File No. 200045 Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee **Date** January 29, 2020

Board of Supervisors Meeting **Date** _____

Cmte	Board	
☐	☐	Motion
☒	☐	Resolution
☐	☐	Ordinance
☐	☐	Legislative Digest
☐	☐	Budget and Legislative Analyst Report
☐	☐	Youth Commission Report
☐	☐	Introduction Form
☒	☐	Department/Agency Cover Letter and/or Report
☐	☐	MOU
☐	☐	Grant Information Form
☐	☐	Grant Budget
☐	☐	Subcontract Budget
☒	☐	Contract/Agreement
☒	☐	Form 126 – Ethics Commission
☐	☐	Award Letter
☐	☐	Application
☐	☐	Public Correspondence

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

☒	☐	Project Description
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	
☐	☐	

Completed by: Linda Wong **Date** January 24, 2020
Completed by: Linda Wong **Date** _____

[Ground Lease Amendment - Refinance Property - Turk & Eddy Associates, L.P - 249 Eddy Street and 161-165 Turk Street]

Resolution approving and authorizing the amendment and restatement of an existing long term ground lease with Turk & Eddy Associates, LP, on City-owned land at 249 Eddy Street, and 161-165 Turk Street ("Property") in order to refinance a 100% affordable, 82-unit multifamily rental housing development (plus one staff unit) for low-income persons ("Project"); and authorizing the Director of Property and Director of Mayor's Office of Housing and Community Development to execute documents, make certain modifications, and take certain actions in furtherance of this Resolution, as defined herein.

WHEREAS, In 2009, the City (the "Landlord") and Turk & Eddy Associates, L.P., a California limited partnership (the "Tenant"), an affiliate of Tenderloin Neighborhood Development Corporation, a California nonprofit public benefit corporation ("TNDC") entered into a ground lease ("Existing Ground Lease") for the Property, dated November 17, 2009; and

WHEREAS, TNDC desires to refinance its leasehold interest in the Property in order to perform certain seismic upgrades and obtain better financing terms;

WHEREAS, City and Turk & Eddy Associates, L.P. desire to amend the Existing Ground Lease upon closing of the refinancing of the Property in order to include certain commercially reasonable lender protection provisions required by Freddie Mac (which is providing part of TNDC's new financing) that are not part of the Existing Ground Lease, but make no other material changes; and

WHEREAS, Because these changes modify the City's rights under the Existing Ground Lease, the changes may be considered material and therefore require the approval of the Board of Supervisors; and

WHEREAS, The purpose of the amended and restated ground lease is solely to implement the mission of MOHCD, and the Board of Supervisors' approval of this Resolution furthers the public purpose of providing affordable housing for low-income households in need, thus obviating the need for a market rent lease appraisal described in San Francisco Administrative Code, Section 23.30; and

WHEREAS, MOHCD and the Director of Property have approved the form of the amended and restated ground lease; and,

WHEREAS, A copy of the substantially final form of the amended and restated ground lease is on file with the Clerk of the Board of Supervisors in File No. 200045, and is incorporated herein by reference; now, therefore be it

RESOLVED, That in accordance with the recommendations of the Director of Property of the San Francisco Real Estate Division and the Director of MOHCD, the Board of Supervisors hereby approves the amended and restated ground lease, and authorizes the Director of Property (or designee) and the Director of MOHCD (or designee) to execute and deliver the amended and restated ground lease and any such other documents that are necessary or advisable to complete the transaction contemplated by the amended and restated ground lease, and to effectuate the purpose and intent of this Resolution; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of Property (or designee) and the Director of MOHCD (or designee), in consultation with the City Attorney, to enter into any additions, amendments or other modifications to the amended and restated ground lease (including in each instance, without limitation, the attachment of exhibits), that the Director of Property and the Director of MOHCD determine are in the best

interests of the City, do not materially decrease the benefits to the City with respect to the Property, or otherwise materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transaction contemplated herein, effectuate the purpose and intent of this Resolution, and are in compliance with all applicable laws, including the City's Charter, provided that documents that include amendments from what was previously submitted to the Board shall be provided to the Clerk of the Board, as signed by the parties, together with a marked copy to show any changes, within 30 days of execution for inclusion in the official file; and, be it

FURTHER RESOLVED, That all actions taken by any City employee or official with respect to the amendment and restatement of the Existing Ground Lease authorized and directed by this Resolution and heretofore taken are hereby ratified, approved and confirmed by this Board of Supervisors; and, be it

FURTHER RESOLVED, That within 30 days of the amended and restated ground lease being fully-executed by all parties, the Director of Property or Director of Mayor's Office of Housing and Community Development shall provide the final amended and restated ground lease to the Clerk of the Board for inclusion into the official file.

RECOMMENDED:

Andrico Q. Penick 1/17/20
Director of Property

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

n:\financ\as2019\9690088\01412604.docx

Project Description

Local Operating Subsidy Program (LOSP)

Turk & Eddy Apartments

Ground Lease Amendment Summary

TURK & EDDY ASSOCIATES, L.P., a California limited partnership, is refinancing the property, Turk & Eddy Apartments, with a Freddie Mac loan that requires an amendment of the Ground Lease with the CITY AND COUNTY OF SAN FRANCISCO (original ground lease with the San Francisco Redevelopment Agency, dated November 17, 2009).

Under the original ground lease the Owner rehabilitated 55 studio units at 249 Eddy Street with approximately 30,185 gross square feet and the 22 studio units plus 5 one-bedroom units at 161-165 Turk Street with approximately 17,400 gross square feet and including two manager's units and other ancillary uses on the Site.

The purpose of the amendment is to provide additional lender financing protections. While the refinancing lender does require a seismic upgrade, there is no significant change to the property with the execution of the amended ground lease.

GROUND LEASE TERM

The original lease was scheduled to expire in 2064 (55 years from 2009) with an option to extend 44 years. The amended lease retains these provisions.

NO FINANCIAL IMPACT ON THE CITY

The amended Ground Lease retains the payment terms of the original ground lease. The City is providing no additional funding to the property.

AMENDED AND RESTATED GROUND LEASE

This Amended and Restated Ground Lease (this "**Ground Lease**") is dated as of, _____ 2020 (the "**Agreement Date**") by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**" or "**Landlord**"), represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development ("**MOHCD**"), and TURK & EDDY ASSOCIATES, L.P., a California limited partnership, as tenant (the "**Tenant**").

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 *et seq.*), the City created the Redevelopment Agency of the City and County of San Francisco, a public body, corporate, and politic ("**Agency**"), in 1948.

B. In furtherance of the objectives of the CRL, the Agency created programs to redevelop and revitalize blighted areas in the City and County of San Francisco, including the development of affordable housing, which it facilitated by lending or expending tax increment housing set-aside funds and by providing developers with site control necessary for such developments in the form of long-term ground leases.

