

File No. 100133

Committee Item No. 6

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 3/10/10

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
- Resolution
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- Legislative Digest
- Budget Analyst Report
- Legislative Analyst Report
- Introduction Form (for hearings)
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
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OTHER

(Use back side if additional space is needed)

- Permissive Note
- Deed of Trust
- Loan Agreement
- _____
- _____

Completed by: Gail Johnson

Date 3/5/10

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [\$157,500 Loan to The Community Center Project of San Francisco, Inc., at 1800 Market
2 Street.]

3 **Resolution authorizing the City to make a \$157,500 Loan to The Community Center**
4 **Project of San Francisco, Inc., a California nonprofit public corporation ("CCP"), located**
5 **at 1800 Market Street, and authorizing actions in furtherance of the Resolution.**

6
7 WHEREAS, The Community Center Project of San Francisco, Inc., a California
8 nonprofit public corporation ("CCP"), owns and operates the San Francisco LGBT Community
9 Center ("Center"), which is located at 1800 Market Street in San Francisco, California ("Real
10 Property"); and,

11 WHEREAS, In 2007, CCP obtained a \$3,200,000 loan from First Republic Bank, a
12 Nevada corporation ("Bank"), as evidenced by a promissory note made by CCP in favor of
13 Bank and dated December 10, 2007 ("Original Bank Note"), and a Deed of Trust, Fixture
14 Filing, Assignment of Rents, and Security Agreement with Borrower as trustor and Bank as
15 beneficiary, recorded in the Official Records of San Francisco on December 31, 2007 as
16 Document No. 2007-I513129 ("Bank Deed of Trust"). Copies of the Original Bank Note and
17 the Bank Deed of Trust are on file with the Clerk of the Board of Supervisors in File No.

18 100133 and are incorporated herein by reference; and,

19 WHEREAS, CCP wishes to modify the Original Bank Note pursuant to an amendment
20 of promissory note and deed of trust (the "Loan Amendment") to restructure Original Bank
21 Note payments as follows: \$157,500 (between July 1, 2009 and June 30, 2010), \$157,500
22 (between July 1, 2010 and June 30, 2011), \$236,250 (between July 1, 2011 and June 30,
23 2012), \$236,250 (between July 1, 2012 and June 30, 2013), and \$236,250 (between July 1,
24 2013 and June 30, 2014); and,

25
Supervisor Bevan Duffy, *2 am pds*
BOARD OF SUPERVISORS

1 WHEREAS, Bank will not enter into the Loan Amendment unless City makes a
2 \$157,500 loan to CCP (the "City Loan") that allows CCP to use City Loan proceeds to make
3 any payment owed under the Original Bank Note, as amended by the Loan Amendment (the
4 "Modified Bank Loan"), if CCP does not other sufficient funds to make such Modified Bank
5 Loan payment when due; and,

6 WHEREAS, The City previously loaned funds to CCP to finance the construction and
7 operation of the Center, and the City Loan would increase CCP's financial ability to operate
8 the Center; and,

9 WHEREAS, The City Loan would be evidenced by a loan agreement in the form on file
10 with the Clerk of the Board of Supervisors in File No. 100133, which is incorporated
11 herein by reference ("Loan Agreement"), and a promissory note in the form on file with the
12 Clerk of the Board of Supervisors in File No. 100133, which is incorporated herein
13 by reference ("City Note"). The City Note will bear interest at a rate of one percent (1%) per
14 annum, simple interest, and will require monthly payments of principal and interest
15 commencing on January 1, 2015, with all outstanding amounts due and payable on December
16 31, 2020; and,

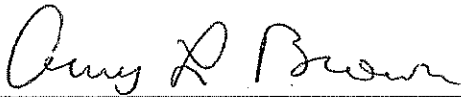
17 WHEREAS, CCP's obligation to repay the City Loan would be secured by a deed of
18 trust in the form on file with the Clerk of the Board of Supervisors in File No.
19 100133, which form is incorporated herein by reference ("City Deed of Trust") and
20 would be subordinate to the Bank Deed of Trust; now, therefore, be it

21 RESOLVED, The Director of Property is hereby authorized to enter into the Loan
22 Agreement and accept the City Note and the City Deed of Trust, and is hereby authorized and
23 directed to do any and all things to execute and deliver the Loan Agreement and all other
24 documents with respect to the Loan Agreement, and take all actions required under the Loan
25 Agreement, that the Director of Property determines, in consultation with the City Attorney, are

1 in the best interest of the City, including any modifications or amendments that do not
2 materially increase the obligations or liabilities of the City, are necessary or advisable to
3 consummate the transactions contemplated in the Loan Agreement or the performance of the
4 purposes of this Resolution, and are in compliance with all applicable laws, including City's
5 Charter; and be it

6 FURTHER RESOLVED, The Mayor, Clerk of the Board, and Director of Property are
7 hereby authorized and directed to take any and all actions which they or the City Attorney may
8 deem necessary or advisable in order to effectuate the purpose and intent of this Resolution.

9
10 RECOMMENDED:

11 

12 Amy L. Brown
13 Director of Property

Items 5 and 6
Files 10-0133 and 10-0206

Department:
 Real Estate Division (RED)

EXECUTIVE SUMMARY

Legislative Objectives

- File 10-0133: Resolution approving an approximately ten-year loan agreement between the City and the Community Center Project of San Francisco, Inc (CCP), a nonprofit organization, in order to establish a “mortgage payment reserve fund”, such that if CCP does not make payments on their existing mortgage with First Republic Bank, First Republic Bank will withdraw funds from the “mortgage payment reserve fund” for the necessary payments.
- File 10-0206: Ordinance appropriating \$157,500 from the City’s General Fund Reserve to the Real Estate Division to establish a “mortgage payment reserve fund” for the CCP.

Fiscal Impact

- Creation of the “mortgage payment reserve fund” would (a) require the proposed initial appropriation of \$157,500 from the General Fund Reserve, and (b) potentially require additional General Fund appropriations of up to \$866,250 in order to replenish the “mortgage payment reserve fund”, for a total potential cost to the City of up to \$1,023,750. All “mortgage payment reserve fund” appropriations would be subject to Board of Supervisors approval.
- Loan repayments to be made by the CCP back to the City would occur over five years from January 2015 through December 2020, at an approximate one percent annual interest rate.

Key Points

- The CCP, a nonprofit organization, operates the San Francisco Lesbian, Gay, Bisexual, and Transgender (LGBT) Community Center at 1800 Market Street. Due to current economic conditions, CCP is unable to make its required mortgage payments to First Republic Bank on the building. First Republic Bank has agreed to restructure CCP’s existing \$3,200,000 mortgage, if the City authorizes the establishment of a “mortgage payment reserve fund” and if the Board of Supervisors approves the requested initial loan amount of \$157,500.
- This initial loan of \$157,500, secured by the LGBT Community Center building, would create a “mortgage payment reserve fund” equal to the restructured loan mortgage payments which CCP owes First Republic Bank in FY 2009-2010. If CCP does not make their required monthly mortgage payments under the restructured loan terms, First Republic Bank would withdraw funds from the “mortgage payment reserve fund” equal to the amount owed by CCP. At the end of each fiscal year, the Real Estate Division will request additional General Fund monies to replenish the “mortgage payment reserve fund” for the next fiscal year.

Recommendation

- Approval of the proposed resolution and ordinance are policy matters for the Board of Supervisors.

BACKGROUND

The Community Center Project of San Francisco, Inc (CCP), a nonprofit organization, completed construction of the San Francisco Lesbian, Gay, Bisexual, and Transgender (LGBT) Community Center building, located at 1800 Market Street at Octavia Boulevard, in March of 2002. According to Mr. John Updike, Assistant Director of Real Estate, the total construction cost of the LGBT Community Center was \$12,339,572, and included (a) \$5,766,150 of General Fund revenues from the City of San Francisco, (b) \$2,423,000 in State and Federal grants, and (c) \$4,150,422 in private donations.

In December of 2007, CCP consolidated its existing debt into a single commercial ten-year mortgage with First Republic Bank, extending through January 1, 2018. This new commercial mortgage was secured by CCP's LGBT Community Center building, located at 1800 Market Street. The mortgage currently has a principal balance of \$3,149,941, at a fixed interest rate of 6.25 percent for five years, followed by an adjustable interest rate based on the London Interbank Offered Rate (LIBOR) plus 2.0 percent. The current payment structure of this loan does not fully amortize the current principal mortgage balance of \$3,149,941, such that after the ten-year term of the loan, CCP would have to either refinance the remaining principal balance or repay the loan in full.

