BAHFA that the requirements of Article 34 of the California Constitution are inapplicable or have been satisfied as to the Project.

(h) *Representations and Warranties.* All of the representations and warranties made by the Borrower in this Agreement and in the Promissory Note and the Regulatory Agreement shall be true and correct in all material respects as of the date of the initial disbursement.

(i) *Authority to Enter Agreement.* Borrower shall have provided BAHFA with a copy of the resolution of the Borrower approving and authorizing execution of this Agreement and all documents contemplated hereby on behalf of Borrower and with such other documentation required by BAHFA regarding Borrower's creation, status and authority to enter into this transaction.

(j) *Certificate of Good Standing.* Borrower shall have provided BAHFA with a certificate showing it to be in good standing under the laws of the State of California.

(k) *Funding of BAHFA Legal Expenses.* Borrower agrees to pay BAHFA legal expenses incurred in connection with this Loan. Such fees shall be disbursed from the proceeds of the Loan through the Close of Escrow.

(l) *Compliance with Supplemental Conditions.* Borrower shall have complied with all Supplemental Conditions set forth in Attachment No. 5, attached hereto and incorporated herein by this reference, that are conditions precedent to disbursement of Loan funds.

(m) *No Default.* Borrower shall not be in default of any of its obligations set forth in this Agreement, and there shall be no event which, with the passage of time or the giving of notice, would constitute a default.

In the event that all of the Funding Conditions are not satisfied on or before the Outside Date, or such earlier time period as provided for herein, or such later deadline as may be mutually approved in writing by BAHFA and Borrower in the sole and absolute discretion of each of them, either party not in default may terminate this Agreement by delivering written notice to the other party.

2.5 Disbursements of Loan.

2.5.1 Intentionally omitted.

2.5.2 Provided Borrower is not in default of this Agreement, from and after the Funding Conditions Satisfaction Date, BAHFA shall disburse the Loan to Borrower no more frequently than once every thirty (30) days to reimburse Borrower for the Eligible Loan Expenses as such expenses are incurred by Borrower and approved by BAHFA. Borrower shall submit to BAHFA a Draw Request, as described in Section 2.5.3, documenting all of Borrower's costs eligible to be considered in calculating the Eligible Loan Expenses. BAHFA shall have the authority to calculate and approve the amount of Borrower's Eligible Loan Expenses. Payment of the amount determined by BAHFA to be owing to Borrower shall be made by BAHFA within thirty (30) business days after Borrower's submission of its completed Draw Request. Any disapproval of a Draw Request shall be provided to Borrower in writing (including the specific reasons for such disapproval) within ten (10) business days after BAHFA has received information necessary to make the determination that the Draw Request cannot be approved.

2.5.3 Each "Draw Request" shall include, at a minimum: (i) the specific dollar amount of the request; (ii) the specific proposed use of the draw, which shall be an Eligible Loan Expense; (iii) documentation that supports the amount and use as described in the request (copies of the contract for work, invoice, and evidence of payment of invoice); (iv) an accounting of money spent to date with balance remaining under the Project Budget; (v) verification that the Project is proceeding in accordance with this Agreement, the Project Budget, and any then existing development progress schedule agreed upon by BAHFA; (vi) if construction has commenced, certification that the Project is being constructed in a good and worker-like manner by appropriate means substantially in accordance with the terms and conditions of this Agreement, and all required inspections and approvals have been obtained by Borrower necessary to lawfully construct the Project; and (vii) if construction of the Project has commenced, certification that conditional and unconditional mechanic's lien claim waivers and releases have been secured from each contractor, subcontractor and supplier for the payments requested and the payments previously made, respectively, to them for work performed and materials supplied on and to the Property.

2.5.4 BAHFA's obligation to make disbursements of the Loan proceeds to Borrower shall be contingent and conditional upon Borrower's continuing satisfaction and the timely performance of all of its obligations under this Agreement. Upon the occurrence of any event which, with the lapse of time or the giving of notice or both, would constitute a default under

this Agreement, BAHFA may at any time thereafter and while such event remains uncured, refuse to issue further disbursements of Loan proceeds under this Agreement until all such defaults are cured to the satisfaction of BAHFA.

2.5.5 In the event the Eligible Loan Expenses for which any disbursement of Loan funds are advanced are not incurred by Borrower within thirty (30) days after BAHFA's disbursement, or such longer time as BAHFA approves in its sole discretion, BAHFA shall have the right to require that Borrower return the Loan proceeds to BAHFA. In addition, if it is determined, as a result of an audit or otherwise, that any of the disbursements of Loan proceeds were improper or made for expenditures not eligible for payment, Borrower shall immediately repay to BAHFA the amounts of such disbursements.

2.5.6 Notwithstanding the foregoing, BAHFA shall have the right to contract with a third party, including, without limitation, an escrow company or another construction lender for the Project to disburse the Loan proceeds to Borrower.

2.6 Repayment of Loan. Borrower shall repay the Loan in accordance with the terms set forth in the Promissory Note in the form attached hereto as Attachment No. 6. Further, the Guarantor shall execute the Repayment Guaranty in the form attached hereto as Attachment No. 7, pursuant to which Guarantor absolutely and unconditionally guarantees the repayment of the Loan. The Promissory Note contains an acceleration clause which generally provides that, to the extent permitted by law, in the event Borrower shall default on any of its obligations set forth in this Agreement, the Promissory Note, or the Regulatory Agreement or on any obligations under any documents relating to any other financing that is secured by the Property, and fail to cure the default within the applicable notice and cure period, then, or at any time thereafter while any such default is continuing, BAHFA, at its option, may declare the entire indebtedness evidenced by the Promissory Note immediately due and payable and collectible then or thereafter as BAHFA may elect, regardless of the date of maturity.

2.7 Execution and Delivery of Documents. Prior to disbursement of any Loan proceeds, Borrower shall deliver to BAHFA the following documents: (a) the Promissory Note Unsecured, executed by Borrower; and (b) the Repayment Guaranty, executed by Guarantor. Borrower and BAHFA shall additionally execute the Regulatory Agreement and Borrower shall cause the Regulatory Agreement to be recorded in the Official Records of the County, against Borrower's fee simple interest in the Affordable Housing Property or the Affordable Housing Developer's leasehold interest in the Affordable Housing Property at such time that Affordable Housing Developer acquires its leasehold interest in the Affordable Housing Property, as set forth in Section 1.38.

2.8 Additional Financing. From and after the date of this Agreement, Borrower shall exercise commercially reasonable efforts to obtain financing for the development of the Project. Borrower intends to utilize financing from a variety of sources for construction and permanent financing for the Project. If a Senior Lender or tax credit investor should, as a condition of providing funding for the Project, request any modification of this Agreement in order to protect its interests in the Project or this Agreement, BAHFA shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the parties under this Agreement. The Executive Director shall have the authority to approve revisions

to the terms of this Agreement requested by such lender or investor.

2.8.1 Permitted Encumbrances. Mortgages, deeds of trust, conveyances, and leases-back or any other form of conveyance required for any reasonable method of financing shall be permitted on the terms set forth herein, but only for the purpose of securing loans of funds to be used for the construction, development and operation of the Project (“**Permitted Encumbrances**”). Following closing of the Loan and other Permitted Encumbrances closing concurrent with the Loan, Borrower shall not enter into any such future conveyance for financing purposes without the prior written consent of BAHFA.

2.8.2 Subordination. The Executive Director shall have the authority to execute and deliver subordination agreements as they determine are commercially reasonable and consistent with the purpose and effect of this Agreement subordinating the Regulatory Agreement to one or more Senior Loans as approved by BAHFA. Nothing herein shall obligate BAHFA to subordinate its Deed of Trust to any other financing. In connection therewith, the Regulatory Agreement implements the affordability requirements imposed under the Act and the sources of funding for the Loan, and must be senior to all financing, unless otherwise agreed to by the Executive Director.

2.8.3 Right of BAHFA to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by the Borrower, Borrower shall promptly deliver to BAHFA a copy of any notice of default or breach received from any other lender and BAHFA may cure the default without acceleration of the subject loan following prior notice thereof to the Borrower, subject to the terms of any subordination agreement. In such event, Borrower shall be liable for, and BAHFA shall be entitled to reimbursement from Borrower within ten (10) days of written demand, of all costs and expenses associated with and attributable to the curing of the mortgage or deed of trust default, including any default consisting of a breach of this Agreement by the Borrower, which are incurred by BAHFA. Any sums which become due to BAHFA from Borrower under the provisions of this Section 2.8.3 shall constitute a lien on the Property, effective upon recordation by BAHFA or BAHFA’s authorized agent of a notice of lien (“Notice of Lien”) concerning nonpayment of any sum due hereunder. The Notice of Lien shall state (i) the amount due, which amount shall include interest at the rate of 10% from the date due to the date paid, and shall also include the cost of preparing and recording the Notice of Lien, (ii) the expenses of collection in connection with any nonpayment, including without limitation reasonable attorneys’ fees, (iii) a description of the Property, (iv) the name and address of BAHFA, (v) the name of Borrower, and (vi) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by BAHFA to enforce the lien by sale. Subject to the terms of any subordination agreement, the lien established pursuant to this section may be enforced by sale of the Borrower’s interest in the Property by BAHFA, BAHFA’s attorneys, any title insurance company authorized to do business in California, or other persons authorized to conduct the sale as a trustee, after failure of Borrower to pay any sum due pursuant to this Agreement within 60 days after recordation of the Notice of Lien. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. BAHFA, through its agents, shall have the power to bid on the Project at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for any amounts due under this Agreement shall be maintainable without foreclosing or waiving any lien securing the same, but this provision

or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section shall include reasonable attorneys' fees as fixed by the court.

2.9 Financial Statements and Reports. Borrower shall furnish to BAHFA, within ten (10) business days after demand, the financial statements of Borrower, which may be internally prepared, on a consolidating and consolidated basis and in conformity with Generally Accepted Accounting Principles, as established by the Financial Accounting Standards Board, consisting of at least statements of income, cash flow, changes in financial position and stockholders' equity, and a consolidated balance sheet, setting forth in each case in comparative form corresponding figures from the previous financial statements delivered to BAHFA pursuant to this Section.

2.10 Books and Records. Borrower shall keep adequate and proper records and books of account in connection with the Project, including construction of the Project, in which full and correct entries will be made of its dealings, business and affairs. All records and books of accounts and other materials deemed to be relevant to the Project shall be accessible at any time, upon reasonable notice, to the authorized representatives of BAHFA for the purpose of examination or audit. Any expenditure from the Loan proceeds that is not authorized by this Agreement or that cannot be adequately documented shall be disallowed and must be reimbursed to BAHFA or its designee by Borrower immediately. Expenditures not described in this Agreement shall be deemed authorized if the performance of such activities is approved in writing by BAHFA prior to their commencement. Absent fraud or mistake on the part of BAHFA, the determination by BAHFA of the qualification of any expenditure shall be final.

3. DEVELOPMENT OF THE PROJECT.

3.1 Scope of Development. Borrower shall commence, pursue and complete all work set forth in the Project Description attached hereto and incorporated herein as Attachment No. 2 in accordance with the timeframes and other requirements of this Agreement. All work performed in connection with the Project shall be performed in compliance with all applicable laws, ordinances, rules and regulations of federal, state, or local governments or agencies now in force or as may be enacted hereafter.

3.2 Compliance with Permits and Laws. Borrower shall carry out the Project as described in the Project Description in conformity with this Section 3 and all applicable federal, state, and local laws, including but not limited to the Act, zoning and development standards applicable to the Project, building, plumbing, mechanical and electrical codes, all applicable access requirements for persons with disabilities, and all environmental mitigation measures imposed as conditions of approval of the Project.

3.3 Monthly Progress Reports. Borrower shall provide to BAHFA, on a monthly basis until all work required pursuant to this Agreement is complete, a progress report regarding the status of the Project, including a certification that the expenditures of disbursements of the Loan to date conform to the Project Budget.

3.4 Required Insurance. Borrower shall, at its own expense, obtain and maintain in effect at all times for the duration of this Agreement the types of insurance and financial security

listed in Attachment No. 4, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All policies will be issued by insurers acceptable to BAHFA, generally with a Best's Rating of A- or better with a Financial Size Category of VII or better, or an A rating from a comparable rating service.

3.4.1 *Insurance Independent of Indemnification.* The insurance requirements of this Agreement are independent of the Parties' indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Parties' indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude BAHFA or BAHFA Affiliates from taking such other actions as are available to it under any other provision of this Agreement or otherwise at law or in equity.

3.5 *Right of Access.* After acquisition of the Property by Borrower, for so long as this Agreement remains in effect, BAHFA, Metropolitan Transportation Commission and each of the aforementioned entities' officers, officials, employees, agents and representatives shall have the right of access to the Property, upon reasonable prior written notice of at least 48 hours, during normal business hours, without charges or fees, for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Project, so long as BAHFA or Metropolitan Transportation Commission representatives comply with all safety rules and do not interfere with, delay or interrupt Borrower's construction activities. It is understood that BAHFA and Metropolitan Transportation Commission do not by this right of access assume any responsibility or liability for a negligent inspection or failure to inspect.

3.6 *Borrower Responsible for Cost of Development.* Except to the extent BAHFA has specifically agreed to provide the Loan pursuant to Section 2, Borrower shall be responsible for all costs of developing and constructing the Project, including but not limited to predevelopment costs incurred for items such as planning, design, engineering, and environmental remediation; all development and building fees; the cost incurred to demolish and clear any and all existing improvements, furnishings, fixtures, and equipment from the Property requiring removal; relocation expenses payable to occupants of the Property as required; costs for insurance and bonds (as required); costs for financing; all on-site construction costs; costs for any necessary public improvements; and legal fees.