C. The Agency was the fee owner of the land located at 249 Eddy Street and 161-165 Eddy Street, San Francisco, California and further described in Attachment 1 ("**Site**"), and entered into a ground lease with Tenant dated as of November 17, 2009 (the "**Agency Ground Lease**") under which Tenant rehabilitated 55 studio units at 249 Eddy Street with approximately 30,185 gross square feet and the 22 studio units plus 5 one-bedroom units at 161-165 Turk Street with approximately 17,400 gross square feet and including two manager's units and other ancillary uses on the Site (the "**Project**").

D. Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session) ("**AB 26**"), the Agency dissolved as a matter of law on February 1, 2012, and pursuant to AB 26, as amended by California State Assembly Bill No. 1484 ("**AB 1484**"), and Resolution No. 11-12, adopted by the City's Board of Supervisors and Mayor on January 26, 2012, Ordinance No. 215-12, adopted by the City's Board of Supervisors and Mayor on October 12, 2012, and the approved housing asset list submitted by City to, and approved by, the State of California Department of Finance pursuant to AB 1484 (Cal. Health & Safety Code Section 34176(a)(2)), City is successor in interest to Agency's fee interest in the Site and to all of the Agency's rights and obligations with respect to the Site.

E. The City now desires to amend and restate the Agency Ground Lease in conjunction with Tenant's refinancing of and certain seismic work at the Project.

F. The City believes that the fulfillment of the terms and conditions of this Ground Lease are in the vital and best interests of the City and the health, safety, morals and

welfare of its residents, and in full accord with the public purposes and provisions of applicable Laws.

NOW THEREFORE, in consideration of the mutual obligations of the parties to this Ground Lease, the City hereby leases to Tenant, and Tenant hereby leases from the City, the Site, for the Term (as defined in ARTICLE 2), and subject to the terms, covenants, agreements, and conditions set forth below, each and all of which the City and Tenant mutually agree.

ARTICLE 1 DEFINITIONS

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

1.01 **Agency** is defined in Recital A

1.02 **Agency Ground Lease** is defined in Recital C.

1.03 **Agreement Date** means the date first set forth above.

1.04 **Annual Rent** has the meaning set forth in the Section 4.01(a).

1.05 **Area Median Income** (or **AMI**) means median income as published annually by MOHCD, derived from the Income Limits determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area, also referred to as "Unadjusted Median Income."

1.06 **Change** has the meaning set forth in Section 12.02.

1.07 **Completion** means the date the Seismic Work is completed and Tenant's architect has issued a certificate of final completion.

1.08 **Effective Date** means the date shown as the Effective Date in the Memorandum of Amended and Restated Ground Lease recorded against the Site, but in no event will the date be before the approval of the Ground Lease by the City's Board of Supervisors and the Mayor.

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

1.10 **Ground Lease** means this Ground Lease, as amended from time to time.

1.11 **Improvements** means all physical construction, including all structures, fixtures, and other improvements, now existing or later constructed on the Site.

1.12 **Indemnification Obligations** means the obligations of Tenant to indemnify Landlord as provided in this Ground Lease or under applicable Laws.

1.13 **Laws** means all statutes, laws, ordinances, regulations, rules, orders, writs, judgments, injunctions, decrees, or awards of the United States or any state, county, municipality, or governmental agency.

1.14 **Lease Year** means each calendar year during the Term, beginning on January 1 and ending on December 31, provided that the "First Lease Year" will commence on the Effective Date and continue through December 31st of that same calendar year. Furthermore, the "Last Lease Year" will end upon the expiration of the Term.

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

1.16 **Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of credit, or other security instrument, and any assignment of the rents, issues, and profits from the Premises, or any portion thereof, that constitutes a lien on the Leasehold Estate and is approved in writing by the City.

1.17 **Lender** means any entity holding a Leasehold Mortgage.

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

1.19 **MOHCD** means the City's Mayor's Office of Housing and Community Development.

1.20 **Payment Date** means the date that Base Rent is due and payable under Section 4.02(a).

1.21 **Personal Property** means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is located in, on, or about the Premises and that can be removed from the Premises without substantial economic loss to the Premises or substantial damage to the Premises and that is incident to the ownership, development, or operation of the Improvements ort the Premises, belonging to Tenant, any Residential Occupant, or any subtenant or other occupant of the Premises and/or in which Tenant, Residential Occupant, or any subtenant or other occupant has an ownership interest, together with all present and future attachments, replacements, substitutions, and additions thereto or therefor.

1.22 **Premises** means the Site and all Improvements.

1.23 **Project** is defined in Recital C.

1.24 **Project Expenses** means the following costs, which may be paid from Project Income to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate and/or possessory interest taxes, assessments, and liability, fire, and other hazard insurance premiums; (b) salaries, wages, and other compensation due and payable to the employees or agents of Tenant who maintain, administer, operate, or provide services in connection with the Project, including all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required for such employees; (c) payments of required interest, principal, or annual servicing fees, if any, on any construction or permanent financing secured by the Project; (d) all other expenses actually incurred by Tenant

to cover routine operating and services provision costs of the Project, including maintenance and repair and the reasonable fee of any managing agent; (e) annual Base Rent payments; (f) any extraordinary expenses as approved in advance by the City; and (g) deposits to reserves accounts required to be established under the Loan Documents. Project Fees are not Project Expenses.

1.25 **Project Fees** means an asset management fee in the amount of $15,000, increasing by 3.5% annually, payable to the Tenant's general partner.

1.26 **Project Income** means all revenue, income receipts, and other consideration actually received from the operation of all leasing at the Project. Project Income includes, but is not limited to: all rents, fees, and charges paid by Residential Occupants or users of any portion of the Site; Section 8 or other rental subsidy payments received for the dwelling units; supportive services funding, if applicable; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; and the proceeds of business interruption or similar insurance. Project Income does not include tenants' security deposits, loan proceeds, capital contributions, or similar advances.

1.27 **Residential Occupant** means any person or entity authorized by Tenant to occupy a residential unit on the Premises, or any portion thereof.

1.28 **Residential Unit** has the meaning set forth in Section 9.01.

1.29 **Seismic Work** is defined in ARTICLE 10 and ATTACHMENT 4.

1.30 **Site** is defined in Recital C.

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

1.32 **Surplus Cash** means all Project Income in any given Lease Year remaining after payment of Project Expenses and Project Fees. The amount of Surplus Cash will be based on figures contained in audited financial statements. All permitted uses and distributions of Surplus Cash will be governed by Section 6.02(g) of this Ground Lease.

1.33 **Tenant** means Turk & Eddy Associates, L.P., a California limited partnership and its successors and assigns (or a Subsequent Owner, where appropriate).