According to Mr. Updike, CCP has experienced significant reductions in private donations as a result of current economic conditions, such that CCP is not able to make their required monthly mortgage payments of \$19,834 (\$238,008 annually) under the current commercial mortgage terms. As a result, CCP requested First Republic Bank to restructure the terms of their loan, such that CCP would be able to make their monthly mortgage payments. According to Mr. Updike, First Republic is willing to restructure the terms of their loan to CCP (and to retroactively apply such term modifications back to July 1, 2009) as shown in Table 1 below, if the City guarantees CCP's debt service payments to First Republic Bank by creating the proposed City funded "mortgage payment reserve fund", discussed in more detail below

Table 1: Current and Restructured Terms for the Loan Between CCP and First Republic Bank

	Existing Loan Structure ¹	Restructured Loan
Loan Termination Date	December 31, 2017	June 30, 2014
Interest Rate	6.25% fixed through 2012, followed by a variable interest rate of at least 6.25%.	Fixed rate of 5.0%
Debt Service Payments²		
FY 2009-2010	\$238,008	\$157,500
FY 2010-2011	238,008	157,500
FY 2011-2012	238,008	236,250
FY 2012-2013	238,008	236,250
FY 2013-2014	238,008	236,250
FY 2014-2015	238,008	0
FY 2015-2016	238,008	0
FY 2016-2017	238,008	0
Total Payments	\$1,904,064	\$1,023,750

As noted above, the scheduled payments on both the existing and restructured loans do not fully amortize the current principal mortgage balance of \$3,149,941. As a result, according to Mr. Updike, under both the existing terms and the restructured terms of the First Republic Bank loans, at the end of the loan period (either on December 31, 2017 under the existing loan terms or June 30, 2014 under the restructured loan terms), CCP would have a remaining principal balance of an estimated \$2,913,691³. Such a balance would have to be either (a) refinanced, or (b) paid in full. Mr. Updike stated that CCP intends to either (a) refinance the remaining principal balance at the termination of the restructured loan with First Republic Bank, (b) initiate a capital campaign to raise sufficient donations to either payoff or reduce the amount of the remaining principal balance, or (c) seek debt relief from the City and County of San Francisco, the State, or Federal sources.

Mr. Updike stated that the City is not currently considering providing debt relief to the CCP for such a remaining restructured loan balance.

RED is now requesting to create a "mortgage payment reserve fund", funded by annual deposits of General Fund monies loaned to CCP, subject to Board of Supervisors appropriation approval, from which First Republic Bank could withdraw at any time an amount equal to the difference

¹ For the purposes of this report, mortgage payments for the variable interest rate periods under the current loan structure, from FY 2012-2013 through the end of the loan in FY 2016-2017, are estimated to be equal to the payments due during the fixed rate interest period.

² Debt service payments are made monthly. Figures in Table 1 show the total monthly payments to be made in each fiscal year.

³ Mr. Updike noted because the scheduled payments are mostly interest payments, the principal loan balance would not be significantly reduced with additional payments.

between (a) the debt service on the CCP mortgage owed to First Republic Bank⁴, and (b) the actual amount received from CCP, such that the City is effectively guaranteeing payment of CCP's monthly mortgage payments due on the First Republic Bank loan.

According to Mr. Updike, RED intends to replenish the proposed "mortgage payment reserve fund" annually, subject to appropriation approval of the Board of Supervisors, in order to ensure that at the beginning of each fiscal year, the proposed "mortgage payment reserve fund" has a balance equal to the total monthly mortgage payments owed by CCP to First Republic Bank under the restructured loan terms for that fiscal year. If CCP makes no monthly payments to First Republic Bank and instead such monthly payments are made from the City's General Fund Reserve, such that RED replenishes the "mortgage payment reserve fund" each year in full, the total amount to be loaned to CCP from the City's General Fund Reserve monies would be \$1,023,750 (see Table 1 above).

DETAILS OF PROPOSED LEGISLATION

The proposed resolution (File 10-0133) would approve a loan agreement between the City and the Community Center Project of San Francisco, Inc. (CCP), a non-profit organization which owns the San Francisco Lesbian, Gay, Bisexual, and Transgender (LGBT) Community Center building, located at 1800 Market Street. The proposed loan agreement establishes the terms of the initial \$157,500 General Fund monies to be loaned to CCP for deposit into the proposed "mortgage payment reserve fund" and the subsequent repayment of the loan by CCP back to the City. The terms of the proposed loan agreement between the City and CCP include (a) a loan term of 117 months, or nearly ten years, extending from April 1, 2010⁵ to December 31, 2020, (b) with an initial loan amount of \$157,500 subject to Board of Supervisors appropriation approval and (c) an annual interest rate of approximately one percent⁶.

According to the terms of the proposed loan agreement, CCP would not be required to make any loan repayments back to the City until January 1, 2015, at which point CCP would be required to make monthly payments to the City over a five-year period ending December 31, 2020 in order to repay the City for the total amount of General Fund Reserve monies which the City paid into the "mortgage payment reserve fund", plus interest of approximately 1.0 percent annually.

The proposed ordinance (File 10-0206) would appropriate \$157,500 from the General Fund Reserve in order for RED to initially fund the "mortgage payment reserve fund" (File 10-0134). According to Mr. Updike, the proposed initial \$157,500 loan would be paid to the CCP, who in

⁴ According to Mr. Updike, no monies from the "mortgage payment reserve fund" could be used for paying the remaining principal balance of the First Republic Bank loan when that loan terminates on June 31, 2014.

⁵ According to Mr. Updike, the loan will begin once the funds requested in File 10-0134 are appropriated. For purposes of this report, the initial loan date is estimated to be April 1, 2010.

⁶ The interest rate on the proposed loan between CCP and the City would be equal to the rate of interest earned on the monies deposited into the "mortgage payment reserve fund" account at First Republic Bank, which Mr. Updike estimated to be approximately 1.0 percent.

turn would subsequently deposit the funds in an interest bearing account at First Republic Bank to serve as a "mortgage payment reserve fund" equal to the total monthly mortgage payments owed by CCP to the First Republic Bank as a result of the mortgage owed on the San Francisco LGBT Community Center building during FY 2009-2010 (as shown in Table 1 above).

FISCAL IMPACTS

Creation of the proposed "mortgage payment reserve fund" could ultimately cost the City up to \$1,023,750 (see Table 1 above), which is the amount of total debt service owed by CCP through FY 2013-2014 to First Republic Bank. This \$1,023,750 potential cost to the City includes (a) the proposed initial appropriation of \$157,500 of General Fund Reserve monies (File 10-0206), and (b) potential additional General Fund appropriations totaling up to \$866,250 (\$1,023,750 as shown in Table 1 above less \$157,500) in order to replenish the "mortgage payment reserve fund". Any additional appropriations above the subject initial request for \$157,500 (File 10-0206) would be subject to separate future appropriation approval by the Board of Supervisors.

The City's potential loan cost of \$1,023,750 does not include the remaining principal balance of an estimated \$2,913,691 which CCP will still owe on its mortgage with First Republic Bank. As noted above, depending on the availability of other resources, the CCP may also seek debt relief from the City and County of San Francisco, the State, or Federal sources for the remaining principal mortgage balance of \$2,913,691. However, according to the RED, the City is not currently considering providing such additional debt assistance to CCP.

In accordance with the proposed loan agreement between the City and CCP, CCP would be required to make loan repayments back to the City over a five-year period beginning January 1, 2015 and ending December 31, 2020. These loan repayments would be at the rate of interest earned on the monies deposited into the "mortgage payment reserve fund" at First Republic Bank, which is estimated to be one percent. According to Mr. Updike, if the CCP does not make their required loan repayments back to the City, the City could ultimately initiate foreclosure proceedings. However, Mr. Updike advises that before that stage, the RED would annually review whether to continue funding the mortgage reserve account, depending on the financial viability of the CCP and CCP's ability to repay the loan back to the City.

POLICY CONSIDERATIONS

Mr. Updike could not identify any precedent for creating a "mortgage payment reserve fund" as is being proposed in File 10-0133.