3.7 *Indemnity.*

3.7.1 *Borrower Indemnity Obligations.* Borrower shall indemnify, defend and hold harmless BAHFA Affiliates against any claim to the extent such claim arises from any wrongful intentional act or negligence of Borrower. Borrower shall also indemnify, defend and hold harmless BAHFA Affiliates against any claim based on any and all of the following: (a) any application made by or at Borrower's request; (b) any agreements that Borrower (or anyone claiming by or through Borrower) makes with a third party regarding the Property or the Project; (c) any workers compensation claim or determination relating to any employee of Borrower or

their contractors; (d) any Prevailing Wage Action relating to this Agreement or the Project; (e) a Claim for failure to comply with Relocation Laws; and (f) any Environmental Claim attributable to any action or failure to act by Borrower. If a third party files a legal action regarding a BAHFA Affiliate's approval of this Agreement or any approval related to the Project, including but not limited to approval of any development entitlements or environmental review required for the Project, Borrower shall indemnify, defend and hold harmless each BAHFA Affiliate against such third party legal action, including all legal costs, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Each BAHFA Affiliate shall reasonably cooperate in its defense in any legal action subject to this Section 3.7 subject to Borrower's indemnity obligations for such legal action. Nothing contained in this Section 3.7 is intended to be nor shall be deemed or construed to be an express or implied admission that a BAHFA Affiliate may be liable to Borrower or any other party for damages or other relief regarding any alleged or established failure of BAHFA to comply with any law. Any legal action that is subject to this Section 3.7 (including any appeal periods and the pendency of any appeals) shall constitute an Enforced Delay and the time periods for performance by any Party under this Agreement may be extended pursuant to the provisions of this Agreement in Section 7.11.

3.8 Survival of Indemnification and Defense Obligations. The indemnity, hold harmless and defense obligations of the Parties under this Agreement shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

3.9 Indemnification Procedures. Wherever this Agreement requires any Party to indemnify the other Party:

3.9.1 *Prompt Notice.* The indemnifying Party shall promptly notify the other Party of any Claim.

3.9.2 *Selection of Counsel.* The indemnifying Party shall select counsel reasonably acceptable to the other Party. Counsel to indemnifying Party's insurance carrier that is providing coverage for a Claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel proves to be incompetent regarding such representation. Even though the indemnifying Party shall defend the Claim, the other Party may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The other Party's separate counsel may attend all proceedings and meetings. The indemnifying Party's counsel shall actively consult with the other Party's separate counsel. The indemnifying Party's counsel shall, however, control the defense, except to the extent that the other Party waives its rights to indemnity and defense of such Claim.

3.9.3 *Cooperation.* The other Party shall reasonably cooperate with the indemnifying Party's defense of the other Party.

3.9.4 *Settlement.* The indemnifying Party may only settle a Claim without the consent of other Party, if the Claim is within the policy limits of applicable insurance policies

provided in satisfaction of the requirements of this Agreement and such settlement procures a release of the other Party from the subject Claims, does not require the other Party to make any payment to the claimant and neither the indemnified Party nor indemnifying Party on behalf of the indemnified Party admits any liability.

3.9.5 Insurance Proceeds. The indemnifying Party's obligations shall be reduced by any net insurance proceeds actually received by the other Party for the matter giving rise to the indemnification obligation.

3.10 Prevailing Wage.

3.10.1 RESPONSIBILITY. BORROWER SHALL ASSUME ANY AND ALL RESPONSIBILITY AND BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER OR NOT CONTRACTORS MUST HIRE APPRENTICES AND/OR LABORERS EMPLOYED RELATIVE TO THE PROJECT WORK MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION AND THE APPLICABLE PREVAILING PER DIEM WAGE RATE PURSUANT TO EITHER THE DAVIS BACON ACT (40 U.S.C. §§ 3141 *ET SEQ.*) OR LABOR CODE SECTIONS 1720 *ET SEQ.*, AS APPLICABLE.

3.10.2 WAIVERS AND RELEASES. BORROWER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES ALL BAHFA AFFILIATES FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO BORROWER PURSUANT TO LABOR CODE SECTION 1781 OR THE DAVIS BACON ACT. RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 3.10.2, BORROWER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

3.10.3 INITIALS. BY INITIALING BELOW, BORROWER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF SECTION 3.10.2:

Initials of Authorized
BORROWER Representative

3.10.4 INDEMNITY. BORROWER SHALL INDEMNIFY ALL BAHFA AFFILIATES, PURSUANT TO SECTION 3.7, AGAINST ANY PREVAILING WAGE ACTIONS ARISING FROM THIS AGREEMENT, THE DEMOLITION WORK OR THE CONSTRUCTION ASSOCIATED WITH THE PROJECT.

3.11 Relocation. Borrower shall have the sole and exclusive responsibility for providing relocation assistance and paying all relocation costs if required to comply with all applicable

federal and state laws, rules, and regulations, including but not limited to the California Relocation Assistance Law, Government Code Section 7260, *et seq.*, and the implementing regulations thereto codified in California Code of Regulations, Title 25, Chapter 6, Section 6000, *et seq.* (collectively, the “**Relocation Laws**”). Any relocation shall be performed in accordance with a relocation plan approved by BAHFA. Borrower shall indemnify, defend, and hold harmless all BAHFA Affiliates from and against any alleged or actual claims, liabilities, damages, remedies, causes of action, demands, losses, and other liabilities made against them related to (1) the acquisition or the use of the Property by Borrower; (2) Compliance with the Relocation Laws; (3) displacement or benefits owned to tenants on the Property including without limitation claims for relocation assistance and inverse condemnation; and (4) any other compensation of whatever kind or nature arising from current or prior occupancy or use of the Property, and/or any move, displacement, relocation therefrom.

3.12 Signs. During the construction of the Project on the Property BAHFA may place or require to be placed signs upon the Property, for public display, stating BAHFA is providing financing for the development of the Project.

4. USE OF PROPERTY; AFFORDABILITY COVENANTS.

Borrower and its successors and assigns shall cause the Affordable Housing Property to be used, operated, and maintained as an affordable rental housing project in accordance with the provisions of this Agreement and the Regulatory Agreement as further described in Section 1.38, as more particularly described in the Project Description. Borrower covenants and agrees that the Regulatory Agreement shall be recorded against the Affordable Housing Property at the time of construction loan closing for the Affordable Housing Project subject only to Permitted Encumbrances approved by BAHFA. The Regulatory Agreement shall require that the Affordable Units on the Affordable Housing Property shall be rented to Qualifying Tenants at Affordable Rents, as those terms are defined herein and in the Regulatory Agreement, for a period of not less than fifty-five (55) years from the Completion Date, as more specifically set forth in the Regulatory Agreement.

5. DEFAULTS AND REMEDIES.

5.1 Defaults-General. Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement; provided, however, such party shall not be deemed to be in default if (a) it cures, corrects, or remedies such default within thirty (30) days after receipt of a notice from the other party specifying such failure or delay, or (b) for defaults that cannot reasonably be cured, corrected, or remedied within such time period, if such party commences to cure, correct, or remedy such failure or delay within such time period after receipt of a notice from the other party specifying such failure or delay, and diligently prosecutes such cure, correction or remedy to completion, within an additional sixty (60) days following the conclusion of such thirty (30) day period (for a total of ninety (90) days). The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute legal proceedings against the party in default until the time for cure, correction, or remedy of a default has expired. Except as otherwise expressly provided in this Agreement, any failure or delay by a party in giving a notice of default or in asserting any of its rights and remedies as to any

default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

5.2 Institution of Legal Actions. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default, or to obtain any other remedy consistent with the purposes of this Agreement, subject to the terms of this Agreement and any subordination agreement entered into by BAHFA. Such legal actions must be instituted and maintained in the Superior Court of the County of San Francisco, or in any other appropriate court in the County of San Francisco.

5.3 Additional BAHFA remedies. In addition to any other rights or remedies available at law or in equity (subject to the terms of this Agreement and any subordination agreement entered into by BAHFA), upon a default of Borrower, BAHFA may do any of the following: (a) refuse to advance all or any part of the Loan; (b) wholly or partially suspend or terminate the award of the Loan; (c) wholly or partially suspend or terminate this Agreement; and (d) require Borrower to repay any Loan funds which Borrower determines were not expended in compliance with the requirements of this Agreement. Upon the occurrence of an event which, with the passage of time or the giving of notice, would constitute a default of Borrower, BAHFA may temporarily withhold disbursement of Loan proceeds pending correction of the default by Borrower.

5.4 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

6. BORROWER REPRESENTATIONS.

6.1 To induce BAHFA to make the Loan, Borrower hereby makes the following representations and warranties to BAHFA, and shall remake these representations and warranties on the date of each disbursement of Loan proceeds. The Borrower shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately provide written notice of such fact or condition to BAHFA.

6.1.1 Organization. Borrower is a duly organized California non-profit public benefit corporation, in good standing. The copies of the documents evidencing the organization of Borrower which have been delivered to BAHFA are true and complete copies of the originals, as amended to the date of Borrower's execution of this Agreement.

6.1.2 Authority to Borrow. Borrower has full power and authority to execute and deliver this Agreement, to make and accept the borrowings contemplated hereunder, to execute and deliver all applicable Loan Documents and to perform and observe the terms and provisions of this Agreement.

6.1.3 Authority of Persons Executing Documents. The applicable Loan Documents have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under the Borrower's organizational documents and applicable governing law for the authorization, execution, delivery

and performance of the Loan Documents have been duly taken.

6.1.4 No Conflict. The execution, delivery and performance by Borrower of the Loan Documents to which it is a party will not (i) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Borrower or the Property; or (ii) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which any of its properties may be bound or, except as specifically contemplated herein, result in the creation of any lien on any asset of Borrower.

6.1.5 Valid Binding Agreement. The Loan Documents executed by Borrower constitute, or if not yet executed, will constitute when so executed, legal, valid and binding obligations of Borrower enforceable by and against it in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principals of equity.

6.1.6 Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially and adversely affect Borrower's ability to repay the Loan or construct the Project.

6.1.7 Financial Statements. All financial statements and information delivered to BAHFA by or on behalf of Borrower, including information relating to the financial condition of Borrower, fairly and accurately represent the financial condition of the subject thereof and have been prepared in accordance with Generally Accepted Accounting Procedures, consistently applied, or another sound accounting practice consistently applied as previously submitted by Borrower to BAHFA and approved by BAHFA. Borrower acknowledges and agrees that BAHFA may request and obtain additional information from third parties.

6.1.8 Accuracy. All reports, documents, instruments, information and forms of evidence delivered to BAHFA concerning the Loan or security for the Loan or required by the Loan Documents are accurate, correct and sufficiently complete to give BAHFA true and accurate knowledge of their subject matter and do not contain any misrepresentation or omission.

6.1.9 Disclosure of Information. All material information concerning the Property known to Borrower, or that should have been known to Borrower in the exercise of reasonable care, has been disclosed to BAHFA. There are no facts or information known to Borrower, or that should have been known to Borrower in the exercise of reasonable care, that would make any of the information furnished to BAHFA by Borrower inaccurate, incomplete, or misleading in any material respect.

6.1.10 Eligible Loan Expenses. The proceeds of the Loan shall be used only for the payment of Eligible Loan Expenses in accordance with the Project Budget.

6.1.11 FIRPTA. Borrower is not a "Foreign Person" within the meaning of the

Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), or is exempt from the provisions of FIRPTA, and Borrower has complied and will comply with all of the requirements under FIRPTA.

7. GENERAL PROVISIONS.

7.1 Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs of suit from the losing party.

7.2 Notices. All notices to be delivered under this Agreement to the other party shall be addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To BAHFA:

BAHFA Section Director
Metropolitan Transportation Commission
375 Beale Street, Suite 800
San Francisco, CA 94105
PHONE 415-778-6678
EMAIL bahfa@bayareametro.gov

Copy to:

General Counsel
Metropolitan Transportation Commission
375 Beale Street, Suite 800
San Francisco, CA 94105
PHONE 415-778-6712
EMAIL generalcounsel@bayareametro.org

To Borrower:

Robert Beck, Treasure Island Director
Treasure Island Development Authority
39 Treasure Island Road
San Francisco, CA 94130
(415) 274-0660
TIDA@sfgov.org

AND

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

Notices personally delivered; delivered through the United States mail, by registered or certified mail, postage prepaid; by means of prepaid overnight delivery service; or by email are acceptable forms of notice. Notices shall be deemed given upon receipt in the case of personal delivery, two days after deposit in the mail, or the next business day in the case of email or

overnight delivery. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any Party may from time to time designate in writing.

7.3 Notices to BAHFA. Borrower shall promptly notify BAHFA in writing of:

7.3.1 Any litigation affecting Borrower, where the amount claimed is One Hundred Thousand Dollars (\$100,000.00) or more;

7.3.2 Any communication, whether written or oral, that Borrower may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that any portion of the Property or the Project fail in any respect to comply with any Governmental Requirement;

7.3.3 Any material default by any contractor, design professional, subcontractor, material supplier or surety in the performance of its or their obligations with respect to the construction, or any material adverse change in the financial condition or operations of any of them;

7.3.4 Any material adverse change in the physical condition of the Property (including any damage suffered as a result of earthquakes or floods), or in Borrower's business condition (financial or otherwise), operations, properties or prospects, or Borrower's ability to repay the Loan; or

7.3.5 The institution of any litigation, arbitration or governmental proceeding, or the rendering of a judgment or decision in such litigation or proceeding, which may cause a material adverse effect to Borrower, the Property or the completion of the construction.