1.34 **Very Low-Income Households** means a tenant household with combined initial income that does not exceed fifty percent (50%) of Area Median Income upon occupancy and whose subsequent household income does not exceed One Hundred Twenty percent (120%) of Area Median Income.

1.35 Whenever an Attachment is referenced, it means an attachment to this Ground Lease unless otherwise specifically identified. Whenever a section, article, or paragraph is referenced, it is a reference to this Ground Lease unless otherwise specifically referenced.

ARTICLE 2 AMENDMENT AND RESTATEMENT; TERM

2.01 Amendment and Restatement; Initial Term. As of the Effective Date, this Ground Lease amends and restates the Agency Ground Lease in its entirety. The term of this Agency Ground Lease commenced on November 17, 2009. The term of this Ground lease is a continuation of the term under the Agency Lease; the term of this Ground Lease will begin on the Effective Date and expire on November 17, 2064 ("**Term**"), unless extended under Section 2.02 below or earlier terminated as provided in this Ground Lease.

2.02 Option for Extension. Provided that the Tenant is not in default under the terms of this Ground Lease and the Loan Documents beyond any notice, grace, or cure period either at the time of giving of an Extension Notice (as defined below), as described in Section 2.03 below, or on the last day of the Term (the "**Termination Date**"), the Term may be extended at the option of the Tenant for one forty-four (44) year period, as provided in this Article below. If the Term is extended pursuant to this Section, all references in this Ground Lease to the "Term" will mean the Term as extended by this extension period.

2.03 Notice of Extension. Not later than one hundred eighty (180) days before the Termination Date, the Tenant may notify the City in writing that it wishes to exercise its option to extend the term of this Ground Lease (an "**Extension Notice**"). Upon Tenant's exercise of this option, the Initial Term will be extended for forty-four (44) years from the Termination Date for a total Ground Lease term not to exceed ninety-nine (99) years.

2.04 Rent During Extended Term. Rent for any extended term will be as set forth in ARTICLE 4.

2.05 Holding Over. Any holding over after expiration or earlier termination of the Term without the City's written consent will constitute a default by Tenant and entitle the City to exercise any or all of its remedies as provided in this Ground Lease, even if the City elects to accept one or more payments of Annual Rent. Failure to surrender the Site in the condition required by this Ground Lease will constitute holding over until the conditions of surrender are satisfied.

ARTICLE 3 FINANCIAL ASSURANCE

Tenant will submit to the City in accordance with the dates specified in the Schedule of Performance, Attachment 2 (the "**Schedule of Performance**"), for approval by the City, evidence satisfactory to the City that Tenant has sufficient equity capital and commitments for the Seismic Work and permanent financing, and/or such other evidence of capacity to proceed with the Seismic Work in accordance with this Ground Lease, as is acceptable to the City. City hereby acknowledges that as of the Agreement Date, Tenant has satisfied this requirement.

ARTICLE 4 RENT

4.01 Annual Rent

4.01(a) Tenant will pay to the City up to Three Hundred Forty Thousand Dollars ($340,000.00) (the "**Annual Rent**") per year for each year of the Term of this Ground

Lease. Annual Rent consists of Base Rent and Residual Rent, as defined in Section 4.02 below, without offset of any kind (except as otherwise permitted by this Ground Lease) and without necessity of demand, notice or invoice. Annual Rent will be re-determined on November 17, 2026 (seventeen years after the date of the Agency Lease), then every fifteen (15) years thereafter, and will be equal to ten percent (10%) of the appraised fair market value of the Site as determined by an MAI appraiser selected by and at the sole cost of the Tenant. Any such adjustment will be made to the Residual Rent and not to the Base Rent.

4.01(b) If the Tenant elects to extend the term of this Ground Lease pursuant to ARTICLE 2 above, Annual Rent (along with any potential future adjustments) during any such extended term will be set by mutual agreement of the parties; provided, however, that Annual Rent during the extended term will in no event be less than the Annual Rent set forth in Section 4.01(a) above. If the parties cannot agree on Annual Rent for the extended term, either party may invoke a neutral third-party process and the parties will agree on a neutral third-party appraiser to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, after the neutral third party process, Tenant, in its sole discretion, may rescind the Extension Notice if it does not wish to extend the Term of this Ground Lease.

4.02 Base Rent

4.02(a) "**Base Rent**" means, in any given Lease Year, Fifteen Thousand Dollars ($15,000) per annum; provided, however, that if the Tenant or any Subsequent Owner fails, after notice and opportunity to cure, to comply with the provisions of Section 9.01, then Base Rent will be increased to the full amount of Annual Rent until such time as the failure under Section 9.01 is cured. Base Rent will be due and payable in arrears on January 31st of each Lease Year. The first Base Rent payment will be due on the January 31st of the calendar year following the Effective Date. Additionally, if a Subsequent Owner elects under Section 26.06(b) to operate the Project without being subject to Section 9.01, then Annual Rent will be adjusted as provided in Section 26.07.

4.02(b) If the Project does not have sufficient Project Income to pay Base Rent in any given Lease Year after the payment of (a) through (d) in the definition of Project Expenses, above, and the City has received written notice from Tenant regarding its inability to pay Base Rent from Project Income at least sixty (60) days before the Base Rent due date, along with supporting documentation for Tenant's position that it is unable to pay Base Rent from Project Income, then the unpaid amount will be deferred and all deferred amounts will accrue without interest until paid ("**Base Rent Accrual**"). The Base Rent Accrual will be due and payable each year from and to the extent of available Surplus Cash. Any Base Rent Accrual will be due and payable upon the earlier of (i) sale of the Project (but not a refinancing or foreclosure of the Project); or (ii) termination of this Ground Lease (unless a new lease is entered into with a mortgagee under Section 26.09 below).

4.02(c) If Tenant has not provided City with the required written notice and documentation under Section 4.02(b)in connection with its claim that it cannot pay Base

Rent due to insufficient Project Income, and/or the City has reasonably determined that Tenant's claim that it is unable to pay Base Rent is not supported by such documentation, the City will assess a late payment penalty of two percent (2%) for each month or any part thereof that any Base Rent payment is delinquent. This penalty will not apply to Base Rent Accrual that has been previously approved by the City under Section 4.02(b). The Tenant may request in writing that the City waive such penalties by describing the reasons for Tenant's failure to pay Base Rent and Tenant's proposed actions to ensure that Base Rent will be paid in the future. The City may, in its sole discretion, waive in writing all or a portion of such penalties if it finds that Tenant's failure to pay Base Rent was beyond Tenant's control and that Tenant is diligently pursuing reasonable solutions to such failure to pay.