Mr. Updike could not identify any other "mortgage payment reserve fund" or similar loan program agreement that the City has previously entered into, in which the City's General Fund Reserve is used to guarantee mortgage payments on behalf of a nonprofit organization, as is being proposed in File 10-0133. The Budget and Legislative Analyst therefore notes that approving the proposed "mortgage payment reserve fund", from which the City would rely on General Fund monies, to guarantee mortgage payments to a bank on behalf of a nonprofit

organization, could establish a precedent for guaranteeing future similar mortgage payments owed by nonprofit organizations, subject to annual appropriation approval by the Board of Supervisors. If the Board of Supervisors approves the proposed legislation, it is possible that other non-profit organizations may request similar General Fund support from the City.

Therefore, because the requested “mortgage payment reserve fund” would be the first time that the City has established such a fund, and could potentially create a precedent for such future requests, the Budget and Legislative Analyst considers approval of the proposed ordinance and resolution to be policy matters for the Board of Supervisors.

RED “has a comfort level” regarding (a) CCP’s ability to make all of its mortgage payments to First Republic Bank, without having to use the “mortgage payment reserve fund” and (b) if the proposed “mortgage payment reserve fund” needs to be used, then CCP’s ability to repay the loan to the City.

According to the attached memorandum from Mr. Updike, RED reviewed the CCP’s financial statements and projections and stated that RED “has a comfort level” regarding CCP’s ability to repay both (a) the restructured loan with First Republic Bank, and (b) the City for all deposits into the “mortgage payment reserve fund”. Mr. Updike provided the information shown in Table 2 below that indicates that since 2002, the CCP has paid First Republic Bank a total of \$1,492,486, including \$1,442,427 of interest and \$50,059 of principal on the mortgage.

Table 2: Payments Made on Mortgage Loans by CCP

Calendar Year	Annual Payments
2002	\$105,578
2003	141,367
2004	150,863
2005	196,932
2006	202,051
2007	219,081
2008	238,606
2009	238,008
Total Payments	\$1,492,486

However, Mr. Updike also advises that since May of 2009, the CCP has been consistently two payments behind schedule, such that CCP has been in arrears by \$39,668 (\$238,008 divided by 12 monthly payments x two payments).

Assuming CCP makes all required payments on both loans, and First Republic Bank never withdraws any funds from the proposed “mortgage payment reserve fund”, then the total fiscal impact to the City of the proposed loan would be zero. If CCP makes all required mortgage payments to First Republic Bank, CCP would fully refund (a) the proposed General Fund appropriation of \$157,500 to initially fund the “mortgage payment reserve fund”, (b) a second

appropriation of \$78,750⁷ to increase the balance of the “mortgage payment reserve fund” to \$236,250, the amount owed by CCP to First Republic Bank in FY 2011-2012, and (c) all interest earnings in the account.

The Budget Analyst notes that while RED may have “a comfort level” regarding CCP’s ability to meet its debt obligations, First Republic Bank apparently did not have a similar “comfort level” with CCP which would have enabled First Republic Bank to restructure the existing loan with CCP, without the requested City funded “mortgage payment reserve fund” from General Fund Reserve monies.

If CCP fails to make the payments due to First Republic Bank, RED might not replenish the “mortgage payment reserve fund”.

According to Mr. Updike, RED will consider the payment history of CCP’s restructured loan with First Republic Bank prior to replenishing the “mortgage payment reserve fund”. However, Mr. Updike could not specify the conditions under which the City’s loan to CCP would not be replenished.

Furthermore, as noted above, CCP would have a remaining principal mortgage balance of an estimated \$2,913,691, after repayment of the existing loan totaling \$1,023,750 to First Republic Bank, which would have to be either (a) refinanced, or (b) paid in full. Mr. Updike stated that CCP intends to either (a) refinance the remaining principal balance at the termination of the existing loan with First Republic Bank, (b) initiate a capital campaign to raise sufficient donations to either payoff or reduce the amount of remaining principal, or (c) seek further debt relief from the City and County of San Francisco, the State, or Federal sources. Mr. Updike stated that the City is not currently considering the use of additional General Fund monies from the City for providing debt relief to the CCP for such a remaining loan balance.

If CCP is unable to make the required payments to First Republic Bank, it is uncertain whether the City would be repaid.

The Budget Analyst notes that if CCP is unable to make the \$1,023,750 in scheduled mortgage payments due to First Republic Bank under the restructured terms of the loan (see Table 1), it is unlikely that CCP would be able to repay its loan to the City.

If CCP does not repay the City for the General Fund monies deposited into the proposed “mortgage payment reserve fund” at First Republic Bank, the terms of the proposed loan between CCP and the City provide the City with the right to foreclose on the San Francisco LGBT Community Center at 1800 Market Street, which was appraised in October of 2006 by All Bay Valuations at a value of \$10,900,000. However, the Budget Analyst notes that the security of this collateral is uncertain given that there are (a) restrictions on the use of the property as a community center which were not considered in the 2006 appraisal, which would likely result in significant reductions in the appraised value, (b) reductions in property values resulting from economic changes since the appraisal date of October of 2006, and (c) the existing mortgage with First Republic Bank in the amount of \$3,200,000 would have a superior lien position to the proposed City loan, such that proceeds realized from the sale of the property would be used to

⁷ The amount of this second appropriation would be reduced by any interest earned on the “mortgage payment reserve fund”.

repay any remaining balance on the First Republic Bank loan before becoming available to repay the City.

The proposed loan's annual interest rate of approximately 1.0 percent is less than the 1.35 percent average annual interest rate currently earned by the City's Treasurer on General Fund monies.

The Budget Analyst notes that in FY 2009-2010, General Fund monies held by the Treasurer have earned interest at an average annual rate of 1.35 percent, such that lending General Fund monies to CCP at an interest rate of 1.0 percent would result in reduced interest income to the City.

Although RED explored other options to provide funding support to CCP, these options were refused by First Republic Bank.

According to Mr. Updike, RED considered a number of alternatives to the proposed "mortgage payment reserve fund." A description of those alternatives is described below.

1. Providing a letter of credit which would only require an appropriation of the City's General Fund monies if CCP failed to make its mortgage payments owed to First Republic Bank. According to Mr. Updike, the Bank refused this option.
2. Purchasing the current principal balance of \$3,149,941 loan from First Republic Bank at a discount. According to Mr. Updike, many lenders are currently selling such loans at discounts of approximately 40 percent off the outstanding principal balance. However, First Republic Bank refused to offer the City any discount on First Republic Bank's loan with CCP. Mr. Updike added that had First Republic Bank offered a discount, the amount of General Fund monies needed to purchase that loan would be far greater than the amount needed to fund the requested "mortgage payment reserve fund".

Mr. Updike noted that RED also considered not providing any funding assistance to CCP. According to Mr. Updike, this option would likely result in First Republic Bank foreclosing and selling the CCP property. This option was not pursued because (a) the deed restriction requiring that the property be used as a community center does not specify that the new community center must serve the same LGBT constituency which the current center serves, (b) it is likely that no services would be provided during any foreclosure and sales process, and (c) given current economic conditions and the deed restriction on the property, the sales process could require a significant amount of time.


While the proposed legislation only approves the initial deposit of \$157,500 into the proposed "mortgage payment reserve fund", it is likely that if the City does not make future appropriations to replenish the balance of the "mortgage payment reserve fund", CCP may default on their mortgage and be subject to foreclosure action by First Republic Bank.

According to Mr. Updike, the terms of the restructuring of loan between CCP and First Republic Bank have not been finalized. Under the current draft terms of the restructured loan, CCP is required to have a "mortgage payment reserve fund" balance equal to the upcoming year's debt

service. Therefore, if the Board of Supervisors does not approve future appropriations to the "mortgage payment reserve fund" necessary to maintain the required balances, CCP could be considered in default of the restructured terms of their mortgage loan with First Republic Bank, and subject to foreclosure.

RECOMMENDATION

Approval of the proposed resolution and ordinance are policy matters for the Board of Supervisors.