7.4 Assignment and Transfer by Borrower. The qualifications and identity of Borrower are of particular concern to BAHFA. It is because of those qualifications and identity that BAHFA has provided financial assistance to Borrower and entered into this Agreement with Borrower. Accordingly, Borrower shall not, whether voluntarily, involuntarily, or by operation of law, undergo any significant change in ownership or assign all or any part of this Agreement or any rights hereunder or in the Property or in the Project except as approved by BAHFA. In considering whether it will grant approval to any assignment by Borrower of its interest in the Property and this Agreement, BAHFA shall consider factors such as the financial capacity and capability of the proposed transferee to perform Borrower's obligations hereunder and the proposed assignee's experience and expertise in the planning, financing, development and operation of similar projects. Notwithstanding the foregoing, the following transfers shall be permitted without the consent of BAHFA: (i) transfers of limited partner interests; (ii) removal and replacement of a general partner pursuant to the terms of the Borrower's partnership agreement; (iii) grant, exercise and subsequent transfer of the Project or the limited partner interest in Borrower pursuant to an option or right of first refusal granted to the general partner of Borrower.

7.5 Relationship Between BAHFA and Borrower. It is hereby acknowledged that the relationship between BAHFA and Borrower is not that of a partnership or joint venture and that BAHFA and Borrower shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, BAHFA shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of

the Property. Borrower agrees to indemnify, hold harmless and defend all BAHFA Affiliates in accordance with the indemnity provisions of this Agreement from any claim made against BAHFA arising from a claimed relationship of partnership or joint venture between BAHFA and Borrower with respect to the development, operation, maintenance or management of the Property.

7.6 Binding on Successors. This Agreement shall be binding upon the parties hereto and their respective representatives, transferees, successors, and assigns.

7.7 Entire Agreement, Waivers, and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. Any amendment or modification to this Agreement must be in writing and executed by BAHFA and Borrower.

7.8 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the internal laws of the State of California without regard to conflict of law principles.

7.9 Authority. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

7.10 Nonliability of BAHFA Officials and Employees. No member, official, employee, or contractor of a BAHFA Affiliate shall be personally liable to Borrower in the event of any default or breach by BAHFA or for any amount which may become due to Borrower or on any obligations under the terms of this Agreement.

7.11 Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, and except as expressly set forth in this Section 7.11, performance by either party hereunder shall not be deemed to be in default and such party shall be entitled to an extension of time to perform its obligations hereunder where delays in performance are due to causes beyond the control and without the fault of such party, including as applicable: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of the public enemy; epidemics; pandemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplies; acts of the other party; acts or the failure to act of BAHFA or any other public or governmental agency or entity (except that any act or failure to act of or by BAHFA shall not excuse performance by BAHFA). Notwithstanding the foregoing, Borrower's inability to secure satisfactory financing, interest rates, or market and economic conditions shall not entitle Borrower to an extension of time to perform. An extension of time for any cause permitted under this Section 7.11 shall be limited to the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the

commencement of the cause. If no written notice is sent within thirty (30) days, for purposes of measuring the extension period for performance of the obligation in question, the period of the enforced delay shall commence to run from the date written notice is sent to the other party.

Times of performance under this Agreement may be extended by mutual written agreement of BAHFA and Borrower.

7.12 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

7.13 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. In the event that all or any portion of this Agreement is found to be unenforceable, this Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the parties; and the parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid this Agreement or that portion which is found to be unenforceable.

7.14 Contract Administration. The Executive Director for BAHFA (or their authorized representative) shall administer this Agreement on behalf of BAHFA and shall have the authority to issue interpretations, waive provisions, extend deadlines, and enter into amendments of this Agreement on behalf of BAHFA so long as such actions do not substantially add to the costs of BAHFA as specified herein.

7.15 Integration. This Agreement and the Loan Documents contain the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into the Loan Documents and shall be of no further force or effect. Each party is entering into the Loan Documents upon the representations set forth in the Loan Documents and upon each party's own independent investigation of any and all facts such party deems material.

7.16 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

7.17 No Waiver. BAHFA may at any time and from time to time waive any one or more of the terms or conditions contained in this Agreement, but any such waiver shall be deemed to be made pursuant to this Agreement and not in modification thereof, and any such waiver in any instance or under any particular circumstances shall not be construed a waiver of such term or condition or of any subsequent default. In order to be effective, all such waivers must be in writing. The failure of BAHFA to promptly exercise its rights or remedies shall not be deemed to be a waiver or grounds for the claim of estoppel.

7.18 Legal Advice. Each party represents and warrants to the other the following: they have carefully read the Loan Documents, and in signing the Loan Documents, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in the Loan Documents, or have knowingly chosen not to consult legal counsel as to the matters set forth in the Loan Documents; and, they have freely signed the Loan Documents without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in the Loan Documents, and without duress or coercion, whether economic or otherwise.

7.19 Execution in Counterpart; Digital Signatures. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart. Each Party of this Agreement may execute this Agreement by use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement.

7.20 Attachments. Attachment Nos. 1-8 attached to this Agreement are incorporated herein by this reference and made a part hereof. Said Attachments are identified as follows:

ATTACHMENT NO. 1	LEGAL DESCRIPTION OF PROPERTY
ATTACHMENT NO. 2	PROJECT DESCRIPTION
ATTACHMENT NO. 3	PROJECT BUDGET
ATTACHMENT NO. 4	INSURANCE AND FINANCIAL SECURITY (BOND) PROVISIONS
ATTACHMENT NO. 5	SUPPLEMENTAL CONDITIONS
ATTACHMENT NO. 6	FORM OF UNSECURED PROMISSORY NOTE
ATTACHMENT NO. 7	FORM OF REPAYMENT GUARANTY
ATTACHMENT NO. 8	FORM OF REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS

[signatures on following page]

IN WITNESS WHEREOF, BAHFA and Borrower have executed this Agreement as of the date set forth above.

“BAHFA”

“BORROWER”

BAY AREA HOUSING FINANCE
AUTHORITY

By: _____
_____, Executive Director

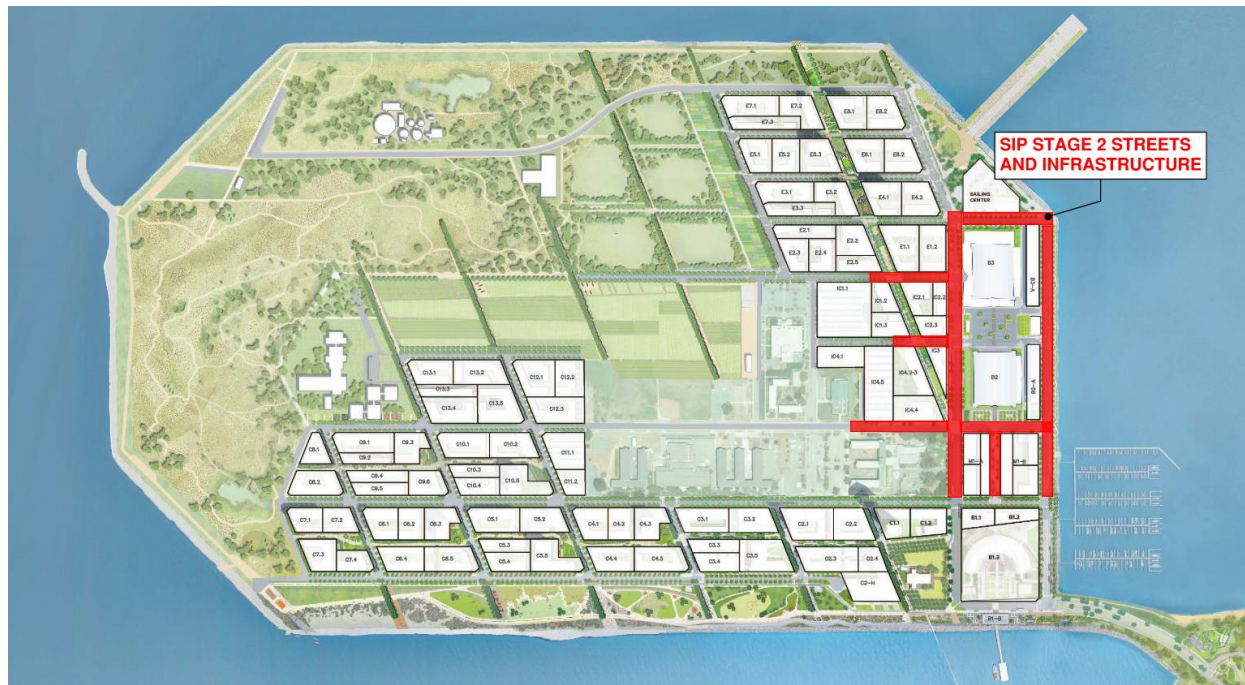
By: _____

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF SITE

Treasure Island Stage 2 street improvements and infrastructure project area, including APN'S:
1939-127, 1939-128, 1939-132, 1939-133, 1939-134, 1939-135, 1939-136, 1939-137, 1939-138,
1939-139, 1939-140, 1939-141, 1939-142, 1939-143, 1939-144, 1939-145, 1939-148, 1939-149,
1939-154, 1939-166, 1939-170, 1939-174, 8913-007, 8921-004, 8930-001, 8930-002, 8931-001,
8931-002, 8931-003, 8932-001, 8933-001, 8933-003, 8934-001, 8934-001, 8934-002, 8934-003,
8934-004, 8934-005, 8934-005, 8934-006, 8935-001, 8937-002, 8945-002, 8945-003, 8945-004

Project Area Map:



TREASURE ISLAND

ATTACHMENT NO. 2

PROJECT DESCRIPTION

The purpose of this loan is to fund soft costs related to construction of new street and infrastructure improvements in Treasure Island SIP Phase 2, described and mapped in Attachment No. 1. Infrastructure improvements include all utilities, street improvements, sidewalks, and furnishings and fixtures. This work will support all affordable housing in Stage 2 including a 100% deed-restricted affordable senior housing development on the eastern portion of Parcel E1.2 on Treasure Island. will be. The E1.2 Senior Housing totaling approximately 100 units will be developed, owned and managed by Mercy Housing. There will be 95 one-bedroom units, and 5 two-bedroom units, including one manager's unit. Units will be restricted per the Regulatory Agreement and the current target breakdown of unit types and income levels is as follows, which may be updated from time to time by Developer:

# of Bedrooms	# of Units	TCAC Income Level (30%, 50%, 80%, etc., or Unrestricted)	Total Unrestricted Unit	Total Affordable Units
1	91	0- 60% AMI		91
1	4	100%		4
2	2	0- 60% AMI		2
2	2	100%		2
2	1	Unrestricted/Manager	1	
Total Units	100		1	99

ATTACHMENT NO. 3

PROJECT BUDGET

Treasure Island Development Authority - BAHFA Priority Sites Pilot Program Budget

Priority Sites Pilot Program Budget		AMOUNT
<u>SOURCES OF FUNDS</u>		
PRIORITY SITES PILOT PROGRAM		\$3,000,000
TOTAL SOURCES		\$3,000,000
<u>USES OF FUNDS (Soft Costs related to Treasure Island Stage 2 Street Improvements, Utilities, Infrastructure)</u>		
Permitting, Entitlements, and Inspections		\$1,500,000
Architectural and Engineering Expenses		\$1,000,000
Legal Expenses		\$500,000
Total Estimated Costs		\$3,000,000
TOTAL USES		\$3,000,000

ATTACHMENT NO. 4

Insurance and Financial Security (Bond) Provisions

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover BORROWER's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that BORROWER authorizes to work under this Agreement (hereinafter referred to as "Agents.") BORROWER shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

BORROWER is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, BORROWER shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling BORROWER's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event BORROWER or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that BORROWER's insurance be primary without right of contribution from BAHFA. Prior to beginning work under this contract, BORROWER shall provide BAHFA with satisfactory evidence of compliance with the insurance requirements of this section.

The insurance listed hereunder shall be considered minimum requirements and any and all insurance proceeds in excess of the requirements shall be made available to BAHFA. If the BORROWER maintains broader coverage and/or higher limits than the minimum limits shown hereunder, BAHFA shall be entitled to the broader coverage and/or higher limits maintained by the BORROWER.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of BORROWER's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of BAHFA. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as BORROWER is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of BORROWER and BORROWER's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation or "Waiver of Transfer of Rights of Recovery Against Others to Us" provision included in the policy language or by endorsement in favor of BAHFA.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

BAHFA and those entities listed in Part 3 of this Attachment No. 4, and their commissioners, directors, officers, representatives, and employees are to be named as additional insureds for ongoing and completed operations. The additional insured endorsements shall be at least as broad as Insurance Service Office (ISO) Form Number CG 20 38 04 13 for ongoing operations and Insurance Service Office (ISO) Form Number CG 20 37 04 13 for completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from BORROWER's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by BORROWER and BORROWER's officers, and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Excess or Umbrella Insurance in the amount of \$9,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to BAHFA and having minimum limits of \$3,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. Such cyber risk coverages shall include liability arising from the loss, theft or failure to protect, or unauthorized acquisition of BAHFA's personally identifiable information or confidential information.

The policy shall provide coverage for all work performed by BORROWER and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of BORROWER. No contract or agreement between BORROWER and any subcontractor/consultant shall relieve BORROWER of the responsibility for providing this Errors

& Omissions or Professional Liability coverage for all work performed by BORROWER and any subcontractor/consultant working on behalf of BORROWER on the project.