4.03 Residual Rent. "**Residual Rent**" means, in any given Lease Year, Three Hundred Twenty-Five Thousand Dollars ($325,000), subject to any periodic adjustments under Section 4.01(a). Residual Rent will be due in arrears on May 15th following each Lease Year. Except as otherwise provided in Section 26.07(a), Residual Rent will be payable only to the extent of Surplus Cash as provided in Section 6.02(g) below, and any unpaid Residual Rent will not accrue. If in any year Surplus Cash is insufficient to pay the full amount of the Residual Rent, then Tenant will certify to the City in writing by May 15 that available Surplus Cash is insufficient to pay Residual Rent and Tenant will provide to City any supporting documentation reasonably requested by City to allow City to verify the insufficiency. If Base Rent is increased to the full Annual Rent as provided in Section 4.02(a) above, then the Residual Rent will not be payable from Surplus Cash, but will be payable as Base Rent under Section 4.02(a) above for so long as the failure under Section 9.01 remains uncured.

4.04 Triple Net Lease. This Ground Lease is a triple net lease and the Tenant will be responsible to pay all costs, charges, taxes, impositions, and other obligations related to the Premises accruing after the Effective Date. If the City pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, the City will be entitled to be reimbursed by Tenant the full amount of such payments as additional rent within thirty (30) days of written demand by City. Failure to timely pay the additional rent will be a default by Tenant of this Ground Lease. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Ground Lease, or otherwise relieves Tenant from any of its obligations under this Ground Lease, or gives Tenant any right to terminate this Ground Lease in whole or in part.

ARTICLE 5 CITY COVENANTS

The City is duly created, validly existing and in good standing under the Law, and has full right, power and authority to enter into and perform its obligations under this Ground Lease. City covenants and warrants that the Tenant and its tenants will have, hold and enjoy, during the Term, peaceful, quiet and undisputed possession of the Site leased without hindrance or molestation by or from anyone so long as the Tenant is not in default under this Ground Lease.

ARTICLE 6 TENANT COVENANTS

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

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

6.02 Use of Premises and Rents. During the Term of this Ground Lease, Tenant and its successors and assigns will comply with the following requirements:

6.02(a) Permitted Uses. Except as provided in Sections 26.06 and 26.07 of this Ground Lease, Tenant will devote the Site to, exclusively and in accordance with, the uses specified in this Ground Lease, as specified in ARTICLE 9 below, which are the only uses permitted by this Ground Lease. Tenant acknowledges that that a prohibition on the change in use contained in Section 9.01 is expressly authorized by California Civil Code section 1997.230 and is fully enforceable.

6.02(b) Non-Discrimination. Tenant will not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or domestic partner status, sexual orientation, or disability (including HIV or AIDS status) in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises, or any part thereof, and Tenant or any person claiming under or through it will not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Residential Occupants, subtenants or vendees on the Premises, or any part thereof, except to the extent permitted by Law or required by funding source. Tenant will not discriminate against tenants with certificates or vouchers under the Section 8 program or any successor rent subsidy program.

6.02(c) Non-Discriminatory Advertising. All advertising (including signs) for sublease of the whole or any part of the Site must include the legend "Equal Housing Opportunity" in type or lettering of easily legible size and design, or as required by applicable Law.

6.02(d) Access for Disabled Persons. Tenant will comply with all applicable Laws providing for access for persons with disabilities, including, but not limited to, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

6.02(e) Equal Opportunity Marketing Plan. Tenant will submit a Fair Housing Marketing Plan to be approved by the City. Any Fair Housing Marketing Plan must follow the City's marketing requirements for such plans.

6.02(f) Lead Based Paint. Tenant agrees to comply with the regulations set forth in 24 CFR Part 35 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in certain residential structures undergoing federally assisted construction and require the elimination of lead-based paint hazards.

6.02(g) Permitted Uses of Surplus Cash. All annual Project Income, before the calculation of Surplus Cash, will be used to pay Project Expenses, including but not limited to Base Rent, and Project Fees. If the Tenant is in compliance with all applicable requirements and agreements under this Ground Lease, Tenant will then use any Surplus Cash to make the following payments in the following order of priority:

i. First to Base Rent Accrual payments, if any;

ii. Second, to replenish the operating reserve account, if necessary, up to the amount required by Lenders;

iii. Third, then one-third (1/3) of remaining Surplus Cash to Tenant as an incentive management fee ("**Incentive Management Fee**")

iv. Fourth, two-thirds (2/3) of remaining Surplus Cash (after payment of the Incentive Management Fee to Tenant) to the City; provided, however, if the Project includes a deferred developer fee and Tenant is in compliance with the City Loan Documents and MOHCD's policies, then fifty percent (50%) of remaining Surplus Cash to the City beginning on the initial Payment Date (as such term is defined in the City Loan Documents) until and including the earlier of the year (i) of the tenth (10th) Payment Date, or (ii) in which all deferred developer fees have been paid to Developer. The City's portion of Surplus Cash will be applied first to repayment of all City loans according to the terms of the City Loan Documents, then to annual Residual Rent; and

v. Then, any remaining Surplus Cash may be used by Tenant for any purposes permitted under Tenant's limited partnership agreement or other contract governing Tenant's use of Surplus Cash.

Notwithstanding the foregoing, Tenant and City agree that the distribution of Surplus Cash may be modified in an amendment to this Ground Lease based on the requirements of other Lenders.

6.03 City Deemed Beneficiary of Covenants. In amplification, and not in restriction, of the provisions of the preceding subsections, it is intended and agreed that the City will be deemed beneficiary of the agreements and covenants provided in this ARTICLE 6 for in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Those agreements and covenants will run in favor of the City for the entire term of those agreements and covenants, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein, or in favor of, to which such agreements and covenants relate. The City will have the exclusive right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

ARTICLE 7 ANNUAL INCOME COMPUTATION, AND CERTIFICATION

Forty-five (45) days after recordation of an NOC (as defined in Section 10.09) by the Tenant for the Improvements, Tenant will furnish to the City a list of the persons who are and Residential Occupants of the Improvements, the specific unit that each person occupies, the household income of the Residential Occupants of each unit, the household size and the rent being charged to the Residential Occupants of each unit along with an income certification, in the form set forth in Attachment 6, for each Residential Occupant. In addition, each Residential Occupant must be required to provide any other information, documents, or certifications deemed necessary by the City to substantiate the Residential Occupant's income. If any state or federal agency requires an income certification for Residential Occupants of the Improvements containing the above-referenced information, the City agrees to accept such certification in lieu of Attachment 6 as meeting the requirements of this Ground Lease. In addition to such initial and annual list and certification, Tenant agrees to provide the same information and certification to the City regarding each Residential Occupant of the Improvements not later than twenty (20) business days after such Residential Occupant commences occupancy.