Harvey M. Rose

cc: Supervisor Avalos
Supervisor Mirkarimi
Supervisor Elsbernd
President Chiu
Supervisor Alioto-Pier
Supervisor Campos
Supervisor Chu
Supervisor Daly
Supervisor Dufty
Supervisor Mar
Supervisor Maxwell
Clerk of the Board
Cheryl Adams
Controller
Greg Wagner



Amy L. Brown
Director of Real Estate



MEMORANDUM

DATE: February 26, 2010

TO: Nathan Cruz, Budget Analyst
Budget & Legislative Analyst's Office

FROM: John Updike, Assistant Director, Real Estate

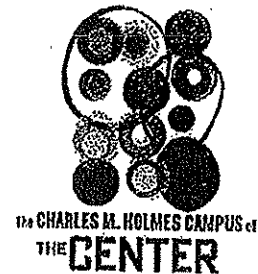
SUBJECT: **The LGBT Community Center Mortgage Payment Reserve Fund Agreement**

As requested, this memorandum outlines our position relative to the LGBT Community Center's (the "Center") likely ability to make timely payments under a restructured loan with the First Republic Bank. Real Estate has a comfort level about the Center's ability to pay given the following:

- The Center's financial stability plan of May 21, 2009, many elements of which have already been put into effect;
- The Center's follow-up to First Republic Bank of December 29, 2009, attached hereto, which shows excellent progress in increasing revenues and reducing expenditures, consistent with the financial stability plan;
- The reduction in payments due over the course of the coming two years (and the current fiscal year) of \$80,000 per year, in accordance with a modified loan with First Republic Bank, subject to approval of the pending loan agreement between the Center and the City.

Should the Center find its financial condition to be such that none or few payments are made toward the restructured loan owed First Republic Bank in the remainder of fiscal year 09-10, Real Estate would take that into serious consideration when determining whether or not to recommend an extension (amendment) of the City's loan with the Center next fiscal year (assuming Board approval of this loan). The success or failure of the Center's financial stability plan will be readily apparent, and if not succeeding, alternatives to continuation of the City's loan agreement would in all likelihood be seriously explored, in a vigilant effort to minimize the City's risk in this matter.

attachment: Letter from Rebecca Rolfe, Executive Director of the Center, to Felix Miranda, Vice-President, First Republic Bank (2 pages)



December 29, 2009

Felix Miranda
Vice President, Senior Credit Officer
First Republic Bank
111 Pine Street
San Francisco, CA 94111

Dear Felix,

In your email of November 5, 2009, outlining the proposed revised terms of our loan, you requested information on the Centers fundraising/business plan, outlining our ability to meet the loan amortization requirements in year 3. Although the loan is not yet finalized, in the spirit of our ongoing work towards the completion of the loan restructure I am providing you with the following summary of our strategies and work to stabilize the Center's financial base.

We have focused most of our efforts on increasing revenue as we have already reduced expenses as low as we can realistically go without damaging infrastructure or our current contractual commitments.

The two areas that we have identified for solid growth in the next three years are revenue from the building and individual giving. While we are building long term plans to increase revenue from foundations, corporations and government contracts, the continued uncertainty in the stock market and overall economy -- and resulting crises in the state and city/county budgets -- mean that significant growth in these three areas will be unlikely for at least the next 12 to 24 months.

Our strategies for growth in facilities revenue and individual contributions are outlined below.

Facilities Revenue: We are finalizing a letter of intent to bring a long term commercial tenant onto our fourth floor. This lease supports a significant increase in rental revenue beginning with an estimated occupancy date in the late fall to winter of 2010 (following a significant build out process).

Individual Donations: We are currently in the process of significantly increasing our capacity to raise contributions from individuals, including:

- **Expansion of our development staff:** we have received grants from two funders which will support the addition of one full time staff member to our development team, bringing the team from a total of 3.0 FTEs to 4.0 FTEs. The new staff position will be focused on individual giving and events and this expanded capacity will support short and long term growth in individual giving.
- **Expansion of board of directors:** Our board is significantly involved in fundraising and has a collective commitment to raise a minimum of \$10,000 per person, which they are currently exceeding. We are working to double the size of the board within the next 18 months and have a short term goal to bring on 9 new board members by the end of this

THE SAN FRANCISCO LESBIAN GAY BISEXUAL TRANSGENDER COMMUNITY CENTER

1800 MARKET STREET, SAN FRANCISCO, CA 94102 TEL: 415.865.5555 FAX: 415.865.5501 INFO@SFCENTER.ORG WWW.SFCENTER.ORG

Felix Miranda
December 29, 2009
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fiscal year. Additionally, we are expanding the committee structure, creating new opportunities for community members to volunteer on board and fundraising committees, which will expand the resources and connections to individual as well as institutional donors.

With these strategies solidly underway, I have confidence that we will be able to make the principle payments due in the third year of the loan and appreciate the time that the restructured loan provides us to adjust our revenue strategies to the changing economy while meeting our commitments to the First Republic Bank.

Please feel free to contact me if you have any questions about our long term strategies or if I can be helpful in any way.

Sincerely,



Rebecca Rolfe
Executive Director

cc: Marcia Berg, First Republic Bank
James Williamson, SF LGBT Community Center, Board of Directors
Terry Micheau, SF LGBT Community Center, Board of Directors
John Updike, Assistant Director of Real Estate, City/County of San Francisco

SECURED PROMISSORY NOTE

San Francisco, CA

Principal Amount: \$157,500.00

Date: February ____, 2010

FOR VALUE RECEIVED, the undersigned, The COMMUNITY CENTER PROJECT OF SAN FRANCISCO, INC., a California nonprofit public corporation ("**Maker**"), hereby promises to pay to the order of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, or holder (as the case may be, "**Holder**"), the principal sum of One Hundred Fifty-Seven Thousand Five Hundred and No/100 Dollars (\$157,500.00) (the "**Funding Amount**"), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement (defined in Section 1 below), as provided in this Secured Promissory Note (this "**Note**").

1. Agreement. This Note is given under the terms of a Loan Agreement between Holder and Maker dated as of February ____, 2010 (the "**Agreement**"), which is incorporated herein by this reference. Rules of interpretation set forth in the Agreement apply to this Note, and any initially-capitalized, undefined term in this Note shall have the meaning given to such term in the Agreement. If there is any inconsistency between the Agreement and this Note, this Note will control.

2. Security. Maker's obligations under this Note are secured a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing made by Maker for the benefit of Holder, which will be recorded in the Official Records of San Francisco County (the "**Deed of Trust**") and will encumber the property commonly known as 1800 Market Street, San Francisco, California.

3. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of one percent (1%) per annum from the date of the disbursement of funds by Holder under the Agreement through the date of full payment of all amounts owing under this Note. Interest will be compounded annually and will be calculated on the basis of actual days elapsed and a 360-day year, which will result in higher interest charges than if a 365-day year were used.

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

4. Payments. Principal and interest will be payable in monthly installments (each, a "**Payment**") equal to the amount that would be necessary to repay all principal and interest over a five (5) year amortization schedule. Beginning on January 1, 2015, and continuing until December 31, 2020 (the "**Maturity Date**"), Maker shall make Payments in the amount of _____ Dollars (\$_____) on the first day of each calendar month (each, a "**Payment**")

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

5. Security. Maker's obligations under this Note are secured by the Deed of Trust

6. Terms of Payment.

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

6.2 All Payments must be made payable to Holder and mailed or delivered in person to Holder's office at 25 Van Ness Avenue, 4th Floor, San Francisco, CA 94102, or to any other place Holder from time to time designates.

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

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

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

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

8. Waivers.

8.1 Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that

Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

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

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

9. Miscellaneous Provisions.

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

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

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

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

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

MAKER:

THE COMMUNITY CENTER PROJECT OF SAN FRANCISCO, INC., a California nonprofit public benefit corporation

By: _____
Rebecca Rolfe, Executive Director

Date: _____

Free Recording Requested Pursuant to
Government Code Section 27383

Recording requested by and
when recorded mail to:

City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

(Space above this line reserved for Recorder's use only)

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**
(Property Address: 1800 Market Street, San Francisco, CA)

This Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") is made as of February __, 2010, by THE COMMUNITY CENTER PROJECT OF SAN FRANCISCO, INC., a California nonprofit public corporation ("Trustor"), whose address is 1800 Market Street, San Francisco, California 94102, to Chicago Title Company ("Trustee"), whose address is _____, San Francisco, California, for the benefit of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Beneficiary"). This Deed of Trust is executed pursuant to a Loan Agreement by and between Trustor and Beneficiary dated as of the date of this Deed of Trust, as it may be amended from time to time (the "Agreement"), the provisions of which are incorporated herein by reference. Rules of interpretation set forth in the Agreement apply to this Deed of Trust, and any initially-capitalized, undefined term used in this Deed of Trust shall have the meaning given to such term in the Agreement.