6. Property Insurance. Property Insurance covering BORROWER's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of BAHFA (if any). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation or "Transfer of Rights of Recovery Against Others to Us" provision included in the policy language or by endorsement in favor of BAHFA.

7. Employee Dishonesty/Crime Insurance. An Employee Dishonesty insurance policy covering BORROWER's employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$1,000,000; and (b) Client Property Blanket Bond - \$1,000,000. BORROWER shall reimburse MTC for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys' fees and any other fees associated with a claim. In lieu of a Client Property Blanket Bond, the policy shall contain a Joint Loss Payee endorsement or other Third Party coverage naming MTC.

9.

BORROWER warrants that all UAV crew, including pilot in command, visual observer, sensor or payload operator, or other persons necessary for the safe operation of the flight have the qualifications, experience, licenses and certificates required. In addition, BORROWER must observe all applicable FAA, state and local regulations.

DELIVERY OF DATA AND DATA RIGHTS: BORROWER agrees to provide BAHFA with copies of data obtained from the performance of the work within the time set forth by BAHFA's delivery directions and/or schedule, upon BAHFA's request.

B. Acceptable Insurers. All policies will be issued by insurers, generally with a Best's Rating of A- or better with a Financial Size Category of VII or better, or an A rating from a comparable rating service.

C. Self-Insurance. BORROWER's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to BAHFA.

D. Deductibles and Retentions. BORROWER shall be responsible for payment of any deductible or retention on BORROWER's policies without right of contribution from BAHFA. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that BAHFA seeks coverage as an additional insured under any BORROWER insurance policy that contains a deductible or self-insured retention, BORROWER shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any

lawsuit arising from or connected with any alleged act of BORROWER, any consultant, contractor, subconsultant, subcontractor, or any of their employees, officers or directors, even if BORROWER or any consultant, contractor, subconsultant, or subcontractor is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a “Claims-Made” (rather than an “occurrence”) basis, then in addition to the coverage requirements above, BORROWER shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, BORROWER shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of BORROWER’s personnel, consultants, subconsultants, contractors, subcontractors, and equipment have been removed from BAHFA’s property, and the work or services have been formally accepted. V must notify BAHFA if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, BORROWER shall deliver to Ebix, BAHFA’s authorized insurance consultant, insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and endorsements referred to above and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

BORROWER shall submit certificates of insurance to:

**Bay Area Housing Finance Authority
Insurance Compliance
P.O. Box 100085-M8
Duluth, GA 30096
or
Email to MTC@Ebix.com**

or
Fax to 1-888-617-2309

BAHFA reserves the right to require copies of all required policy declarations pages or insurance policies, including endorsements, required by these specifications, at any time.

2. FINANCIAL SECURITY (BONDS), IF APPLICABLE

Concurrent with the execution and delivery of the Agreement and prior to the commencement of any work under the Agreement, BORROWER shall deliver to BAHFA documentation of bonds verifying the coverages listed below. BORROWER shall submit documentation of bonds as noted below. Such evidence of bond requirements shall include the project name and be signed by the authorized representative of the Surety. BORROWER has provided, and shall maintain in effect for the term of the Agreement unless otherwise specified herein, the following types of bonds as financial security for the Project:

A. Performance Bond. A bond to guarantee the faithful performance of the Agreement in the amount of 100% of the total Agreement price.

B. Payment Bond. A bond to guarantee payment of claims of laborers and materialmen/persons under subcontract to BORROWER. Such bond shall be in the amount of 100% of the total Agreement price.

The Performance and Payment Bonds shall in no event be construed to cap, liquidate, or otherwise modify or limit the amount of damages payable by BORROWER for breach of this Agreement.

All bonds will be issued by surety companies acceptable to BAHFA, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

BORROWER shall submit documentation of bonds:

**BAHFA Section Director
Bay Area Housing Finance Authority
375 Beale Street, Suite 800
San Francisco, CA 94105
or
EMAIL bahfa@bayareametro.gov**

3. ADDITIONAL INSURED, IF APPLICABLE

The following entities are to be named as Additional Insureds under applicable sections of this Attachment No. 4 and as BAHFA Indemnified Parties, pursuant to Section 3.7 of the Agreement.

Bay Area Housing Finance Authority
Metropolitan Transportation Commission

Association of Bay Area Governments
California State Department of Housing and Community Development
And their commissioners, directors, officers, representatives, and employees

ATTACHMENT NO. 5

SUPPLEMENTAL CONDITIONS

The Loan is subject to the State of California Department of Housing and Community Development (HCD) Grant Agreement No. 23-REAP2-17909 (“REAP 2.0 Grant Agreement”), attached hereto and incorporated herein by this reference as Attachment 5A, pursuant to the Notice of Funding Availability and Final Guidelines – Metropolitan Planning Organization Allocations Regional Early Action Planning Grant (REAP 2.0) (“REAP 2.0 NOFA”), attached hereto and incorporated by reference as Attachment 5B. To ensure timely satisfaction of the requirements set forth in the REAP 2.0 Grant Agreement and REAP 2.0 NOFA, BAHFA must receive the first Draw Request, which satisfies the conditions of this Agreement, no later than July 2, 2025 (“First Expenditure Deadline”). Borrower’s failure to provide the first Draw Request by the First Expenditure Deadline shall constitute default under this Agreement (“First Expenditure Default”). The First Expenditure Default is not subject to the default and cure provisions of Section 5.1 or any other provision herein. In the event of a First Expenditure Default, the parties agree that on July 3, 2025, the Loan Agreement terminates, BAHFA is entitled to redistribute the funds that would constitute the Loan, and the parties will take reasonable action necessary to terminate the Regulatory Agreement. In BAHFA’s sole discretion, the Executive Director may extend the First Expenditure Deadline by providing notice as required by Section 7.2 on or before the First Expenditure Deadline that the First Expenditure Deadline is extended to the date in the notice.

In addition, Borrower shall submit its last Draw Request no later than April 1, 2026, and all Loan disbursements must be expended by May 1, 2026. If on May 2, 2026, there is any amount of the Loan still remaining to be disbursed and expended, the Loan shall be reduced by the amount of the funds remaining for disbursement and expenditure (“Unused Funds”), and BAHFA shall be entitled to reallocate the Unused Funds for other purposes as allowed by the REAP 2.0 Grant Agreement.

ATTACHMENT NO. 6

FORM OF UNSECURED PROMISSORY NOTE

UNSECURED PROMISSORY NOTE
(Priority Sites Program— Treasure Island Stage 2 Infrastructure)

Principal Amount: \$ _____

Date of Note: _____

Maker: Treasure Island Development Authority, a California non-profit public benefit corporation

Lender: BAY AREA HOUSING FINANCE AUTHORITY

Maturity Date: Three (_3_) years from the date of this Note with the option for two one-year extensions at no cost

Interest Rate: Three Percent (3%) simple

1. Loan.

FOR VALUE RECEIVED, the undersigned Treasure Island Development Authority, a California non-profit public benefit corporation (“**Maker**”), with its principal place of business located at Treasure Island Administration Building, 39 Treasure Island Road, San Francisco, CA 94130, promises to pay to the BAY AREA HOUSING FINANCE AUTHORITY (“**Holder**” or “**BAHF**”) at 375 Beale Street, Suite 800, San Francisco, California 94105, or such place as the Holder may, from time to time, designate by written notice to the Maker, the principal sum of Three Million DOLLARS (\$3,000,000.00), (the “**Loan**”), together with any accrued interest, if applicable, as set forth in this Note. This Promissory Note (the “**Note**”) is made and given pursuant to that certain Affordable Housing Loan Agreement (Priority Sites Program— Treasure Island Stage 2 Infrastructure) between Holder and Maker, dated [Insert Date of Loan Agreement] (the “**Loan Agreement**”). The Loan Agreement is incorporated herein by this reference. All initially capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement.

2. Term of Loan and Right of Prepayment.

a. Maturity Date. All accrued interest and principal shall be due and payable in full without any further demand or notice three (3) years from the date of this Note (“**Maturity Date**”). Subject to BAHF’s written approval, the Maturity Date may be extended up to five (5) years from date of this Note upon Maker’s delivery of written notice to BAHF and provided that any necessary entitlements for the Project have been extended.

b. Prepayment. This Note may be prepaid in whole or in part at any time and from time to time without penalty or premium.

3. Unsecured Note.

This Note is an unsecured promissory note.

4. Interest Calculation.

The principal outstanding under this Note shall accrue simple interest at the rate of three percent (3%) per annum, except in the case of an Event of Default as set forth in Section 6 of this Note. Principal and interest shall be payable in lawful money of the United States of America. If applicable, interest shall be computed based on an actual day year and the actual number of days elapsed. Interest shall commence on amounts disbursed hereunder from the date of disbursement.

5. Repayment.

Repayment of the principal amount and interest accrued under this Note shall be deferred until the Maturity Date, except in the event of acceleration of this Note as set forth herein.

6. Acceleration Upon Certain Events or Upon Event of Default.

In the event of any Event of Default under the terms of this Note, the Loan Agreement or the Regulatory Agreement, or under any Senior Loans, notes or deeds of trust, at the option of the Holder and after notice to the Maker, providing Maker with thirty (30) days in which to cure any Event of Default, and such Event of Default not having been cured within thirty (30) days (or if a greater amount of time is reasonably necessary to effect a cure, if actions to cure such Event of Default are not undertaken within said thirty (30) day period and pursued with reasonable diligence thereafter), all principal and interest due under this Note shall immediately become due and payable, upon thirty (30) day written notice from the Holder to the Maker. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of any subsequent Event of Default.

7. Interest on Default.

From and after an Event of Default, the entire outstanding principal balance of this Note shall automatically bear an annual interest rate equal to the lesser of: (a) eight percent (8%) compounding annually; or (b) the maximum interest rate allowed by law.

8. Costs Paid by Maker.

Maker agrees to pay the following costs, expenses and attorneys' fees paid or incurred by the Holder of this Note, or as adjudged by a court of competent jurisdiction: (a) reasonable costs of collection, costs and expenses and attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; and (b) costs of suit in such sum as the court may adjudge reasonable as attorneys' fees in any action to enforce payment of this instrument.

9. Waiver.

Maker hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this instrument, and expressly agrees that, without in any way affecting the liability of Maker hereunder, the Holder hereof may extend the Maturity Date or the

time for payment of any installment due hereunder, accept additional security, release any party liable hereunder or release any security now or hereafter securing this Note. Maker hereby waives, to the fullest extent permitted by law, the right to plead any and all statutes of limitations as a defense to any demand on this instrument or any security agreement, guarantee or other agreement now or hereafter securing this Note.

10. Indemnification.

Maker shall indemnify, defend, protect and hold the Holder harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense, including, without limitation, reasonable attorneys' fees and expenses incurred by the Holder hereof, arising as a result of any (i) fraud or material misrepresentation (meaning a misrepresentation that impacts the consideration that the Holder receives under the agreements, or served as a material basis for the Holder entering into the agreements) by the Maker under or in connection with the Loan Agreement or related agreements; (ii) intentional bad faith waste of the real property encumbered by the deed of trust which secures this Note; and (iii) losses resulting from Maker's failure to maintain insurance as required under the provisions of the Loan Agreement.

11. Severability.

If any provision of this Note is determined by a court of competent jurisdiction to be void or unenforceable, such determination shall not affect any other provision of this instrument, and all other provisions hereof shall remain valid and in full force and effect.

12. Non-Waiver.

No delay in demanding or failure to demand performance hereunder shall constitute a waiver by the Holder hereof of its right to subsequently demand such performance or to exercise any remedies for any Event of Default hereunder. Further, in order to be effective, any waiver of any of the Holder's rights and remedies hereunder shall be expressed in a writing signed by a duly appointed representative of the Holder hereof. Further, waiver by the Holder hereof of any right hereunder shall not constitute a waiver of any other right, including, but not limited to, the right to exercise any and all remedies for a different or subsequent Event of Default hereunder.

[Signatures on Following Page]

SIGNATURE PAGE TO
UNSECURED PROMISSORY NOTE
(Priority Sites Program - Treasure Island Stage 2 Infrastructure)

MAKER: Treasure Island Development Authority, a
California non-profit public benefit corporation

By: Robert Beck, Director

ATTACHMENT NO. 7

FORM OF REPAYMENT GUARANTY

REPAYMENT GUARANTY

This **REPAYMENT GUARANTY** (this “**Guaranty**”), dated as of _____, 20__, is made by Treasure Island Development Authority, a California non-profit public benefit corporation (the “**Guarantor**”), to the **BAY AREA HOUSING FINANCE AUTHORITY** (“**BAHFA**”).

RECITALS:

WHEREAS, pursuant to that certain Affordable Housing Loan Agreement (Priority Sites Program—Treasure Island Stage 2 Infrastructure) dated as of the date hereof (as the same may be amended, extended or modified from time to time, the “**Loan Agreement**”), BAHFA has made a loan in an amount not to exceed **\$3,000,000** (the “**Loan**”) to Treasure Island Development Authority, a California non-profit public benefit corporation (the “**Borrower**”), to be evidenced by a certain Unsecured Promissory Note dated as of the date hereof and made by Borrower to BAHFA (as it may be amended, extended or modified from time to time, the “**Note**”). Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Loan Agreement and the Note.

WHEREAS, as a condition to the BAHFA’s obligations to make the Loan, Guarantor is obligated to execute and deliver this Repayment Guaranty to BAHFA, and BAHFA is unwilling to accept the Note and the other Loan Documents or make the Loan unless this Guaranty is so delivered by Guarantor.