ARTICLE 8 CONDITION OF SITE—"AS IS"

8.01 Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in its "as-is" condition, without any improvements or alterations by the City, without representation or warranty of any kind, and subject to all applicable Laws governing their use, development, occupancy, and possession. Tenant further represents and warrants that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's intended use. Tenant acknowledges and agrees that neither City nor any of its agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, or the present or future suitability of the Premises for Tenant's use, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose; it being expressly understood that the Premises is being leased in an "AS IS" condition with respect to all matters.

8.02 Accessibility Disclosure. California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

8.03 Presence of Hazardous Substances. California law requires landlords to disclose to tenants the presence of certain Hazardous Substances. Tenant is advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane, and building materials containing chemicals, such as formaldehyde, radon, mold, asbestos-containing materials, lead-based paint, and polychlorinated biphenyls (PCBs).

ARTICLE 9 PERMITTED AND PROHIBITED USES

9.01 Permitted Uses and Occupancy Restrictions. The permitted uses of the Project are limited to eighty (80) units of affordable rental housing plus two (2) unrestricted managers' units (collectively, the "**Residential Units**") and common areas as described in Recital B, above. Each of the current Residential Occupants of the Residential Units (except for the manager's units) who are temporarily displaced during any Seismic Work will have the right to return to their Residential Unit after the Seismic Work on their Units is complete. Upon the Completion of Seismic Work, one hundred percent (100%) of the Residential Units, with the exception of the manager's units, in the Project will be occupied or held vacant and available for rental by Very Low Income Households. Residential Units must be occupied and rented in accordance with all applicable restrictions imposed on the Project by this Ground Lease and by Lenders for so long as such restrictions are required by the applicable Lender.

9.02 Prohibited Uses. Except for uses of the Premises directly related to the Seismic Work performed in accordance with this Ground Lease, Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "**Prohibited Use**" and collectively, "**Prohibited Uses**"), are inconsistent with this Ground Lease, are strictly prohibited and are considered Prohibited Uses:

9.02(a) any activity, or the maintaining of any object, that is not within the Permitted Use;

9.02(b) any activity, or the maintaining of any object, that will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

9.02(c) any activity or object that will overload or cause damage to the Premises;

9.02(d) any activity that constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises, or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Premises;

9.02(e) any activity that will in any way injure, obstruct, or interfere with the rights of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

9.02(f) any vehicle and equipment maintenance, including but not limited to, washing, fueling, changing oil, transmission or other automotive fluids;

9.02(g) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;

9.02(h) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials; or

9.02(i) bars, retail liquor sales, marijuana sales, or any other uses that cater exclusively to adults.

ARTICLE 10 SEISMIC WORK

10.01 City acknowledges that Tenant will be performing certain seismic-related construction work described in the attached ATTACHMENT 4 (the "**Seismic Work**") at the Premises, as required by Freddie Mac (defined in Section 25.01 below). Tenant will undertake and complete Rehabilitation, as provided in this Ground Lease, in accordance with the Schedule of Performance. Tenant will provide City with regular updates regarding the commencement, progress, and completion of that work and any other information that City may reasonably request. If tenant undertakes the Seismic Work but Tenant fails to complete the Seismic Work in accordance with the requirements of this Ground Lease, such failure will be a material default under this Ground Lease and subject to the provisions of Section 19.03 below.

10.02

10.03 Compliance with Local, State and Federal Law. The all work at the Premises, including the Seismic Work, must be in compliance with all applicable Laws. Tenant understands and agrees that the Seismic Work and Tenant's use of the Premises permitted under this Ground Lease will require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, City agencies. Tenant will be solely responsible for obtaining any and all such regulatory approvals. Tenant will bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and will be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Project or City's interest therein must first be approved by City in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval will be immediately paid and discharged by Tenant, and City will have no liability, monetary or otherwise, for any such fines or penalties. Tenant will indemnify, defend, and hold harmless the City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in ARTICLE 21 below) arising in connection with Tenant's failure to obtain or failure by Tenant, its agents, or invitees to comply with the terms and conditions of any regulatory approval.

10.04 Issuance of Building Permits. Tenant will have the sole responsibility for obtaining all necessary building permits and will make application for such permits directly to the City's Department of Building Inspection.

10.05 Performance and Payment Bonds. Before commencement of any Seismic Work, Tenant will deliver to City performance and payment bonds, each for the full value of the cost of the Seismic Work, which bonds will name the City as co-obligee, or such other completion security which is acceptable to the City. The payment and performance bonds may be obtained by Tenant's general contractor and name Tenant and City as co-obligees.

10.06 Times for Construction. Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any part thereof, that Tenant and such successors and assigns will

promptly begin and diligently prosecute the Seismic Work to Completion , and that the Seismic Work will be completed no later than the dates specified in the Schedule of Performance, subject to force majeure, unless such dates are extended by the City.

10.07 Force Majeure. For the purposes of any of the provisions of this Ground Lease, and notwithstanding anything to the contrary, neither the City nor Tenant, as the case may be, will be considered in breach or default of its obligations, and there will not be deemed a failure to satisfy any conditions with respect to the beginning and Completion of the Seismic Work, or progress in respect thereto, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions, due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God, acts of the public enemy, terrorism, fires, earthquakes, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials, unusually severe weather, or delays of subcontractors due to unusual scarcity of materials or labor, or unusually severe weather; it being the purposes and intent of this provision that the time or times for the satisfaction of conditions to this Ground Lease including those with respect to the Seismic Work, will be extended for the period of the delay; provided, however, that the party seeking the benefit of the provisions of this paragraph must have notified the other party of the delay and its causes in writing within thirty (30) days after the beginning of any delay and requested an extension for the reasonably estimated period of the delay;.

10.08 Access to Site. As of the Effective Date and until the Completion of the Seismic Work, Tenant will permit City access to the Premises whenever and to the extent necessary to carry out the purposes of the provisions of this Ground Lease, at reasonable times and upon reasonable advance notice, and on an emergency basis without notice whenever City believes that emergency access is required. After the Completion of the Seismic Work, access to the Premises will be governed by ARTICLE 24, below.

10.09 Notice of Completion. Promptly upon Completion of the Seismic Work, Tenant will file a Notice of Completion ("**NOC**") and record the approved NOC in the San Francisco Recorder's Office. Tenant will provide the City with a copy of the recorded NOC.

10.10 Completion of Seismic Work by New Developer. If a Lender or a successor thereto forecloses, obtains a deed or assignment in lieu of foreclosure, or otherwise realizes upon the Premises and undertakes the Seismic Work ("**New Developer**") (a) the New Developer will not be bound by the provisions of the schedule of performance previously provided by Tenant with respect to any deadlines for the Completion of the Seismic Work but will only be required to Complete the Seismic Work with due diligence and in conformance with a new Schedule of Performance as agreed upon by the New Developer and the City, and (b) the New Developer will only be required to Complete the Seismic Work in accordance with all applicable building codes and ordinances.