1. Grant in Trust. For valuable consideration, Trustor hereby grants, transfers and assigns to Trustee, in trust, with power of sale, for the benefit of Beneficiary, all right, title and interest Trustor now has or may have in the future in the following (collectively, the "Property"):

(a) that improved real property situated in the City and County of San Francisco, State of California, described in the attached Exhibit A and incorporated herein by reference (the "Land"); and

(b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements"), including the LGBT Community Center currently located thereon; and

(c) all existing and future leases, subleases, tenancies, subtenancies, licenses, occupancy agreements and concessions ("Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the Leases; and

(d) except for personal property and removable fixtures installed by tenants or subtenants, all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the

Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which will be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; and

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

(f) all RED Loan proceeds, whether disbursed or not, and all funds now or in the future on deposit in the City Funds Account; and

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

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

(i) all rents, revenues, issues, royalties, proceeds and profits, including prepaid rent and security deposits ("Rents"), from the Land and the Improvements, subject to:
(i) Trustor's right to collect and retain the same as they become due and payable; and
(ii) Beneficiary's rights under Section 5(d); and

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

This Deed of Trust constitutes a security agreement under, and a fixture filing in accordance with, the California Uniform Commercial Code, as it may be amended from time to time. The filing of a financing statement pertaining to personal property may not be construed in any way as derogating from or impairing the lien of, or the rights or obligations of the parties under, this Deed of Trust.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing the following (collectively, the "Secured Obligations"):

(a) performance of all present and future obligations of Trustor set forth in the Agreement, as it may be amended from time to time, and the promissory note of even date herewith and made by Trustor in favor of Beneficiary for the original principal amount of \$157,500 (as it may be amended from time to time, the "Note") and performance of each agreement incorporated by reference, contained therein, or entered into in connection with the Agreement;

(b) payment of the indebtedness evidenced by the Agreement and the Note in the original principal amount of \$157,500, with interest, according to the terms of the Agreement and the Note; and

(c) payment of any additional sums Trustor may borrow or receive from Beneficiary, when evidenced by another note (or any other instrument) reciting that payment is secured by this Deed of Trust.

3. Trustor's Covenants. To protect the security of this Deed of Trust, Trustor agrees as follows:

(a) to perform the Secured Obligations in accordance with their respective terms;

(b) to keep the Land and the Improvements in good condition and repair, normal wear and tear and acts of God excepted; not to remove or demolish any Improvements without Beneficiary's prior written consent; to complete or restore promptly and in good and workmanlike manner any Improvement constructed, damaged or destroyed on the Land; to pay when due all claims for labor performed and materials furnished therefor, subject to Trustor's right to contest any claim in good faith; to comply with all laws affecting the Land, subject to Trustor's right to contest any claim in good faith; not to commit or permit waste with respect to the Land or the Improvements; not to commit, suffer or permit any act upon the Land or the Improvements in violation of law, including Environmental Laws; and to do all other acts made reasonably necessary by the character or use of the Land and the Improvements;

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

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

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

(f) should Trustor fail to make any payment or to do any act as herein provided, then, without: (i) obligation to do so; (ii) notice to or demand upon Trustor; or (iii) releasing Trustor from any obligation hereof, Beneficiary or Trustee may: (A) make or do the same in any manner and to the extent as it deems necessary to protect the security hereof; (B) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (C) pay, purchase, contest or compromise any encumbrance, charge or lien that in its judgment appears to be prior or superior hereto; and (D) in exercising these powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees and costs, and Trustor consents to Beneficiary's and/or Trustee's entry upon the Land and Improvements for any purpose set forth in this Subsection, including Beneficiary's exercise of its rights under California Code of Civil Procedure Section 564(c); and

(g) to reimburse within five (5) days of demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest at an annual rate of interest equal to the lesser of: (i) ten percent (10%); or (ii) the maximum lawful rate from date of expenditure to the date of payment.

4. Insurance and Condemnation Proceeds.

(a) Trustor hereby assigns to Beneficiary any award of damages arising from the condemnation of all or any part of the Property for public use and any insurance proceeds arising from injury to all or any part of the Property.

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

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

(d) Trustor agrees that Beneficiary's application or release of funds pursuant to this Section will not cure or waive any default or Notice of Default (as defined below) or invalidate any act by Beneficiary performed following a default pursuant to any City Document unless the default has been cured by the application or release of funds.

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

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

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

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

(d) As additional security, Trustor hereby irrevocably, absolutely and unconditionally assigns to Beneficiary all Rents, whether now due, past due or to become due, subject to Beneficiary's grant to Trustor of a license to collect and retain Rents as they become due and payable so long as Trustor has not defaulted in performance of the Secured Obligations.

(e) Any voluntary or involuntary conveyance, sale, encumbrance, pledge or other transfer of all or any interest in the Property or in Trustor, including a security interest, in violation of the Agreement will constitute an Event of Default (as defined below) giving Beneficiary the right to exercise its remedies at law or in equity.

(f) For the purposes of this Deed of Trust, Beneficiary from time to time may substitute a successor or successors to Trustee named herein or acting hereunder by instrument in

writing executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of San Francisco County, which instrument shall be conclusive proof of proper substitution of a successor trustee or trustees. Without conveyance from Trustee, any successor or substitute trustee will succeed to all title, estate, rights, powers and duties of Trustee. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the recording information for this Deed of Trust and the name and address of the new Trustee.

(g) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, provided that this subsection does not constitute Beneficiary's consent to any transfer in violation of this Deed of Trust. The term Beneficiary shall mean the holder of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(h) Trustee accepts this Trust when this duly executed and acknowledged Deed of Trust is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

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

(a) Trustor's license to collect and retain Rents will terminate automatically.

(b) Trustor consents to Beneficiary's entry upon and taking possession of the Property or any part thereof, at any time after the occurrence of an Event of Default without notice, either in person, by agent or by a receiver to be appointed by a court without regard to the adequacy of any security for the indebtedness hereby secured to sue for or otherwise collect and apply Rents, less costs and expenses of operation and collection, including those of the Property, in its own name or in the name of Trustor. Beneficiary's collection and application of Rents shall not cure or waive any Event of Default or Notice of Default or invalidate any act done pursuant to any notice.

(c) Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property ("Notice of Default"), and:

i. Trustee shall cause the Notice of Default to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

ii. After the lapse of time then required by law following the recordation of a Notice of Default, and notice of sale ("Notice of Sale") having been given as then required by law, Trustee without demand on Trustor may sell the Property at the time and place fixed in the Notice of Sale either as a whole or in separate parcels in any order at public auction to the highest bidder for cash in lawful money of the United States payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to any purchaser a trustee's deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the trustee's deed of any matters of facts shall be conclusive proof of the

truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale.

iii. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (A) all sums expended under the terms of this Deed of Trust not then repaid, with accrued interest at the highest rate allowed by law in effect at the date hereof; (B) all other sums then secured hereby; and (C) the remainder, if any, to the person or persons legally entitled thereto.

7. Notice of Default to Trustor. The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at its address set forth above or any succeeding address given by notice in accordance with the Agreement.

TRUSTOR:

THE COMMUNITY CENTER PROJECT OF SAN FRANCISCO, INC., a California nonprofit public benefit corporation

By:

Rebecca Rolfe, Executive Director

ALL SIGNATURES MUST BE NOTARIZED

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of the Land

LOAN AGREEMENT

This Loan Agreement ("**Agreement**") is entered into as of _____, 2010, by and between the City and County of San Francisco ("**City**"), a municipal corporation acting by and through its Real Estate Division ("**RED**"), and The Community Center Project of San Francisco, Inc. ("**Borrower**"), a California nonprofit public corporation, whose address is 1800 Market Street, San Francisco, California, 94102.

RECITALS

A. Borrower owns real property that is primarily used as a community center and located at 1800-1849 Market Street in San Francisco, California, as further described in the attached Exhibit A ("**Property**").

B. Borrower received a loan in the original principal amount of \$3,200,000 (the "**Original Bank Loan**"), from First Republic Bank, a Nevada corporation ("**Bank**"), which was evidenced by, among other documents, a Promissory Note Secured by Deed of Trust made by Borrower in favor of Bank dated December 10, 2007 (the "**Bank Promissory Note**"), and a Deed of Trust, Fixture Filing, Assignment of Rents, and Security Agreement with Borrower as trustor and Bank as beneficiary, recorded in the Official Records of San Francisco County on December 31, 2007, as Document No. 2007-I513129 (the "**Bank Deed of Trust**").

C. Borrower wishes to restructure the Original Bank Loan to enhance its ability to make loan payments when due, and Bank is willing to restructure the Original Bank Loan if City agrees to loan funds to Borrower to enable Borrower to make certain payments under such modified loan.