WHEREAS, Guarantor is the owner of a direct or indirect interest in Borrower and will directly benefit from BAHFA making the Loan to Borrower.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to induce BAHFA to make the Loan to the Borrower, Guarantor hereby agrees for the benefit of BAHFA as follows:

1. Payment Obligations. Guarantor absolutely and unconditionally guarantees to BAHFA the prompt payment when due, whether by acceleration or otherwise, of the outstanding amount of the Loan that has been disbursed to Borrower at the time such funds are due, up to the full principal amount of the Loan, together with all interest, fees, expenses and other obligations under this Guaranty, the Note, the Loan Agreement and the other Loan Documents, whether outstanding or hereafter made or incurred, whether incurred by the Borrower as maker, endorser, drawer, acceptor, guarantor, accommodation party, counterparty, purchaser, seller, or otherwise, and whether due or to become due, secured or unsecured, absolute or contingent, joint and/or several, and howsoever or whenever acquired by BAHFA (collectively, the “**Payment Obligations**”). The Payment Obligations shall include interest accruing thereon before or after the commencement of any insolvency, bankruptcy or reorganization proceeding in respect of the Borrower or any other guarantor of the Payment Obligations whether or not such interest is an allowable claim in any such proceeding and irrespective of the discharge or release of the Borrower or any other guarantor in such proceeding.

2. Carry Obligations. Without limiting **Paragraph 1** above, Guarantor absolutely and unconditionally guarantees to BAHFA the prompt payment when due, whether by acceleration or otherwise, of (collectively, the “**Carry Obligations**”):

2.1 all real estate taxes, insurance premiums, and other operating expenses relating to the Premises and the Improvements or in connection with the Premises;

- 2.2 all property management expenses;
- 2.3 all sales and leasing commissions now or hereafter owing with respect to the sale, leasing and rental of all or a portion of the Premises;
- 2.4 all property maintenance charges;
- 2.5 any condominium or planned unit development charges, business improvement district charges, any permit fees, violation or other municipal charges; and
- 2.6 any other expenses or deficits relating to the ownership or operation of the Premises.

3. Indemnification Obligations. Without limiting **Paragraph 1** above, Guarantor hereby indemnifies and agrees to hold BAHFA harmless from any loss, cost or expense incurred by BAHFA as a result of (collectively, the "**Indemnification Obligations**"; the Payment Obligations, the Carry Obligations, and the Indemnification Obligations being herein collectively referred to as the "**Guarantor's Obligations**");

- 3.1 Any waste at any portion of the Premises;
- 3.2 Any fraud or misrepresentation by the Borrower in connection with the Loan;
- 3.3 The gross negligence or willful misconduct of the Borrower or Guarantor, or their agents, managers, officers or employees with respect to their obligations to the operation of the Premises;
- 3.4 Any failure to pay any taxes, insurance or other payments required in connection with the ownership or operation of the Premises;
- 3.5 Any transfer of any direct or indirect interest in the Premises which is in violation of the terms of the Security Instrument;
- 3.6 The filing by the Borrower or any guarantor or indemnitor, including, without limitation, any Indemnitor, of a voluntary petition under the United States Bankruptcy Code (the "**Bankruptcy Code**") or any other Federal or state bankruptcy or insolvency law;
- 3.7 Any affiliate, officer, director or representative which controls, directly or indirectly, the Borrower or any guarantor or indemnitor, including, without limitation, any Indemnitor files, or joins in the filing of, an involuntary petition against the Borrower or any guarantor, including, without limitation, any Indemnitor, under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicits or causes to be solicited petitioning creditors for any involuntary petition against the Borrower or any guarantor or indemnitor, including, without limitation, any Indemnitor, from any Person;
- 3.8 The Borrower or any guarantor or indemnitor, including, without limitation, any Indemnitor, files an answer consenting to, or otherwise acquiescing in, or joining in, any involuntary petition filed against it by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person; and
- 3.9 Any affiliate, officer, director or representative which controls the Borrower or any guarantor or indemnitor, including, without limitation, any Indemnitor, consents to, or acquiesces in, or joins in, an application for the appointment of a custodian, receiver, trustee or examiner for the Borrower, any guarantor or indemnitor, including, without limitation, any Indemnitor, or any portion of the Premises.

4. Representations and Warranties. Guarantor represents and warrants to BAHFA that:

- 4.1 **Power and Authority.** Guarantor has the full power and authority to execute and deliver this Guaranty and to perform its obligations hereunder; the execution, delivery and performance of this Guaranty by Guarantor has been

duly and validly authorized; and all requisite action has been taken by Guarantor to make this Guaranty valid and binding upon Guarantor and enforceable in accordance with its terms.

4.2 Binding Agreement. This Guaranty constitutes the valid and legally binding obligations of Guarantor and is enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally.

4.3 Litigation. There are no actions, suits or proceedings at law or in equity or governmental proceedings pending or, to the knowledge of Guarantor, threatened against Guarantor.

4.4 Required Consents. All consents, approvals and authorizations, if any, required for the execution, delivery and performance of this Guaranty have been obtained, and no other consent, authorization or approval of, filing with, notice to, or exemption by, any governmental agency or other person (except for those which have been obtained, made or given) is required to authorize, or is required in connection with the execution, delivery and performance of this Guaranty or is required as a condition to the validity or enforceability of this Guaranty. No provision of any applicable statute, law (including, without limitation, any applicable usury or similar law), rule or regulation of any governmental agency prevents the execution, delivery or performance of, or affects the validity of, this Guaranty.

4.5 No Conflicting Agreement. Guarantor is not in default under any mortgage, indenture, contract or agreement to which it is a party or by which it or any of its properties is bound. The execution, delivery or carrying out of the terms of this Guaranty will not result in the breach of any term or provision of any of Guarantor's organizational documents or constitute a default thereunder, or result in the creation or imposition of, or obligation to create, any lien or other encumbrance upon any property of Guarantor or result in a breach of or require the mandatory repayment of or other acceleration of payment under or pursuant to the terms of any such mortgage, indenture, contract or agreement.

4.6 Compliance with Applicable Laws. Guarantor is not in default with respect to any judgment, order, writ, injunction, decree or decision of any governmental agency. Guarantor is complying in all material respects with all laws, statutes, regulations, rules and orders applicable to Guarantor.

4.7 Financial Representations. Guarantor warrants, represents and covenants to BAHFA that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to BAHFA are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; and (d) there are not now pending any court or administrative proceedings or undischarged judgments against any Guarantor, no federal or state tax liens have been filed or threatened against any Guarantor, and Guarantor is not in default or claimed default under any agreement.

5. Covenants. Guarantor covenant and agrees that:

5.1 Reimbursement. Guarantor shall, promptly upon demand by BAHFA, pay to BAHFA and/or reimburse BAHFA and/or perform as directed by BAHFA, in respect of all Guarantor's Obligations or other agreements herein, in such manner and at such time as BAHFA shall require.

5.2 Specific Performance. In the event that Guarantor does not timely pay or perform any of its obligations under this Agreement, BAHFA may pay or perform said obligations at the expense of Guarantor. The failure of Guarantor to so pay or perform any of its obligations under this Agreement shall constitute a default hereunder, and BAHFA, shall have the option to require specific performance by Guarantor of any of said obligations hereunder, in addition to any other rights or remedies hereunder, under the Loan Documents or at law or equity. Any amounts expended by BAHFA in the exercise of any rights of BAHFA hereunder shall be paid to BAHFA promptly upon demand, and until paid shall accrue interest at the Default Rate.

6. Unconditional and Continuing Nature of Guaranty.

(a) **Unconditional Guaranty.** The obligations of Guarantor hereunder are absolute and unconditional, under all circumstances and irrespective of the genuineness, validity, regularity, discharge, release or enforceability of Guarantor's Obligations, or of any instrument evidencing any of Guarantor's Obligations or of any collateral therefor or of the existence or extent of such collateral or of the obligations of Guarantor under this Guaranty.

(b) **Modification of Agreements.** Guarantor agrees that BAHFA may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of Guarantor, extend the time of payment of, exchange, release, substitute or surrender any collateral for, renew or extend any of, or change the amount of, the Loan or increase the interest rate thereon, and may also make any agreement with the Borrower or with any other party to or person liable on the Loan, or any guarantor of or hypothecator of collateral or other surety for such Guarantor's Obligations or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between BAHFA and the Borrower or any such other party or person, without in any way impairing or affecting this Guaranty.

(c) **Continuing Guaranty.** This is a continuing Guaranty and shall remain in full force and effect and be binding upon Guarantor and Guarantor's successors and assigns until all of the occurrence of the conditions set forth in **subsection (e)** below have been satisfied. If any of the present or future Guarantor's Obligations are guaranteed by persons, partnerships, limited liability companies or corporations in addition to Guarantor, the death, release or discharge in whole or in part, or the bankruptcy, liquidation or dissolution of one or more of them, shall not discharge or affect Guarantor's Obligations under this Guaranty. In addition, the death, release or discharge in whole or in part, or the bankruptcy, liquidation or dissolution of any of the persons comprising Guarantor shall not discharge or affect the liabilities of any of the other persons comprising Guarantor under this Guaranty.

(d) **Guaranty of Payment.** This Guaranty is a guaranty of payment and not of collection, and BAHFA shall not be under any obligation to take any action against the Borrower or any other person liable with respect to any of Guarantor's Obligations or resort to any collateral security securing any of Guarantor's Obligations or this Guaranty as a condition precedent to Guarantor being obligated to make payment and perform as agreed herein.

(e) **Release.** Until the earlier to occur of (i) the indefeasible repayment in full of the Loan and all other sums due in connection therewith and the termination of the Loan Agreement and return of the Note to Borrower by BAHFA, and (ii) the indefeasible payment and performance by Guarantor of all of its obligations hereunder, the liability of Guarantor under this Guaranty shall not be released.

6.1 Reinstatement. This Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time payment of all or any part of any payment of Guarantor's Obligations is rescinded or must be restored or returned by BAHFA whether under any reorganization, bankruptcy, receivership or insolvency proceeding or otherwise; and Guarantor agrees that it will indemnify BAHFA on demand for all costs and expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by BAHFA in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

7. Miscellaneous.

7.1 Waivers. Guarantor hereby waives for the benefit of BAHFA:

7.1.1 Waiver of Notice, Presentment. Notice of the acceptance of this Guaranty and of the making of the Loan or extensions of credit or the incurrence of any other obligation by the Borrower pursuant to the Loan Documents, presentment to or demand of payment from anyone whosoever liable upon any of Guarantor's Obligations, protest, notice of presentment, non-payment or protest and notice of any sale of collateral security or any default of any sort;

7.1.2 Waiver of Claims. Any rights to claim or interpose any defense, counterclaim or offset of any nature and description which it may have or which may exist between and among BAHFA, the Borrower and/or Guarantor or to seek injunctive relief;

7.1.3 Subrogation. Until such time as BAHFA shall have been indefeasibly paid in full all of Guarantor's Obligations, Guarantor waives any rights to be subrogated to the rights of BAHFA with respect to Guarantor's Obligations and Guarantor waives any right to, and agrees that it will not institute or take any action against the Borrower seeking, contribution, reimbursement or indemnification by the Borrower with respect to any payments made by Guarantor to BAHFA; and

7.1.4 Other Defenses. Any defense or benefits that may be derived from or afforded by laws which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guaranty.

(f) **Enforcement of Loan Documents.** The obligations of the undersigned are in addition to, and not in diminution of, the obligations of the Borrower and Guarantor under any other Loan Document. No failure on the part of BAHFA to exercise, and no delay in exercising, any right, remedy or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise by BAHFA of any right, remedy or power hereunder or under any other Loan Document preclude any other or future exercise thereof or the exercise of any other right, remedy or power.

(g) **Liabilities Unimpaired.** The liability of Guarantor under this Guaranty shall not be limited or impaired by reason of any amendment, waiver or modification of the provisions of any Loan Document, the release or substitution of any collateral securing the Loan, any transfer of the Premises or any part thereof to BAHFA or its nominee, any failure on the part of BAHFA to record or otherwise perfect any lien or security interest in any such collateral, any sale or transfer of the Premises or any part thereof or any determination that any Loan Document is illegal or unenforceable.

(h) **Guarantor's Acknowledgements.** Guarantor hereby acknowledges (i) receipt and approval of the Loan Agreement, the Note, and all other Loan Documents, and (ii) it has derived or expects to derive a financial or other benefit from each and every obligation incurred by the Borrower to BAHFA under or pursuant to the Loan Agreement, the Note and the other Loan Documents.

(i) **Post Default Interest.** Guarantor agrees that any of Guarantor's Obligations which are not paid on demand shall accrue interest at the Default Rate until paid in full, all such interest being payable to BAHFA on demand.

(j) **Expenses.** If any suit or proceeding is instituted by BAHFA for the enforcement of any of the provisions of this Guaranty, Guarantor shall pay to BAHFA on demand all expenses of BAHFA (including reasonable attorneys' fees and actual disbursements) in connection with such suit or proceeding, and until such expenses are paid, the same shall accrue interest at the Default Rate. The obligations of Guarantor under this paragraph shall survive any termination of Guarantor's other obligations under this Guaranty.