ARTICLE 11 INTENTIONALLY OMITTED

ARTICLE 12 CHANGES TO THE IMPROVEMENTS

12.01 Changes. The City has a particular interest in the Project and in the nature and extent of the permitted changes to the Improvements. Accordingly, it imposes the following control on the Premises: during the term of this Ground Lease, neither Tenant, nor any voluntary or involuntary successor or assign, may make or permit any Change (as defined in Section 12.02) in the Improvements, unless the express prior written consent for any change has been requested in writing from the City and received, and, if received, upon such terms and conditions as the City may reasonably require. The City agrees not to unreasonably withhold or delay its response to such a request. City and Tenant acknowledge that the Seismic Work is a Change, and that City has approved the Seismic Work.

12.02 Definition of Change. "**Change**" means any alteration, modification, addition, and/or substitution of or to the Premises, and/or the density of development that differs materially from that which existed upon the Commencement Date in accordance with this Ground Lease. For purposes of the foregoing, "exterior" includes the roof of the Improvements. "Change" does not include any repair, maintenance, cosmetic interior alterations (e.g., paint, carpet, installation of moveable equipment and trade fixtures, and hanging of wall art) in the normal course of operation of the Project, or as may be required in an emergency to protect the safety and well-being of the Project's Residential Occupants.

12.03 Enforcement. Subject to ARTICLE 19 hereof, City will have any and all remedies in law or equity (including, without limitation, restraining orders, injunctions, and/or specific performance), judicial or administrative, to enforce the provisions of this ARTICLE 12, including, without limitation, any threatened or actual breach or violation of this Section.

ARTICLE 13 TITLE TO IMPROVEMENTS

City acknowledges that fee title to the Improvements is vested in Tenant for the Term of this Ground Lease. It is the intent of the Parties that this Ground Lease and the Memorandum of Lease will create a constructive notice of severance of the Improvements from the land without the necessity of a deed from Lessor to Lessee. City and Tenant hereby agree that fee title to the Improvements will remain vested in Tenant during the Term, subject to Section 14.01 below; provided, however, that, subject to the rights of any Lenders and as further consideration for the City entering into this Ground Lease, at the expiration or earlier termination of this Ground Lease, fee title to all the Improvements will vest in the City without further action of any party, without any obligation by the City to pay any compensation to Tenant, and without the necessity of a deed from Tenant to the City. Notwithstanding the foregoing, if requested by the City, upon expiration or sooner termination of this Ground Lease, Tenant will execute and deliver to the City an acknowledged and good and sufficient grant deed conveying to the City Tenant's fee interest in the Improvements. City acknowledges and agrees that any and all depreciation, amortization, and tax credits for federal and state tax purposes relating to the Improvements, fixtures therein, and other property relating thereto will be deducted or credited exclusively to Tenant during the Term and for the tax years during which the Term begins and ends.

ARTICLE 14 ASSIGNMENT, SUBLEASE, OR OTHER CONVEYANCE

14.01 Assignment, Sublease, or Other Conveyance by Tenant. Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its interest in this Ground Lease or in the Improvements or any portion thereof, other than to Lender(s) or affiliates of Lender(s) as provided in this Ground Lease, or allow any person or entity to occupy or use all or any part of the Site, other than leases to Residential Occupants and the managers in the ordinary course of business, and it may not contract or agree to do any of the same, without the prior written approval of the City, which approval will not be unreasonably withheld or delayed. Tenant will provide any background or supporting documentation that the City may require in assessing Tenant's request for approval.

14.02 Assignment, Sublease, or Other Conveyance by City. The parties acknowledge that any sale, assignment, transfer, or conveyance of all or any part of the City's interest in the Site, the Improvements, or this Ground Lease, is subject to this Ground Lease. The City will require that any purchaser, assignee, or transferee expressly assume all of the obligations of the City under this Ground Lease by a written instrument recordable in the Official Records of the City. This Ground Lease will not be affected by any such sale, and Tenant will attorn to any such purchaser or assignee. For the avoidance of doubt, Landlord may not mortgage its fee estate unless there is an express subordination of the fee mortgage to Tenant's Leasehold Estate. If Landlord mortgages its interest in the fee estate during the term of any Lender's loan, Tenant may not subordinate the Ground Lease to the lien of that mortgage.

ARTICLE 15 TAXES

Tenant agrees to pay, or cause to be paid, before delinquency to the proper authority, any and all valid taxes, assessments, and similar charges on the Premises that become effective after the Effective Date of this Ground Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. Tenant will not permit any such taxes, charges, or other assessments to become a defaulted lien on the Site or the Improvements thereon; provided, however, that in the event any such tax, assessment, or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment ,or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof is contested by Tenant in good faith and without expense to the City. If Tenant contests a tax, assessment, or other similar charge, then Tenant will protect, defend, and indemnify the City against all Claims resulting therefrom, and if Tenant is unsuccessful in any such contest, Tenant will immediately pay, discharge, or cause to be paid or discharged, the tax, assessment, or other similar charge. The City will furnish such information as Tenant may reasonably request in connection with any such contest, provided that such information is in the City's possession or control or is otherwise available to the public. City hereby consents to and will reasonably cooperate and assist with Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Premises, or on Tenant's interest therein.

ARTICLE 16 UTILITIES

From and after the Effective Date, Tenant will procure water and sewer service from the City and electricity, telephone, natural gas, and any other utility service from the City or utility companies providing such services, and will pay all connection and use charges imposed in connection with such services. From and after the Effective Date, as between the City and Tenant, Tenant will be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service. All electricity necessary for operations in the Premises must be purchased from San Francisco Public Utilities Commission ("**SFPUC**"), at SFPUC's standard rates charged to third parties, unless SFPUC determines, in its sole judgment, that it is not feasible to provide such service to the Premises. SFPUC is the provider of electric services to City property, and the Interconnection Services Department of SFPUC's Power Enterprise coordinates with Pacific Gas and Electric Company and others to implement this service. To arrange for electric service to the Premises, Tenant will contact the Interconnection Services Department in the Power Enterprise of the SFPUC.

ARTICLE 17 MAINTENANCE AND OPERATION

17.01 Maintenance. Tenant, at all times during the Term, will maintain or cause to be maintained the Premises in good condition and repair to the reasonable satisfaction of the City, including the exterior, interior, substructure, and foundation of the Improvements and all fixtures, equipment, and landscaping from time to time located in, on, or under the Premises or any part thereof. The City will not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Site or any Improvements. Tenant hereby waives all rights to make repairs at the City's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect.

17.02 City's Consent for Work Requiring a Permit. Tenant will not make, or cause or suffer to be made, any repairs or other work for which a permit is required by any applicable building code, standard, or regulation without first obtaining the City's prior written consent and a permit therefor.