D. City is willing to loan funds to Borrower if the Bank and Borrower enter into a loan modification agreement that restructures the Original Loan on the terms set forth in the attached Exhibit B and is in a form approved by City (the "**Loan Modification Agreement**"), all on the terms, conditions and controls set forth in this Agreement. The Bank Promissory Note, as modified by the Loan Modification Agreement, shall be referred to as the "**Modified Bank Note**". The Loan Modification Agreement, the Modified Bank Note, the Bank Deed of Trust and any other documents executed by Borrower in favor of Bank pursuant to the Loan Modification Agreement shall be collectively referred to as the "**Modified Bank Documents**".

Now, therefore, the parties to this Agreement agree as follows:

1. Terms of the RED Loan.

a. RED agrees to loan Borrower a maximum principal amount of One Hundred Fifty Seven Thousand Five Hundred Dollars (\$157,500) (the "**RED Loan**") for the sole purpose of Borrower's payment of amounts owed to the Bank under the Modified Bank Note when such amounts are due and payable ("**Required Bank Payments**") if Borrower does not have sufficient financial means to make such Required Bank Payment. The RED Loan proceeds shall be disbursed to the Borrower through a direct deposit in the City Funds Account (as defined in Section 5 below) and shall remain in the City Funds Account at all times, except to the extent that such deposited proceeds are used to make a Required Bank Payment when it is due and payable. Borrower acknowledges that RED's agreement to make the RED Loan is based in part on Borrower's agreement to use the RED Loan proceeds solely to make a Required Bank Payment when it is due and payable if Borrower does not otherwise have sufficient funds to make such Required Bank Payment, and agrees to use the RED Loan proceeds solely

for that purpose. RED Loan proceeds shall be used only for deposit in the City Funds Account and for making Required Bank Payments when due and payable.

b. The RED Loan shall be evidenced by this Agreement, a promissory note in the original principal amount of \$157,500 made by Borrower in favor of RED (the "**RED Note**"), and a deed of trust made by Borrower, as trustor, in favor of City, as beneficiary, which shall encumber the Property (the "**RED Deed of Trust**"). This Agreement, the RED Note and the RED Deed of Trust shall be collectively referred to as the "**RED Loan Documents**".

c. The outstanding principal balance of the RED Note will bear interest at a rate of one percent (1%) per annum, simple interest, with payments amortized over a five (5) year period, as provided in the RED Note. Interest shall be calculated on the basis of a 360-day year. Monthly payments under the RED Note shall commence on January 1, 2015, and shall be based on a five (5) year amortization schedule. Borrower shall repay to RED all amounts owing under the RED Loan Documents on December 31, 2020. Borrower shall have the right to prepay all or any portion of the RED Note at any time without penalty. Notwithstanding anything to the contrary in this Section, the payment schedule set forth in this Section is subject to City's exercise of its rights under Section 7 below.

d. If any payment owed under the RED Loan Documents is not paid within ten (10) days after its due date, Borrower shall pay RED a late charge equal to six percent (6%) of the amount due, or One Hundred Fifty Dollars (\$150), whichever is greater. Since it would be impractical or difficult to measure the actual damages resulting from a failure to make payments when due, the parties hereto agree that the above amount is a fair estimate of the administrative and other costs that the City will accrue as a result of such late payment. In addition to such late charge, Borrower shall pay late interest in the amount of the lesser of (i) ten percent (10%) of the amount due and owing, or (ii) the highest percentage permitted by law, from the date when such sum is due through and to the date when Borrower pays such amount to the City.

e. RED shall have no obligation to disburse any funds during any period in which there exists an uncured default under any of the RED Loan Documents or any conditions precedent have not been satisfied.

2. Collateral. Payment and performance of all sums and all other obligations under the RED Loan Documents shall be secured by the RED Deed of Trust.

3. No Further Obligation. The Borrower acknowledges and agrees that the total amount being provided under the RED Loan shall not exceed One Hundred Fifty-Seven Thousand Five Hundred Dollars (\$157,500). No additional funds to cover Required Bank Payments that exceed the total amount of the RED Loan, or to provide for other project or Bank Loan costs, anticipated or unanticipated, are available under this Agreement under any circumstances.

4. Representations and Warranties. As a further inducement to RED to make the RED Loan under this Agreement, the Borrower hereby represents and warrants that:

a. Borrower is qualified to do business in San Francisco, and is in good standing in the State of California with respect to all laws and regulations necessary to conduct its business.

b. Borrower has authority, and have completed all proceedings and obtained all approvals, necessary to execute, deliver, and perform this Agreement, the RED Promissory Note, the RED Deed of Trust, the Loan Modification Agreement, and the transactions contemplated thereby.

c. The execution, delivery, and performance of the RED Loan Documents and the Loan Modification Agreement and all associated documents will not contravene, or constitute a default under or result in a lien upon assets of Borrower pursuant to any applicable law or regulation, any charter document of Borrower, or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree, or other instrument binding upon or affecting Borrower.

d. When duly executed by Borrower, the RED Loan Documents and the Loan Modification Agreement shall constitute the legal, valid and binding obligations of the Borrower. Borrower hereby waives any defense to the enforcement of the terms of the RED Loan Documents related to alleged invalidity of the RED Loan Documents.

e. With the exception of any pending actions related to the Original Bank Loan, there is no action, suit or proceeding pending or threatened against the Borrower that might adversely affect the Borrower in any material respect.

f. With the exception of any pending actions related to the Original Bank Loan, Borrower is not in default under any agreement to which it is a party, including but not limited to any lease of real property.

g. Borrower has furnished RED with documented financial information which is accurate and which fairly presents the financial position and results of operations of Borrower for the periods described in such information.

h. Borrower has delivered to RED copies of the insurance policies or certificates of insurance for the coverage described in Section 6.a(9) below.

i. Borrower is a non-profit California corporation engaged in a community/cultural activity.

j. Borrower shall use the RED Loan proceeds only to pay a Required Bank Payment if Borrower does not otherwise have sufficient funds to make such Required Bank Payment at such time, and for no other purpose.

k. Borrower has not been suspended, disciplined or disbarred by the U.S. General Services Administration, nor has Borrower been suspended, disciplined, or prohibited from contracting with any federal, state or local governmental agency. In the event Borrower has been so suspended, disciplined, disbarred or prohibited from contracting with any governmental agency, Borrower shall immediately notify RED of same and the reasons therefore together with any relevant facts or information requested by RED.

l. All previous statements or representations by Borrower to RED, on any loan application or otherwise, remain true and correct as of the date of this Agreement.

m. Borrower shall not amend or modify any of the Modified Bank Documents without first obtaining RED's prior written consent.

5. Conditions For Loan Disbursement. Upon request by Borrower, RED will disburse the RED Loan proceeds in a timely manner after reviewing any such requests per the following conditions:

a. Borrower must have delivered to RED a fully executed Loan Modification Agreement and any additional documents executed by Borrower in connection with the Loan Modification Agreement.

b. Borrower shall have established a deposit account (the "**City Funds Account**") with Bank that bears annual interest at one percent (1%), and Borrower and Bank shall have delivered written agreements to City, in forms acceptable to City in its sole and absolute discretion, that limit the use of City Funds Account funds to the holding of RED Loan proceeds and any interest thereon, the payment of a Required Bank Payment or a payment owed under the RED Note, and requires the delivery of at least one (1) business days' prior written notice to City of any pending withdrawal or transfer from the City Funds Account funds.

c. There shall be no event of default under any of the RED Loan Documents or the Modified Bank Loan Documents and Borrower shall be in full compliance with its obligations under the RED Loan Documents and the Modified Bank Loan Documents.

d. There shall be no amendments or modifications to the Modified Bank Loan Documents.

e. Bank shall have approved of Borrower's execution of this Agreement, the RED Note and the RED Deed of Trust, and the recordation of the RED Deed of Trust in the Official Records of San Francisco County.

f. There shall be no liens or encumbrances on the Property other than those shown as Exception Nos. 6-15 on the preliminary report prepared by Old Republic Title Company for Order No. 0227008491 and dated as of May 21, 2009, any taxes and assessments that are not yet due and payable, and the RED Deed of Trust.