8. Special State Provisions. To the extent permitted by law, Guarantor hereby also waives and agrees not to assert or take advantage of:

8.1 Any defense based upon BAHFA's election of any remedy against any Guarantor, including, without limitation, the defense to enforcement of this Guaranty (the "Gradsky" defense based upon Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968) or subsequent cases) which, absent this waiver, Guarantor would have by virtue of an election by BAHFA to conduct a non-judicial foreclosure sale of the Property, it being understood by Guarantor that any such non-judicial foreclosure sale will destroy, by operation of California Code of Civil Procedure Section 580d, all rights of any party to a deficiency judgment against the Borrower, and, as a consequence, will destroy all rights which Guarantor would otherwise have (including, without limitation, the right of subrogation, the right of reimbursement, and the right of contribution) to proceed

against the Borrower and to recover any such amount, and that BAHFA could be otherwise estopped from pursuing Guarantor for a deficiency judgment after a non-judicial foreclosure sale on the theory that a guarantor should be exonerated if a lender elects a remedy that eliminates the guarantor's subrogation, reimbursement or contribution rights;

8.2 Any rights under California Code of Civil Procedure Sections 580a and 726(b), which provide, among other things: that a creditor must file a complaint for deficiency within three (3) months of a nonjudicial foreclosure sale or judicial foreclosure sale, as applicable; that a fair market value hearing must be held; and that the amount of the deficiency judgment shall be limited to the amount by which the unpaid debt exceeds the fair market value of the security, but not more than the amount by which the unpaid debt exceeds the sale price of the security; and

8.3 Without limiting the generality of the foregoing or any other provision hereof, Guarantor expressly waives any and all benefits which might otherwise be available to Guarantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899 and 3433 and California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections.

8.4 Without limiting the generality of the foregoing or any other provision of this Guaranty, Guarantor hereby expressly waives any and all benefits under California Civil Code Sections 2787 thru and including 2856.

9. Guarantor's Waiver Pursuant to California Civil Code Section 2856. In addition to all the other waivers agreed to and made by Guarantor as set forth in this Guaranty, and pursuant to the provisions of California Civil Code Section 2856, Guarantor hereby waives all rights and defenses that Guarantor may have because the debtor's debt is secured by real property. This means, among other things:

9.1 The creditor may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.

9.2 If the creditor forecloses on any real property collateral pledged by the debtor:

9.3 The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

9.4 The creditor may collect from Guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

Guarantor further hereby waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(Remainder of page intentionally left blank; signature page(s) follow.)

IN WITNESS WHEREOF, this Repayment Guaranty has been duly executed as of the day and year first written above.

_____, a

By: _____
Name:
Title:

ATTACHMENT NO. 8

**FORM OF REGULATORY AGREEMENT AND DECLARATION
OF COVENANTS AND RESTRICTIONS**

[Attached behind this cover page]

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Bay Area Housing Finance Authority
Bay Area Metro Center, Suite 800
375 Beale Street, San Francisco, California 94105
Attn: BAHFA Section Director

SPACE ABOVE FOR RECORDER'S USE ONLY
EXEMPT FROM RECORDING FEE PER
GOVERNMENT CODE §27383

REGULATORY AGREEMENT
(Priority Sites Program—Insert Name of Project)

between

THE BAY AREA HOUSING FINANCE AUTHORITY

and

[NAME OF DEVELOPER],
a [State and type of entity, e.g. a California limited partnership]

[Dated as of _____, 20__ for reference purposes only]

REGULATORY AGREEMENT
(Priority Site Program—Insert Name of Project)

This REGULATORY AGREEMENT (Priority Sites Program—Insert Name of Project) (“**Regulatory Agreement**”) is made and entered into as of _____, 2021, by and between the BAY AREA HOUSING FINANCE AGENCY (“**BAHFA**”) and INSERT NAME OF DEVELOPER], a [Insert State and type of business entity] (“**Owner**”).

RECITALS

A. BAHFA and the Owner entered into that certain Affordable Housing Loan Agreement (Priority Sites Program—Insert Name of Project) dated as of _____ (the “**Affordable Housing Agreement**”), which provides that BAHFA will loan certain funds to the Owner subject to the terms and conditions of the Affordable Housing Agreement. Under the Affordable Housing Agreement, BAHFA has agreed to provide financial assistance to the Owner to be used in furtherance of the development or preservation of certain multifamily residential housing that will include Affordable Housing Units that shall be rented to Qualified Households at an Affordable Rent, as more specifically described in the Unit Breakdown, attached hereto as Attachment No. 2 attached hereto and incorporated herein by this reference (the “**Project**”).

B. BAHFA and the Owner desire that the Project be operated as a multifamily residential community on the Property that will include residential units made available to Qualified Households at an Affordable Rent as more specifically defined herein. This Regulatory Agreement establishes terms and conditions which govern the operation of the Property.

C. The terms of the Affordable Housing Agreement require that certain covenants and affordability restrictions remain in full force and effect on the Project for a term commencing on the date of recordation of this Regulatory Agreement and continuing for fifty-five (55) years following the Completion Date as defined herein (“**Term**”).

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND UNDERTAKINGS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE OWNER AND BAHFA DO HEREBY COVENANT AND AGREE FOR THEMSELVES, THEIR SUCCESSORS AND ASSIGNS AS FOLLOWS:

1. Definitions of Certain Terms. as used in this Regulatory Agreement, the following words and terms shall have the meaning as provided in the recitals or in this Section 1, unless the specific context of usage of a particular word or term may otherwise require. All initially capitalized terms used and not otherwise defined in the recitals or in this Section shall have the meaning ascribed to such term by the Affordable Housing Agreement.

1.1 Affordable Rent. In reference to each Affordable Unit, “**Affordable Rent**” shall mean rent at a level which is no higher than the maximum rent for the applicable household income level as published by TCAC annually as the Multi-Family Tax Subsidy Rents for Low Income Housing Tax Credit Projects. For purposes of the calculation of Affordable Rent “adjusted

for household size” shall be the federally-mandated household size assumptions as set forth in federal statutes or regulations for the Tax Credit program.

1.2 Affordable Units. The residential units that are part of the Project that are restricted by Owner for rental and occupancy by Qualifying Households at an Affordable Rent in accordance with the terms and conditions of this Agreement. The income levels for the Affordable Units are set forth in the Unit Breakdown, attached to this Regulatory Agreement as Attachment No. 2 and incorporated herein by this reference, and are established based on the income levels for the County in which the Project is located, as published annually by TCAC based on the income levels applicable to low income housing funded with Low Income Housing Tax Credits as published by the U.S. Department of Housing and Urban Development.

1.3 Area Median Income or AMI. “Area Median Income” or “AMI” shall mean the 100% Income Level for the County in which the Project is located, as published annually by the California Tax Credit Allocation Committee based on the Income Limits applicable to low income housing funded with Low Income Housing Tax Credits as determined by the U.S. Department of Housing and Urban Development.

1.4 Annual Report. The Certification of Continuing Program Compliance attached to this Regulatory Agreement as Attachment No. 4 and incorporated by this reference or comparable report filed annually by the Owner with TCAC, HCD or other governmental agencies.

1.5 BAHFA Parties. Collectively, BAHFA, Metropolitan Transportation Commission, Association of Bay Area Governments, and their respective boards, agents, attorneys, officers, employees, and authorized representatives.

1.6 Completion Date. The date a final certificate of completion, occupancy, or equivalent document is issued by the local jurisdiction where the Project is located to certify that the Project may be legally occupied.

1.7 County. The County in which the Property is located.

1.8 Income Certification Form. The Certification of Tenant Eligibility attached to this Regulatory Agreement as Attachment No. 3 and incorporated by this reference, or comparable income certification form required by TCAC, HCD or other governmental agencies.

1.9 Market Rate Units. The residential units that are included in the Project that are not restricted by Owner as Affordable Units for rental and occupancy by Qualifying Households at an Affordable Rent. The number of Market Rate Units included in the Project are set forth in the Unit Breakdown, attached to this Regulatory Agreement as Attachment No. 2 and incorporated herein by this reference.

1.10 Project. The operation of a multi-family rental housing development on the Property that will include Affordable Housing Units that shall be rented to Qualified Households at an Affordable Rent, at the income levels as set forth in the Unit Breakdown attached hereto as Attachment No. 2, and all related on- and off-site improvements, as more particularly described in Project Description attached to the Affordable Housing Agreement.

1.11 Property. That certain real property where the Project is located, as more particularly described in the legal description attached hereto as Attachment No. 1 and incorporated herein by this reference.

1.12 Property Manager. Property Manager shall have the meaning as set forth in Section 11.1 of this Regulatory Agreement.

1.13 Qualifying Households. A household that (1) intends to reside in the Affordable Unit; and (2) whose income does not exceed the maximum income allowable for the subject Affordable Unit. The required income levels for Qualifying Households in the Project are designated in the Unit Breakdown attached hereto as Attachment No.2.

1.14 Term. The period of time following the date of recordation of this Regulatory Agreement, and ending on the fifty-fifth (55th) anniversary of the Completion Date; provided, however, if a record of the Completion Date cannot be located or established, the Term will expire on the fifty-seventh (57th) anniversary of this Regulatory Agreement.

2. Affordable Multi-Family Residential Rental Property Restrictive Covenant. The Owner covenants to and for the benefit of BAHFA that the Owner shall develop, own, manage and operate, or cause the management and operation of, the Project to provide multi-family residential rental housing in the Affordable Units only to Qualifying Households at an Affordable Rent in accordance with the Unit Breakdown. The Owner will not knowingly permit any Affordable Unit to be used on a transient basis and will not lease or rent any Affordable Unit for an initial period of less than twelve (12) months. No Affordable Unit will, at any time, be leased or rented for use as a hotel, motel, time share, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitary or rest home.

3. Continuous Operation Covenant. The Owner covenants to and for the benefit of BAHFA to cause the Project to be continuously operated, in accordance with the other provisions of this Regulatory Agreement, throughout the Term.

4. Abandonment. The Owner shall not abandon or surrender the operation of all or any part of the Project during the Term, except due to material casualty or condemnation.

5. Rental of Affordable Units. The Owner covenants that each of the Affordable Units shall be occupied or available for occupancy by a Qualifying Household at an Affordable Rent on a continuous basis throughout the Term.

6. Affordable Rent. The monthly rent charged to a Qualifying Household for the occupancy of an Affordable Unit shall not exceed an Affordable Rent for such Affordable Unit except as provided herein.

6.1 Rent for Qualifying Units may be increased only once per calendar year at the annual anniversary of each tenant's lease execution. At such time the Owner shall increase the rent by the lesser of (i) a percentage increase based on the percentage change in Area Median Income over that year; or (ii) four percent (4%); provided that the rent for each Affordable Unit must never exceed the Affordable Rent for that Qualifying Household.

6.2 Determination of Qualifying Household income shall be made by the Owner at the time of initial application by an individual or household for occupancy of an Affordable Unit. At the time of initial application, the Owner shall require an applicant to complete the Income Certification Form and certify the accuracy of the information provided on such form. The Owner shall make a good faith effort to verify the accuracy of income information provided in any Income Certification Form by an applicant for occupancy of an Affordable Unit or by a Qualifying Household occupying an Affordable Unit, by taking one or more of the following steps, as reasonably required or indicated: (1) obtain an income tax return and copy of each W2 Wage and Earnings Statement for the most recently concluded income tax year; (2) conduct a credit reporting agency or similar search; (3) obtain an income verification form from the applicant's or the Qualifying Household's current employer(s); (4) obtain an income verification form from the United States Social Security Administration and/or the California Department of Social Services, if the applicant or the Qualifying Household receives assistance from either of such agencies; or (5) if the applicant or an adult member of a Qualifying Household is unemployed and has no such income tax return, obtain another form of independent verification. For purposes of this Section 6.2, the Owner may conclusively rely upon the evidence of the age of the occupant(s) of an Affordable Unit as presented in a valid California Driver's License, other form of identification issued by the State of California or the United States Government, which includes a date of birth. All such verification information shall only be obtained by the Owner after obtaining the applicant's or the Qualifying Household's written consent for the release of such information to the Owner. Failure to consent in writing to the release of such income verification information to the Owner may disqualify an applicant for occupancy of an Affordable Unit. After the initial certification, Owner shall, upon request by BAHFA, provide such periodic income certification or reports as are required in conjunction with other financing sources utilized by Owner in the development of the Project.

6.3 The restricted income level of each Affordable Unit may change as Affordable Units become vacant (to the extent necessary to satisfy the "next available unit rule" or other similar requirements imposed by Project financing sources). In all circumstances, though, the rent for each Affordable Unit shall be an Affordable Rent for the Affordable Unit as necessary to maintain the restricted income tenant mix required under the Unit Breakdown. If the Owner or BAHFA determines that the income of a previously Qualifying Household exceeds one hundred forty percent (140%) of the qualifying income for a Qualifying Household, then, subject to applicable law and the requirements of any financing source, the Owner or Property Manager shall notify such household that its lease for its Affordable Unit will not be renewed upon the expiration of its lease, unless the household again becomes a Qualifying Household upon recertification prior to the expiration of its lease. If Owner or BAHFA determines that the income category of a Qualifying Household exceeds the qualifying income of the Affordable Unit, then such Qualifying Household shall be permitted to continue to occupy the Qualifying Unit and the Affordable Rent may be increased to one-twelfth of thirty percent (30%) of the Qualifying Household's actual income, adjusted for household size, upon sixty (60) days written notice to the Qualifying Household, and the Affordable Unit shall continue to be classified as an Affordable Unit at the existing income level, but the Owner or Property Manager shall rent the next available Unit to a Qualifying Household with an income level that will maintain the tenant income level mix set forth in the Unit Breakdown. To the extent the federal low-income housing tax credit requirements conflict with the requirements in this Section 6.3 relative to the continued occupancy by

households that do not qualify as Qualifying Households, the federal low-income housing tax credit requirements shall apply in place of the provisions in this Section 6.3.