17.03 Facilities Condition Report. Every five (5) years beginning on the fifth anniversary date of the recording of the NOC, Tenant will deliver to the City a facilities condition report for the Premises, prepared by a qualified team of construction professionals acceptable to Tenant and the City, describing at a minimum the condition and integrity of the Premises, including the Improvements, the foundation and structural integrity of the buildings, and all utilities systems serving the buildings (the "**Facilities Condition Report**"). Tenant will provide with its submittal of the Facilities Condition Report, an anticipated schedule of and budget for, the repairs identified in the Facilities Condition Report. If the City reasonably believes the Facilities Condition Report does not adequately describe the condition and integrity of the listed items or the timing of required repairs, then the City will notify Tenant of the deficiency and Tenant will revise the Facilities Condition Report to address the City's concerns. If Tenant fails to provide a Facilities Condition Report to City every five (5) years, then the City after giving thirty (30) days' notice to Tenant will have the right, but not the obligation, to cause a Facilities Condition Report to be prepared by a team of construction professionals of the City's

choice, at Tenant's sole cost. Tenant will perform the repairs within the timeframe set forth in the Facilities Condition Report approved by the City.

17.04 City's Right to Inspect. Without limiting ARTICLE 24 below, the City may make periodic inspections of the Premises and other areas for which Tenant has obligations and may advise Tenant when maintenance or repair is required, but such right of inspection will not relieve Tenant of its independent responsibility to maintain the Premises and other areas as required by this Ground Lease in a condition as good as, or better than, their condition at the Completion of the Seismic Work, excepting ordinary wear and tear.

17.05 City's Right to Repair. If Tenant fails to maintain or to promptly repair any damage as required by this Ground Lease (subject to the notice and cure provisions in Section 19.03, except in the event of an emergency as reasonably determined by City), the City may repair the damage at Tenant's sole cost and expense and Tenant will immediately reimburse the City for all costs of the repair.

17.06 Operation. Subject to the Seismic Work, Tenant will maintain and operate the Project in a manner consistent with the maintenance and operation of a safe, clean, well-maintained residential project located in San Francisco. Tenant will be exclusively responsible, at no cost to City, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant will provide (or require others to provide), services as necessary and appropriate to the uses to which the Project are put, including (a) repair and maintenance of the Improvements; (b) utility and telecommunications (including internet/Wi-Fi) services to the extent, if any, customarily provided by equivalent projects located in San Francisco; (c) cleaning, janitorial, pest extermination, recycling, composting, and trash and garbage removal; (d) landscaping and groundskeeping; (e) security services with on-site personnel for the Premises; and (f) sufficient lighting at night for pedestrians along pathways. Tenant will use commercially reasonable efforts to ensure that all of the Premises are used continuously during the Term for the Permitted Use and not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion. Any Residential Unit may remain unoccupied but only to the extent permitted under any applicable regulatory agreements, housing assistance payment contract, and applicable Law.

ARTICLE 18 LIENS

Tenant will use its best efforts to keep the Premises free from any liens arising out of any work performed or materials furnished by itself or its subtenants. If Tenant does not cause a lien to be released of record or bonded around within twenty (20) days following written notice from the City of the imposition of the lien, the City will have, in addition to all other remedies provided in this Ground Lease and by Law, the right (but not the obligation) to cause the lien to be released by any means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by the City for such purpose, and all reasonable expenses incurred by it in connection therewith, will be payable to the City by Tenant on demand. Notwithstanding the foregoing, Tenant will have the right, upon posting of an adequate bond or other security, to contest any lien, and the City will not seek to satisfy or discharge the lien unless Tenant has failed so to do within ten (10) days after the final determination of the validity of the lien. If

Tenant contests a lien, then Tenant will protect, defend, and indemnify the City against all Claims resulting therefrom. The provisions of this Section will not apply to any liens arising before the Effective Date that are not the result of Tenant's contractors, consultants, or activities.

ARTICLE 19 GENERAL REMEDIES

19.01 Application of Remedies. The provisions of this ARTICLE 19 govern the parties' remedies for breach of this Ground Lease.

19.02 Breach by City. If Tenant believes that the City has materially breached this Ground Lease, Tenant must first notify the City in writing of the purported breach, giving the City one hundred twenty (120) days from receipt of such notice to cure the breach. If the City does not cure the breach within the 120-day period, or, if the breach is not reasonably susceptible to cure within that one hundred twenty (120) day period, begin to cure within one hundred twenty (120) days and diligently prosecute then cure to completion, then Tenant will have all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this entire Ground Lease with the written consent of each Lender; (ii) prosecuting an action for damages; (iii) seeking specific performance of this Ground Lease; or (iv) any other remedy available at law or equity.

19.03 Breach by Tenant.

19.03(a) Default by Tenant

Subject to the notice and cure rights under Sections 19.03(b) and 19.04, any of the following events each constitute a basis for the City to take action against Tenant:

(i) Tenant fails to comply with the Permitted Uses and Occupancy Restrictions set forth in Section 9.01;

(ii) Tenant voluntarily or involuntarily assigns, transfers, or attempts to transfer or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements, except as permitted by this Ground Lease or otherwise approved by the City;

(iii) From and after the Effective Date, Tenant, or its successor in interest, fails to pay real estate taxes or assessments on the Premises or any part thereof before delinquency, or places on the Site any encumbrance or lien unauthorized by this Ground Lease, or suffers any levy or attachment, or any material supplier's or mechanic's lien or the attachment of any other unauthorized encumbrance or lien, and the taxes or assessments not have been paid, or the encumbrance or lien removed or discharged within the time period provided in ARTICLE 18; provided, however, that Tenant has the right to contest any tax or assessment or encumbrance or lien as provided in ARTICLE 15 and ARTICLE 18;

(iv) Tenant is adjudicated bankrupt or insolvent or makes a transfer to defraud its creditors, or makes an assignment for the benefit of creditors, or brings or is brought against Tenant any action or proceeding of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy, or reorganization act and, in the event such proceedings are involuntary, Tenant is not dismissed from the proceedings within

sixty (60) days thereafter; or, a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days;

(v) Tenant breaches any other material provision of this Ground Lease; or

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

19.03(b) Notification and City Remedies. Upon the happening of any of the events described in Section 19.03(a) above, and before exercising any remedies, the City will notify Tenant and each Lender in writing of the Tenant's purported breach, failure, or act in accordance with the notice provisions of ARTICLE 38, giving Tenant sixty (60) days from the giving of the notice to cure such breach, failure, or act. If Tenant does not cure or, if the breach, failure, or act is not reasonably susceptible to cure within that sixty (60) day period, does not begin to cure within sixty (60) days and diligently prosecute such cure to completion, then, subject to the rights of any Lender and subject to Section 19.04 and ARTICLE 26, the City will have all of its rights at law or in equity, including, but not limited to