6. Covenants of the Borrower.

a. Until the RED Loan is paid in full, the Borrower covenants that it shall:

- (1) Promptly cure, have retracted or stay any default or alleged default under any written agreement, including but not limited to the Loan Documents, to which Borrower is a party;
- (2) Deliver to RED annual financial statements within 90 days after the end of each fiscal year prepared by an independent accountant in accordance with generally accepted accounting principles and certified by Borrower as fairly representing Borrower's financial condition, and provide RED promptly with such financial information concerning Borrower's business activities and financial condition RED may request from time to time;
- (3) Deliver to RED, within 90 days of Borrower's fiscal year end, a complete signed copy of Borrower's federal tax return. If an extension is filed in lieu of a return, then deliver to RED a copy of the extension and a copy of the return, each within 30 days of filing;
- (4) Promptly notify RED in writing of the occurrence of any event which might materially and adversely affect Borrower or which constitutes, or with the giving of notice or passage of time or both would constitute, an event of default under any of the RED Loan Documents, the Modified Bank Loan Documents. Such occurrences include, but are not limited to, the threat or initiation of lawsuits or administrative proceedings against Borrower, or problems with vendors, suppliers, or customers that may materially affect the operations of the business;

- (6) Cooperate with RED staff at all reasonable times to facilitate such inspection, monitoring and reporting on project performance and progress as may be required by RED to confirm Borrower's compliance with this Agreement, including but not limited to inspection of Borrower's place of business and maintaining accurate books and records of Borrower's income and expenses and permit the City to review inspect or audit such books and records upon request. All records shall be maintained in accordance with the minimum standards set forth in applicable federal law and in a manner which, in RED's reasonable judgment, will provide an effective system of internal control and will permit timely and effective audits if necessary or requested;
- (7) Not change ownership or control of the business, or transfer, assign, or otherwise encumber any interest in the business;
- (8) Not refinance any existing indebtedness, with the exception of the modification of the Original Bank Loan pursuant to the Loan Modification Agreement, or incur additional indebtedness except that incurred on open account for purchases of materials, supplies and equipment from vendors necessary in the normal course of business;
- (9) Obtain fire and hazard insurance protecting all property securing the RED Loan and general liability, workers compensation and general automobile insurance. Each policy shall be issued by a company and on a form of insurance that is approved by RED (which approval shall not be withheld unreasonably), and shall be maintained throughout the term of the RED Loan. Property insurance shall be in an amount not less than replacement costs for the property and equipment and not less than One Million Dollars (\$1,000,000) for general liability. RED shall be designated as "additional insured" or "loss payee" on such policies. The policies shall contain thirty-day (30) notice of cancellation clauses in favor of RED;
- (10) Not make or guarantee any loans;
- (11) Not invest its cash in securities or similar investment instruments other than federal bonds or "money market" funds;
- (12) Not engage in any business activities substantially different from those in which Borrower is presently engaged;
- (13) Not dilute the business assets by selling any portion of its business assets with a value in excess of Ten Thousand Dollars (\$10,000) without RED's permission and not remove its business assets from 1800 Market Street, San Francisco, CA 94102 except in the ordinary course of business; and
- (14) Pay all liens, taxes, assessments and other governmental charges, unless the validity of such lien, tax, assessment or charge is contested in good faith through appropriate legal challenge and adequate provisions have been made to bond over or to otherwise provide adequate protection to RED, in RED's sole discretion, against any such lien, tax, assessment or other governmental charge.

b. As a condition precedent to RED's obligations under this Agreement, and in consideration of the City's special concerns for the economic well-being of the City and County of

San Francisco, Borrower acknowledges it will continue with its established Employment Plan acceptable to the City providing for the hiring of San Francisco residents, which plan includes a reporting mechanism to measure compliance and goal fulfillment. (At least 51% of the jobs created as a result of the assistance provided by the funds from this Agreement must be filled or made available to low to moderate-income residents.) Where applicable, the Employment Plan shall include a First Source Hiring Referral Agreement in accordance with the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83) to utilize the City's employment and hiring system and resources to recruit, screen and place such residents for appropriate newly-created job opportunities. Because it is impractical or impossible to determine the actual damage to the City resulting from Borrower's failure to report to the City on the agreed schedule or otherwise to satisfy the terms of the Employment Plan, the parties agree that Borrower shall pay to the City liquidated damages in the amount of fifteen percent (15%) of each monthly loan payment for the period during which the Borrower fails to report or to otherwise satisfy the terms of the Employment Plan. In addition, the City shall have all rights and remedies set forth hereunder for failure to comply or satisfy the Employment Plan including, but not limited to termination and acceleration of this loan. The parties agree that this is the parties' best and most accurate estimate of the damages the City would incur for the above failures, and that such estimate is reasonable under the circumstances existing on the date of this Agreement.

c. Prior to the disbursement of the RED Loan, Borrower, if required by RED, shall submit evidence to the City providing assurance that the Borrower's business facilities are in compliance with the City's General Plan and current San Francisco zoning regulations, and any other local rules requested by the City.

d. Borrower shall not alter the location of place of business outside the geographical boundaries of the City and County of San Francisco for the term of the RED Loan, and shall promptly notify RED of its intention to relocate its business to any location other than the Property. In the event that Borrower moves its business outside the geographical boundaries of the City and County of San Francisco, RED may suspend all further disbursements under this Agreement, declare an event of default and exercise all available remedies, including but not limited to acceleration of the indebtedness due hereunder.

e. Borrower shall deposit RED Loan proceeds in the City Funds Account when the RED Loan proceeds are disbursed to Borrower by City. If any funds are withdrawn or transferred from the City Funds Account, Borrower shall deliver notice of such matter (each, an "**Expenditure Report**") and the Required Bank Payment made with such withdrawn or transferred funds. Each Expenditure Report shall be accompanied with financial materials that evidence Borrower's inability to make the Required Bank Payment that was made with such withdrawn or transferred City Funds Account funds, any other materials reasonably requested by RED to evidence such inability, and Borrower's representation and certification that it did not have sufficient funds to timely pay the Required Bank Payment described in such Expenditure Report.

f. All RED Loan proceeds disbursed to Borrower shall be deposited in the City Funds Account and shall remain in the City Funds Account at all times, except to the extent that such proceeds are used to pay a Required Bank Payment or pay any amount payable under the RED Note.

g. Borrower shall not permit the City Funds Account to be funded with anything other than the RED Loan proceeds and any interest earned on such proceeds.

7. Default.

a. Any of the following shall constitute an event of default of the Borrower for the purposes of this Agreement:

- (1) Failure to pay the City any sums owed under any of the RED Loan Documents when due in accordance with the terms of such RED Loan Document;
- (2) Failure to use any of the disbursed RED Loan proceeds to pay the Required Bank Payment for which such disbursement was made;
- (3) Disclosure subsequent to this Agreement, by any source, as to the falsehood of any representation or warranty in any of the RED Loan Documents or any Expenditure Request;
- (4) Failure to perform any other provision of any of the RED Loan Documents and either (i) such failure continues for more than thirty (30) days after written notice from the City, unless such failure is not reasonably capable of being cured within such 30-day period but is reasonably capable of being cured within sixty (60) days after such notice and the Borrower commences action to cure such failure within such 30-day period and diligently and continuously prosecutes such action to completion and causes such failure to be cured within sixty (60) days after such notice, or (ii) such failure is not reasonably capable of being cured within sixty (60) days after notice of such failure is given by the City to the Borrower;
- (5) Failure to perform any of the covenants of Borrower in any of the RED Loan Documents. With respect to any Borrower failure to maintain the insurance required by Section 6.a (9), RED shall be entitled, but not obligated, to pay the premium for or obtain such insurance and add the amounts paid by RED to the principal of the RED Loan;
- (6) Any lien or encumbrance is recorded against the business property of Borrower without RED's prior written consent, and such lien is not removed or otherwise remedied to RED's satisfaction within thirty (30) days of the date it is recorded.
- (7) The sale or encumbrance of the Property, the destruction of all or substantial portion of the Property by fire or other casualty, the condemnation, seizure or appropriation of the Property by any governmental or quasi -governmental entity other than City, or RED's security is otherwise materially threatened;
- (8) Borrower is dissolved, liquidated or merged with or into any other entity, without RED's prior written consent, or Borrower ceases to exist in good standing under the laws of the State of California;
- (9) Borrower is subject to an order for bankruptcy relief, is unable or admits in writing its inability to pay its debts, applies for or consents to the appointment of a receiver, trustee or similar official for all or part of its property, institutes or consents to any bankruptcy, insolvency, reorganization or similar proceeding, or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against Borrower or its property;
- (10) Borrower is in default under any other agreement between Borrower and RED or the City, including but not limited to any grant agreement; and
- (11) Borrower is in default under any of the Modified Bank Loan Documents.

b. If Borrower does not cure or commence to cure any of the above events of default within the time periods specified above, the City may without notice to or demand upon Borrower (which are expressly waived by Borrower), exercise one or more of the following remedies, in addition to any other remedies set forth in the RED Loan Documents or as otherwise provided by law or in equity: (i) the City may, at its option, terminate all commitments to make disbursements, (ii) the City may perform any of Borrower's obligations, at Borrower's sole cost, in such manner as City may determine to protect the City's security, (iii) the City may, either directly or through an agent or court-appointed receiver, take possession of any property security, and (iv) the City may declare the entire unpaid principal balance of the RED Note, together with all accrued interest, all other sums then payable, without protest, presentment, notice of dishonor, demand or further notice of any kind and may take any action necessary or appropriate to foreclose, obtain, seize or retain any of its security.