6.4 The Owner and each Qualifying Household occupying an Affordable Unit shall permit BAHFA to conduct inspections of the Property, the Project and each Affordable Unit, from time-to-time, for purposes of verifying compliance with this Regulatory Agreement, upon fifteen (15) days prior written notice to the Owner.

6.5 The Owner shall submit its first Annual Report to BAHFA on the April 30th immediately following the issuance of the final Certificate of Completion or Occupancy for the Project by BAHFA. Thereafter, on each April 30 during the Term, the Owner shall submit an Annual Report to BAHFA. BAHFA shall maintain the confidentiality of the information contained in any Annual Report specifically relating to any particular Qualifying Household occupying an Affordable Unit, to the extent reasonably allowed by Law, as determined by BAHFA'S general counsel.

7. Owner Covenant Regarding Lease of Affordable Units. The Owner, for itself, its successors and assigns, covenants and agrees that, if any Affordable Unit is rented or leased during the Term, the rental or lease of the Affordable Unit shall be accomplished through a written lease agreement and all of the following restrictions shall apply:

7.1 A Qualifying Household shall be the record tenant and only occupant of the Affordable Unit.

7.2 The lease for each Affordable Unit shall be for an initial term of not less than twelve (12) months.

7.3 Each lease for an Affordable Unit shall contain all of the following provisions:

7.3.1 An agreement authorizing the Owner to immediately terminate the tenancy of a Qualifying Household occupying an Affordable Unit, where one or more members of that Qualifying Household misrepresented any fact material to the qualification of such household as a Qualifying Household;

7.3.2 An agreement providing that each Qualifying Household occupying an Affordable Unit may be subject to rental increases in accordance with this Regulatory Agreement;

7.3.3 An agreement providing that the Owner will not discriminate on the basis of race, color, creed, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, genetic information or receipt of public assistance or housing assistance in connection with rental of an Affordable Unit, or in connection with the employment or application for employment of persons for operation and management of the Project, and all contracts, applications and leases entered into for such purposes shall contain similar non-discrimination clauses to such effect; and

7.4 The Owner shall not terminate the tenancy or refuse to renew the lease or rental agreement of a Qualifying Household except for: (i) serious or repeated violations of the

terms and conditions of the lease; (ii) for violation of applicable Federal, State, or local law; or (iii) for other good cause. The Owner shall follow all applicable laws, rules and regulations in connection with termination of the tenancy of a Qualifying Household or a refusal to renew the lease or rental agreement of a Qualifying Household.

7.5 Tenant Selection Policies. The Owner shall adopt written tenant selection policies and criteria that:

7.5.1 are consistent with the purpose of providing affordable rental housing for Qualifying Households at an Affordable Rent;

7.5.2 are reasonably related to tenant eligibility and ability to perform the obligations of the lease for an Affordable Unit;

7.5.3 provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;

7.5.4 give prompt written notice to any rejected applicant of the grounds for rejection; and

7.5.5 provide for all of the Affordable Units to be available for occupancy on a continuous basis to Qualifying Households at an Affordable Rent; and

7.5.6 provide that Owner shall list available Affordable Units on BAHFA's Doorway Portal for available affordable housing opportunities once it is available for use by affordable housing providers, or any subsequent on-line affordable housing portal developed by BAHFA or designated by BAHFA for use in the applicable County

8. Non-Discrimination. The Owner shall not give preference to any particular class or group of persons in renting the units in the Project. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit. Neither the Owner nor any person claiming under or through the Owner, shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of any Unit, the Project or the Property. All deeds, leases or contracts made or entered into by the Owner as to the units, the Project or the Property or any portion thereof, shall contain covenants prohibiting discrimination, as prescribed by this Regulatory Agreement.

9. Equal Housing Notice. The Owner shall provide for a statement in all advertisements, notices and signs for the availability of Qualifying Units for lease or rent to the effect that the Owner is an equal housing opportunity provider, and include an equal housing

opportunity logotype in all notices, signs and advertisements in print media for the Affordable Units.

10. Compliance with Law. The Owner shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement, including but not limited to guidelines or regulations promulgated by BAHFA during the term of this Agreement to clarify the implementation of the Agreement. The Owner shall obtain any and all permits, licenses, and other authorizations necessary for completion of the Project and compliance with the terms of this Agreement.

11. Development and Management of the Project.

11.1 Management of Project; Property Manager. Owner shall manage or cause the Project, and all appurtenances thereto that are a part of the Project, to be managed in a prudent and business-like manner, consistent with good property management standards for other comparable first quality, well-managed affordable rental housing projects in the County. The Owner or the entity retained by Owner to manage the Project shall be referred to herein as the **“Property Manager.”** The Property Manager shall manage the Project in accordance with the definitions of Affordable Units and Affordable Rent, the tenant selection requirements, and the definitions relating to income contained herein and in the Affordable Housing Agreement. The Property Manager shall be responsible for management of the Project, including, without limitation, the selection of Qualified Households, certification and recertification of household size and income of all Qualified Households, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. BAHFA shall bear no responsibility for the management or operation of the Project or the Property. Owner shall conduct due diligence and background evaluation of any potential third-party property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a property manager.

11.2 Gross Mismanagement. During the Term, and in the event of “Gross Mismanagement” (as defined below) of the Project, BAHFA shall have and retain the authority to direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and further to direct and require the immediate removal of the Property Manager and replacement with a new qualified and approved Property Manager, if such condition(s) is/are not ceased and/or corrected after expiration of thirty (30) days from the date of written notice from BAHFA. If Owner or Property Manager has commenced to cure such Gross Mismanagement condition(s) on or before the 20th day from the date of written notice (with evidence of such submitted to BAHFA), but has failed to complete such cure by the 30th day (or such longer period if the cure cannot reasonably be accomplished in thirty (30) days as reasonably determined by the non-defaulting party), then Owner and its Property Manager shall have an additional ten (10) days to complete the cure of Gross Mismanagement condition(s). In no event shall any condition of Gross Mismanagement continue uncured for a period exceeding forty-five (45) days from the date of the initial written notice of such condition(s), except that the conditions described in subdivisions 11.2.4 and 11.2.5 below may exist for up to, but no longer than, seventy-five (75) days without triggering BAHFA’s right to remove the Property Manager as described in the immediately following sentence as long as Owner is diligently working to cure such conditions

of Gross Mismanagement. If such condition(s) do persist beyond such period, BAHFA shall have the sole and absolute right to immediately and without further notice to Owner (or to Property Manager or any other person/entity) to remove the Property Manager and replace the Property Manager with a new property manager of BAHFA'S selection at the sole cost and expense of Owner. If Owner takes steps to select a new Property Manager that selection is subject to the requirements set forth above for selection of a Property Manager.

For purposes of this Regulatory Agreement, the term "Gross Mismanagement" shall mean management of the Project in a manner which knowingly violates the terms and/or intention of this Agreement to operate a high quality affordable housing complex, and shall include, but is not limited to, any one or more of the following:

11.2.1 Leasing of a unit to tenants who exceed or households that do not qualify as a Qualified Household for the applicable Affordable Unit (except if such action was based on fraudulent documents submitted by such tenant in the course of application for occupancy of a unit, which could not be discovered by the Property Manager initially through the exercise of ordinary and customary due diligence);

11.2.2 Allowing tenants to exceed the prescribed occupancy levels without taking immediate action to stop such overcrowding consistent with applicable laws;

11.2.3 Under-funding required reserve accounts;

11.2.4 Failing to timely maintain the Project in accordance with Section 12 of this Regulatory Agreement;

11.2.5 Failing to submit timely and/or complete annual reports to BAHFA as required herein;

11.2.6 Fraud or embezzlement of Project funds, including without limitation funds in the reserve accounts;

11.2.7 Failing to fully cooperate with local law enforcement agency(ies) with jurisdiction over the Project, in maintaining a crime-free environment within the Project;

11.2.8 Failure to remove graffiti which is visible from any public right-of-way which is adjacent or contiguous to the Project within 72 hours of notification by BAHFA. Such removal shall be accomplished by either painting over the evidence of such vandalism with a paint which has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water as appropriate.

11.2.9 Failing to fully cooperate with the local fire department or other local public safety agency(ies) with jurisdiction over the Project, in maintaining a safe and accessible environment within the Project;

11.2.10 Failing to fully cooperate with local health and safety enforcement agency(ies) with jurisdiction over the Project, in maintaining a decent, safe and sanitary environment within the Project; and

11.2.11 Failure to fully remediate any conditions on the Property that give rise to a notice of violation issued by a local building official or other agency with authority over building conditions for the Project.

Notwithstanding the requirements of the Property Manager to correct any condition of Gross Mismanagement as described above, Owner is obligated and shall use its best efforts to correct any defects in property management or operations at the earliest feasible time and, if necessary, to replace the Property Manager as provided above. Owner shall include advisement and provisions of the foregoing requirements and requirements of this Agreement within any contract between Owner and its Property Manager for the Project.

11.3 Insurance. Borrower shall, at its own expense, obtain and maintain in effect at all times for the duration of this Regulatory Agreement the types of insurance and financial security listed in Attachment No. 4, Insurance and Financial Security (Bond) Provisions, to the Loan Agreement entered into by an between BAHFA and Owner, which Attachment is incorporated herein by this reference, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Regulatory Agreement. All policies will be issued by insurers acceptable to BAHFA, generally with a Best's Rating of A- or better with a Financial Size Category of VII or better, or an A rating from a comparable rating service.

11.4 Insurance Independent of Indemnification. The insurance requirements of this Agreement are independent of the Parties' indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Parties' indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude BAHFA or BAHFA Parties from taking such other actions as are available to it under any other provision of this Agreement or otherwise at law or in equity.

12. Maintenance of the Project. The Owner, for itself, its successors and assigns, hereby covenants and agrees that the exterior areas of the Project which are subject to public view (e.g.: all improvements, paving, walkways, landscaping, and ornamentation) shall be maintained in good repair and in a neat, clean and orderly condition, ordinary wear and tear excepted. In the event that at any time during the Term, there is an occurrence of an adverse condition on any area of the Project which is subject to public view in contravention of the general maintenance standard described above ("**Maintenance Deficiency**"), then BAHFA shall notify the Owner in writing of the Maintenance Deficiency and give the Owner thirty (30) calendar days from the date of such notice to cure the Maintenance Deficiency as identified in the notice. "Maintenance Deficiency" includes, without limitation, the following inadequate or non-conforming property maintenance conditions and/or breaches of residential property use restrictions: (i) failure to properly maintain the windows, structural elements, and painted exterior surface areas of the units in a clean and presentable manner; (ii) failure to keep the common areas of the Project free of accumulated debris, appliances, inoperable motor vehicles or motor vehicle parts, or free of storage of lumber, building materials or equipment not regularly in use on the Property; (iii) failure to regularly maintain, replace and renew the landscaping in a reasonable condition free of weed and debris; and (iv) the

use of garage areas on the Project for purposes other than the parking of motor vehicles and the storage of personal possessions and mechanical equipment of persons residing in the Project.

12.1 BAHFA Right to Cure. In the event the Owner fails to cure or commence to cure the Maintenance Deficiency within the time allowed, BAHFA shall have the right to enter the Project (exterior areas of the Project which are subject to public view only) and perform all acts necessary to cure the Maintenance Deficiency, or to take other action at law or equity that BAHFA may then have to accomplish the abatement of the Maintenance Deficiency. Any sum expended by BAHFA for the abatement of a Maintenance Deficiency as authorized by this Section 12.1 shall become a lien on the Project. If the amount of the lien is not paid within thirty (30) calendar days after written demand for payment by BAHFA to the Owner, BAHFA shall have the right to enforce the lien in the manner as provided in Section 12.2.

12.2 Enforcement of Liens for Maintenance Deficiency. The parties hereto further mutually understand and agree that the rights conferred upon BAHFA under this Section 12 expressly include the power to establish and enforce a lien or other encumbrance against the Property in the manner provided under California Civil Code Sections 2924, 2924b and 2924c, as such sections may be amended or superseded, in the amount as reasonably necessary to restore the Project to the maintenance standards required under this Section 12, including attorneys' fees and costs of BAHFA associated with the abatement of the Maintenance Deficiency or removal of graffiti and the collection of the costs of BAHFA in connection with such action. In any legal proceeding for enforcing such a lien against the Project, the prevailing party shall be entitled to recover its attorneys' fees and costs of suit. The provisions of this Section 12 shall be a covenant running with the land for the Term and shall be enforceable by BAHFA in its discretion, cumulative with any other rights or powers granted to BAHFA under applicable law. Nothing in the foregoing provisions of this Section 12 shall be deemed to preclude the Owner from making any alterations, additions, or other changes to any structure or improvement or landscaping on the Project, provided that such changes comply with the zoning and development regulations of BAHFA and other applicable law.