All costs, expenses and charges of RED in exercising any of the above remedies (including any such amounts that cause the obligations of Borrower to exceed the face amount of the RED Note) shall be added to the outstanding principal balance of the RED Loan.

8. Indemnity. Borrower shall indemnify, defend, reimburse and hold the City, and its officers, agents and employees, harmless from and against any and all claims, damages, losses, causes of action, demands and liabilities (collectively, "Claims") arising out of (i) any default by Borrower in the observance or performance of any of the obligations under the RED Loan Documents, (ii) any failure of any representation by Borrower to be correct in all material respects when made, or (iii) any matter arising out of or related to the RED Loan or the RED Loan Documents, or any transaction contemplated by, or any action or inaction by the City under the RED Loan Documents. In the event any Claim is brought against the City, Borrower shall at its sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the City. The City shall have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the City in connection with the matters covered by this Agreement. The provisions of this paragraph shall survive the repayment of the Loan and/or termination of this Agreement.

9. Notices. All notices, consents, communications, or transmittals required by this Agreement shall be made in writing, and shall be deemed communicated by personal delivery or by United States mail, postage prepaid, as of the earlier of actual receipt or seven days from mailing, addresses as follows:

To the City: Director
Real Estate Division, City and County of San Francisco
25 Van Ness Avenue, 4th Floor
San Francisco, CA 94102

To Borrower: Rebecca Rolfe, Executive Director
1800 Market Street
San Francisco, CA 94102

Or such other address as either party may designate, from time to time, by written notice sent to the other party in like manner.

10. Standard City Provisions.

a. MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City also urges

San Francisco companies to do business with corporations that abide by the MacBride Principles. Borrower acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

b. Tropical Hardwood and Virgin Redwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, the Borrower shall not permit any construction with the use of tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event the Borrower fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, the Borrower shall be liable for liquidated damages for each violation in any amount equal to the Borrower's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

c. Notification of Limitations on Contributions. Through execution of this Agreement, the Borrower acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract, or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

d. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Borrower may not use any proceeds from the Loan to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). Borrower agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Borrower violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Borrower from bidding on or receiving any new City contract for a period of two (2) years.

e. Violence Prevention. Borrower acknowledges the urgent need to prevent violence and create greater community awareness regarding the negative impact of violence of you in our communities. Borrower is encouraged, where appropriate, to direct its City-assisted activities to benefit and reduce violence.

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

12. Conflict of Interest. Through execution of this Agreement, the Borrower acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 *et seq.* and Sections 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which

constitute a violation of said provision and agrees that if it becomes aware of any such fact during the Term, the Borrower shall immediately notify the City.

13. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code Sections 6.80-6.83, any party who submits a false claim shall be liable to the City for three times the amount of damages, which the City sustains because of the false claim. A party who submits a false claim shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A party will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim

14. Labor Standards. Borrower agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, and where applicable, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. Sections 276.327-333) and all other federal, state and local laws and regulations pertaining to labor standards insofar as they apply to the performance of this Agreement.

15. Miscellaneous Provisions.

a. Borrower understands and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (California Government Code Section 6250 *et seq.*), apply to all of the RED Loan Documents and any and all records, information, and materials submitted to the City in connection with the RED Loan. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Borrower hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with the RED Loan.

b. All RED Loan Documents will be governed by and construed in accordance with the laws of the State of California, and shall be subject and subordinate to the City's Charter and Administrative Code, as well as any applicable HUD regulations.

c. It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Borrower and RED, and that there are no oral understandings or agreements between the parties not incorporated within this Agreement.

d. If any lawsuit is commenced to enforce any of the terms in this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party. The reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

e. Any forbearance, failure or delay by RED in exercising any right, power or remedy shall not preclude the further current or future exercise of such right, power or remedy, and all RED's rights and remedies shall continue in full force and effect until specifically waived in writing by RED.

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

g. All terms of this Agreement shall remain in full force and effect until the RED Loan has been paid in full by Borrower and all Borrower's obligations set forth in the RED Loan Documents have been fulfilled.

h. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary herein, RED shall have no obligation to provide funds unless and until the City's Controller certifies that there is a valid appropriation from which disbursements may be made.

i. This Agreement, together with the remaining RED Loan Documents, contains the entire agreement between the parties and all prior written or oral negotiations; discussions, understandings and agreements are merged herein.

j. The City is not, and none of the provisions in this Agreement shall be deemed to render the City, a partner in Borrower's business, or joint venture or member in any joint enterprise with Borrower. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party. The granting of this Agreement by the City does not constitute authorization or approval by the City of any activity conducted by Borrower.

k. The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

l. If Borrower consists of more than one person then the obligations of each person shall be joint and several.

m. Borrower agrees to abide by, to the extent applicable, the following: (i) Office of Management and Budget ("OMB") Circular A-122; (ii) OMB Circular A-133, and (iii) such additional federal requirements as apply to this Loan, as the same may change from time to time.

n. Time is of the essence in all matters relating to this Agreement and the other RED Loan Documents.

o. In accordance with the Citizen's Right to Know Act of 1998 (Chapter 79 of the City's Administrative Code), no officer, department, board or commission of the City shall approve a City Project, as defined in Chapter 79, unless a sign has been posted on the applicable property at least fifteen (15) days prior to such approval. A City Project is a project that involves new construction, a change in use or a significant expansion of an existing use where the City Funding for such project is \$50,000 or more. If the Grant Amount will be used for a City Project, this Agreement will not become effective until fifteen (15) days following the posting of the requisite sign (the "Sign Date") under Chapter 79, and City shall have the right to nullify or revoke this Agreement, without cost or liability of any sort whatsoever, at any time prior to the Sign Date. If the Borrower believes that this Agreement relates to a City Project and that the requisite sign has not been posted, the Borrower shall notify the City so that the City may determine the applicability of Chapter 79, and, if necessary, post the requisite sign.

p. The City and County of San Francisco has enacted an Ordinance at Chapter 23, Article V of its Administrative Code, commencing at Section 23.31 (the "Card Check Ordinance"), which applies

to Borrower if the project funded in whole or in part by this Agreement relates to or involves a Hotel or Restaurant Project and Borrower employs, or intends to employ, fifty (50) or more full or part-time employees. The terms of the Card Check Ordinance are expressly incorporated herein by this reference. To the extent Borrower, or its successors or assigns, employs individuals in a hotel or restaurant within the scope of the Card Check Ordinance, Borrower agrees, as a material condition of this Agreement, to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent Borrower's employees, if and as required by the Card Check Ordinance, and to otherwise fully comply with the requirements of the Card Check Ordinance. Borrower recognizes that, if applicable, it must enter into a Card Check Agreement with a Labor Organization(s) as specified before executing this Agreement, and that being a party to such a Card Check Agreement is a condition precedent to the effectiveness of this Agreement.

16. Earned Income Tax Credit.

a. Borrower shall provide the EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Borrower has already provided such EIC Forms at least once during the calendar year in which such effective date fails); (ii) promptly after any Eligible Employee is hired by Borrower; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (i) above shall constitute a material breach by Borrower of the terms of this Agreement. If within thirty (30) days after Borrower receives written notice of such a breach, Borrower fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Borrower fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Borrower shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

d. Capitalized terms used in this paragraph and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
GAVIN NEWSOM
Mayor

By: _____
Amy L. Brown, Director of Property
Real Estate Division

By: _____
Ben Rosenfield, Controller

BORROWER:

THE COMMUNITY CENTER PROJECT OF
SAN FRANCISCO, INC., a California nonprofit
public benefit corporation

By: _____
Rebecca Rolfe, Executive Director

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By: _____
Carol Wong, Deputy City Attorney

Exhibit A

Legal Description of Property

Exhibit B

Loan Modification Terms