12.3 Displacement of Residents and Relocation. The Owner shall make best efforts to conduct capital repairs and replacements and ordinary repair and maintenance (collectively, "**Repairs**") in good faith and in a manner that does not result in the displacement of any of the residents of the Units. If any of the Owner's actions to conduct Repairs result in displacement of any of the Units' residents, the Owner shall notify BAHFA in writing, prior to conducting such Repairs, of the identities of the residents to be displaced, the Units they will be displaced from, the estimated length of time such residents shall be displaced, and shall demonstrate to the satisfaction of BAHFA that the displacement of the residents is required to complete the Repairs, and that the Repairs are necessary and cannot wait until a time when resident displacement would not be required, or that the resident has requested the Repairs. In no event will the residents be displaced for more than 180 days. If the displacement of the residents triggers relocation obligations, the Owner shall be responsible, at its sole cost and expense, for any and all such relocation obligations and related expenses. The Owner shall comply with all applicable federal, state and local laws, rules and regulations regarding such relocation obligations and related expenses, including any relocation requirements set forth by BAHFA, including as set forth in the Affordable Housing Agreement. The Owner shall defend, indemnify and hold harmless BAHFA Parties from and against all liability for any relocation obligations and related expenses attributable

to any Repairs. In the event that the Owner desires to convert the Project to community land trust or other form of limited equity ownership structure, the parties will negotiate in good faith regarding the terms of a rider or amendment to this Agreement to allow for such a conversion if permitted by the applicable funding sources and to address the possibility of any displacement or relocation based on the specific facts of the proposed conversion.

12.4 Comparability of Affordable Units to Other Units. The appearance, materials, finished quality, appliances and amenities of the Affordable Units shall be comparable to any Market Rate Unit on the Property and continue to be so during the Term. In the event that Owner makes improvements or upgrades to the Project during the term, Owner shall make comparable improvements to the Market Rate Units and Affordable Units. Occupants of the Affordable Units shall have access to and the right to use all Property and Project amenities provided to occupants of Market Rate Units within the Project on the same terms and conditions as offered to the occupants of other units within the Project.

12.5 Fees. Owner shall annually pay to BAHFA, BAHFA's monitoring and enforcement fees for the Affordable Units as may be established from time to time as a component of BAHFA's Fee Schedule. The monitoring or enforcement fee shall be either BAHFA's actual expenses incurred for monitoring or enforcing the terms of the Agreement, including staff time and third-party costs or the amount set forth in the Fee Schedule, as determined by BAHFA. BAHFA may expend such sums to reimburse itself for BAHFA's actual out-of-pocket expenses incurred in connection with such monitoring and /or enforcement activities.

12.6 Indemnification. It is specifically understood and agreed by the Parties that the Project contemplated by this Regulatory Agreement is a private development, that BAHFA has no interest in or responsibility for or duty to third persons concerning any of said improvements, and that Owner shall have the full power and the exclusive control of the Property subject only to the limitation and obligations of the Owner under this Regulatory Agreement. The Owner hereby agrees to and shall indemnify, defend with counsel reasonably acceptable to BAHFA and hold harmless BAHFA, Metropolitan Transportation Commission (MTC), Association of Bay Area Governments (ABAG) and their respected elected and appointed representatives, officers, agents and employees from any and all claims arising out of this Regulatory Agreement and related to any portion of the Project, including claims for bodily injury, including death, and property damage, which may arise directly or indirectly from the acts, omissions, negligence or willful misconduct of Owner or its shareholders, partners, members, principals, officers, employees, representatives, agents, contractors or subcontractors, excepting suits and actions arising from the active negligence or willful misconduct of BAHFA, MTC, ABAG or any of their respective officials, elected or otherwise, officers, employees, representatives, agents, contractors or subcontractors ("Claim"). This indemnification, defense and hold harmless agreement applies to all damages and claims for damages (including attorneys' fees and costs) suffered or alleged to have been suffered by reason of the acts, omissions, negligence or willful misconduct referred to in this Section 13, regardless of whether or not BAHFA prepared, supplied or approved plans or specifications for the Project. This Section 12.6 shall survive termination of this Agreement.

13. Covenants to Run With the Land. The Owner and BAHFA hereby declare their specific intent that the covenants, reservations and restrictions set forth herein are part of a plan for the production and preservation of affordable housing in accordance with the statutory

responsibilities of BAHFA and that each shall be deemed covenants running with the land and shall pass to and be binding upon the Property and each successor-in-interest of the Owner in the Property for the Term. The Owner hereby expressly assumes the duty and obligation to perform each of the covenants and to honor each of the reservations and restrictions set forth in this Regulatory Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

14. Defaults.

14.1 Events of Default. The occurrence of any of the following is a default and shall constitute a material breach of this Regulatory Agreement and, if not corrected, cured or remedied in the time period set forth in Section 14.2, shall constitute an “**Event of Default**” hereunder:

14.1.1 failure of the Owner or any person under its direction or control to comply with or perform when due any material term, obligation, covenant or condition contained in this Regulatory Agreement;

14.1.2 any warranty, representation or statement made or furnished to BAHFA by the Owner under this Regulatory Agreement that is false or misleading in any material respect at the time made or furnished;

14.1.3 any assignment for the benefit of creditors, any type of creditor workout or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Owner; or

14.1.4 an Event of Default pursuant to the Affordable Housing Agreement.

14.2 Notice of Default. BAHFA shall give written notice of default to the Owner, in accordance with Section 21, stating that such notice is a “**Notice of Default**”, specifying the default complained of by BAHFA and requiring the default to be remedied within thirty (30) calendar days of the date of the Notice of Default. Except as required to protect against further material damage, BAHFA may not institute legal proceedings against the Owner until thirty (30) calendar days after providing the Notice of Default. Failure or delay in giving a Notice of Default shall not constitute a waiver of any default, nor shall it change the time of occurrence of the default. If the default specified in the Notice of Default is such that it is not reasonably capable of being cured within thirty (30) calendar days, and if the Owner initiates corrective action within said thirty (30) calendar day period and diligently works to effect a cure as soon as possible, then the Owner may have such additional time as authorized in writing by BAHFA as reasonably necessary to complete the cure of the default prior to exercise of any other remedy for the occurrence of an Event of Default. Such authorization for additional time to cure shall not be unreasonably withheld, conditioned or delayed. Owner’s limited partner shall have the right to cure any default on behalf of Owner and any cure tendered by Owner’s limited partner shall be accepted or rejected on the same basis as if tendered by Owner.

If the Owner fails to take corrective action relating to a default within thirty (30) calendar days following the date of Notice of Default (or to complete the cure within the additional time as may be authorized by the BAHFA or as set forth above), an Event of Default shall be deemed to have occurred.

14.3 Inaction Not a Waiver of Default. Any failure or delays by BAHFA in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by BAHFA in asserting any of its rights and remedies shall not deprive BAHFA of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

15. Remedies. Upon the occurrence of an Event of Default which continues beyond applicable notice and cure periods, BAHFA shall, in addition to the remedial provisions of Section 12 as related to a Maintenance Deficiency at the Property, be entitled to seek any appropriate remedy by initiating legal proceedings as follows: (i) by mandamus or other suit, action or proceeding at law or in equity, to require the Owner to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of BAHFA; or (ii) by other action at law or in equity as necessary or convenient to enforce the obligations, covenants and Agreements of the Owner to BAHFA.

15.1 Rights and Remedies are Cumulative. The rights and remedies of BAHFA as set forth in this Section 15 are cumulative and the exercise by BAHFA of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner.

15.2 Enforcement by Third Parties. No third party shall have any right or power to enforce any provision of this Regulatory Agreement on behalf of BAHFA or to compel BAHFA to enforce any provision of this Regulatory Agreement against the Owner or the Project.

16. Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California and applicable federal laws, without regard to its conflicts of laws principles.

17. Amendment. This Regulatory Agreement may be amended after its recordation only by a written instrument executed by the Owner and BAHFA.

18. Attorneys' Fees. In the event that a party to this Regulatory Agreement brings an action to enforce any condition or covenant, representation or warranty in this Regulatory Agreement or otherwise arising out of this Regulatory Agreement, the prevailing party(ies) in such action shall be entitled to recover from the other party reasonable attorneys' fees to be fixed by the court in which a judgment is entered, as well as the costs of such suit for the purposes of this Section 18, the words "reasonable attorneys' fees," in the case of BAHFA, shall include the salaries, costs and overhead of BAHFA's General Counsel office, as well as any other legal counsel hired by BAHFA in such action, as allocated on an hourly basis.

19. Severability. If any provision of this Regulatory Agreement shall be declared invalid, inoperative or unenforceable by a final judgment or decree of a court of competent jurisdiction such invalidity or unenforceability of such provision shall not affect the remaining

parts of this Regulatory Agreement which are hereby declared by the parties to be severable from any other part which is found by a court to be invalid or unenforceable.

20. Time is of the Essence. For each provision of this Regulatory Agreement which states a specific amount of time within which the requirements thereof are to be satisfied, time shall be deemed to be of the essence.

21. Notices, Demands and Communications Between the Parties. Any and all notices submitted by any party to another party pursuant to or as required by this Regulatory Agreement shall be dispatched by personally delivery; delivery through the United States mail, by registered or certified mail, postage prepaid; by means of prepaid overnight delivery service; or by email. Notices shall be deemed given upon receipt in the case of personal delivery, two days after deposit in the mail, or the next business day in the case of email or overnight delivery. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any Party may from time to time designate in writing. Rejection, other refusal to accept or the inability to deliver any notice because of a changed address of which no notice was given or other action by a person or entity to whom notice is sent, shall be deemed receipt of the notice.

The following are the authorized addresses for the submission of notices to the parties, as of the date of this Regulatory Agreement:

To the Owner:

With copies to:

To BAHFA:

BAHFA Section Director
Metropolitan Transportation Commission
375 Beale Street, Suite 800
San Francisco, CA 94105
PHONE 415-778-6678
EMAIL bahfa@bayareametro.gov

With copies to:

General Counsel
Metropolitan Transportation Commission
375 Beale Street, Suite 800
San Francisco, CA 94105
PHONE 415-778-6678
EMAIL generalcounsel@bayareametro.gov

22. Recording. The parties hereto shall cause this Regulatory Agreement to be recorded in the official records of the County.

23. No Third Party Beneficiary. No claim as a third-party beneficiary under this Regulatory Agreement by any person, corporation or any other entity, shall be made or be valid against BAHFA or the Owner.

24. Prohibition Against Transfer.

24.1 Except as expressly provided in the Affordable Housing Agreement, the Owner shall not, without prior written approval of BAHFA, which may not be unreasonably withheld, delayed or conditioned: (i) assign or attempt to assign this Regulatory Agreement or any right herein; or (ii) make any total or partial sale, transfer, conveyance, lease, leaseback, or assignment of the whole or any part of the Property or the improvements thereon, with the exception of leases of the residential units as permitted by this Regulatory Agreement, or permit to be placed on any of the Property any unauthorized mortgage, trust deed, deed of trust, encumbrance or lien.

24.2 In the absence of specific written agreement or approval by BAHFA, no unauthorized sale, transfer, conveyance, lease, leaseback or assignment of the Property shall be deemed to relieve the Owner or any other party from any obligations under this Regulatory Agreement.

25. BAHFA Approvals and Actions. The Executive Director shall have the authority to make approvals, issue interpretations, waive provisions, grant extensions of time, approve amendments to this Regulatory Agreement and execute documents on behalf of BAHFA (to the extent not provided otherwise in this Regulatory Agreement), including, without limitation, subordinations (which may be granted or denied at the Executive Director's sole discretion) and any documents necessary to implement any changes in the number or affordability of the

Affordable Units, so long as such actions do not reduce the length of affordability of the Affordable Units or add to the costs incurred or to be incurred by BAHFA as specified herein.

IN WITNESS WHEREOF, the Owner and BAHFA have caused this Regulatory Agreement to be signed, acknowledged and attested on their behalf by duly authorized representatives in counterpart original copies which shall upon execution by all of the parties be deemed to be one original document.

[Signatures on following pages]

BAHFA SIGNATURE PAGE
TO
REGULATORY AGREEMENT
(Priority Sites Program—Insert Project Name)

BAHFA:

BAY AREA HOUSING FINANCE AGENCY

By: _____ Date: _____

SIGNATURE TO BE NOTARIZED

**OWNER SIGNATURE PAGE
TO
REGULATORY AGREEMENT**
(Priority Sites Program—Insert Project Name)

OWNER:

By: _____

By: _____

SIGNATURE TO BE NOTARIZED

Last Updated: 8/6/24

ATTACHMENT NO. 1
TO
REGULATORY AGREEMENT
(Priority Sites Program—Insert Project Name)

LEGAL DESCRIPTION
[To be included]

ATTACHMENT NO. 2
TO
REGULATORY AGREEMENT
(Priority Sites Program—Insert Project Name)

UNIT BREAKDOWN

The Project shall be comprised of multifamily rental housing units and shall include Affordable Units that shall be rented to Qualifying Households in accordance with the Unit Breakdown Table set forth below. The Unit Breakdown Table lists the number of units of each size (i.e., one-bedroom, two-bedroom, etc.) that will be designated for rent to households at specific income levels, based on the Maximum Income Levels as published annually by the California Tax Credit Allocation Committee for the County in which the Project is located, or Unrestricted. The units listed as Affordable Units in the table below shall be rented or made available for rental to Qualifying Households at Affordable Rents in accordance with the income limits listed in this Attachment.

Unit Breakdown Table:

# of Bedrooms	# of Units	TCAC Income Level (30%, 50%, 80%, etc., or Unrestricted)	Total Unrestricted Unit	Total Affordable Units
Total Project Units				

Last Updated: 8/6/24

ATTACHMENT NO. 3
TO
REGULATORY AGREEMENT
(Priority Sites Program—Insert Project Name)

Certification of Tenant Eligibility

[to be inserted]

ATTACHMENT NO. 4
TO
REGULATORY AGREEMENT
(Priority Sites Program—Insert Project Name)

Annual Report

[to be inserted]