(i) the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Ground Lease in full force and effect and the City may enforce all of its rights and remedies under this Ground Lease, including the right to collect rent when due. During the period Tenant is in default, the City may enter the Premises without terminating this Ground Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant will be liable immediately to the City for all reasonable costs that the City incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as the City deems advisable, subject to any restrictions applicable to the Premises. Tenant will pay the City the rent due under this Ground Lease on the dates the rent is due, less the rent the City receives from any reletting. If the City elects to relet, then rentals received by the City from the reletting will be applied in the following order: (1) to reasonable attorneys' and other fees incurred by the City as a result of a default and costs if suit is filed by the City to enforce its remedies; (2) to the payment of any costs of maintaining, preserving, altering, repairing, and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property and Changes; (3) to the payment of rent due and unpaid; (4) the balance, if any, will be paid to Tenant upon (but not before) expiration of the Term. If that portion of the rentals received from any reletting during any month that is applied to the payment of rent, is less than the rent payable during the month, then Tenant must pay the deficiency to the City. The deficiency will be calculated and paid monthly. No act by the City allowed by this Section will terminate this Ground Lease unless the City notifies Tenant that the City elects to terminate this Ground Lease. After Tenant's default and for as long as the City does not terminate Tenant's right to possession of the Premises by written notice, if Tenant obtains the City's consent Tenant will have the right

to assign or sublet its interest in this Ground Lease, but Tenant shall not be released from liability and the assignment or subletting will not serve to cure the default;

(ii) the City may terminate Tenant's right to possession of the Premises at any time. No act by the City other than giving notice of termination to Tenant will terminate this Ground Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on the City's initiative to protect the City's interest under this Ground Lease will not constitute a termination of Tenant's right to possession. If the City elects to terminate this Ground Lease, then the City has the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Annual Rent and any additional charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. The City's efforts to mitigate the damages caused by Tenant's breach of this Ground Lease will not waive the City's rights to recover damages upon termination;

(iii) The right to have a receiver appointed for Tenant upon application by the City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to the City under this Ground Lease;

(iv) seeking specific performance of this Ground Lease; or

(v) in the case of default under Section 19.03(a)(i), increasing the Base Rent to the full amount of the Annual Rent.

19.04 Reserved.

19.05 City's Right to Cure Tenant's Default. If Tenant defaults in the performance of any of its obligations under this Ground Lease, the City may at any time thereafter after notice and expiration of the applicable cure period (except in the event of an emergency as determined by the City, in which case the may act when the City determines necessary), remedy the default for Tenant's account and at Tenant's expense. Tenant will pay to the City as additional Base Rent, promptly upon demand, all sums expended by the City, or other costs, damages, expenses, or liabilities incurred by the City, including reasonable attorneys' fees, in remedying or attempting to remedy the default. Tenant's obligations under this Section will survive the termination of this Ground Lease. Nothing in this Section implies any duty of the City to do any act that Tenant is obligated to perform under any provision of this Ground Lease, and the City's cure or attempted cure of Tenant's default will not constitute a waiver of Tenant's default or any rights or remedies of the City on account of the default.

19.06 Waiver of Redemption. Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or the City takes possession of the Premises by reason of any default of Tenant hereunder.

19.07 Remedies Not Exclusive. The remedies set forth in Section 19.03(b) are not exclusive; they are cumulative and in addition to any and all other rights or remedies of the City now or later allowed by Law. Tenant's obligations hereunder will survive any termination of this Ground Lease.

ARTICLE 20 DAMAGE AND DESTRUCTION

20.01 Insured Casualty. If the Improvements or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant under this Ground Lease, Tenant will promptly commence and diligently complete the restoration of the Improvements as nearly as possible to the condition thereof before such damage or destruction; provided, however, that if more than fifty percent (50%) of the Improvements are destroyed or are damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to complete the restoration, then Tenant, with the written consent of Lender, may terminate this Ground Lease within thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. If Tenant is required or elects to restore the Improvements, then all proceeds of any policy of insurance required to be maintained by Tenant under this Ground Lease will, subject to any applicable rights of Lenders, be used by Tenant for that purpose and Tenant will make up from its own funds or obtain additional financing as reasonably approved by the City any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost. If Tenant elects to terminate this Ground Lease as provided under this Section 20.01, or elects not to restore the Improvements, then the insurance proceeds will be divided in the order set forth in Section 20.03. If Tenant restores the Improvements as provided in this Section, any insurance proceeds remaining after restoration is completed shall, subject to the applicable rights of any Lender, be retained by Tenant and be considered Project Income.

20.02 Uninsured Casualty. If (i) more than 50% of the Improvements are damaged or destroyed and ten percent (10%) or more of the cost to complete the restoration is not covered by insurance required to be carried under this Ground Lease; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be completed or operated on an economically feasible basis; and (iii) there is not available to Tenant any feasible source of third party financing for restoration reasonably acceptable to Tenant; then Tenant may, with the written consent of each Lender terminate this Ground Lease upon ninety (90) days written notice to the City. If it appears that the provisions of this Section 20.02 may apply to a particular event of damage or destruction, Tenant will notify the City promptly and not consent to any settlement or adjustment of an insurance award without the City's written approval, which approval will not be unreasonably withheld or delayed. If Tenant terminates this Ground Lease under this Section 20.02, then all insurance proceeds and damages payable by reason of the casualty will be divided among City, Tenant, and Lenders in accordance with the provisions of Section 20.03. If Tenant does not have the right, or elects not to exercise the right, to terminate this Ground Lease as a result of an uninsured or underinsured casualty, then Tenant will promptly commence and diligently complete the restoration of the Improvements as nearly as possible to their condition before the damage or destruction in accordance with the provisions of Section 20.01 and will, subject to any applicable rights of Lenders, be entitled to all available insurance proceeds to do so.

20.03 Distribution of the Insurance Proceeds. If Tenant elects to terminate and surrender as provided in either Sections 20.01 or 20.02, then the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by Tenant hereunder will be as follows:

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

20.03(b) Second, to pay for the cost of removal of all debris from the Site or adjacent and underlying property, and for the cost of any work or service required by any Law, for the protection of persons or property from any risk, or for the abatement of any nuisance, created by or arising from the casualty or the damage or destruction caused thereby;

20.03(c) Third, to compensate City for any diminution in the value (as of the date of the damage or destruction) of the Site caused by or arising from the damage or destruction; and

20.03(d) The remainder to Tenant.

20.04 Clean-up of Site. If Tenant terminates this Ground Lease under the provisions of Sections 20.01 or 20.02, then Tenant must all clean up and remove all debris from the Site and adjacent and underlying property and leave the Site in a clean and safe condition and in compliance with all Laws upon surrender, as described in in Section 20.03(b). If the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Section 20.03(b), then Tenant must pay the portion of the costs not covered by the insurance proceeds.

20.05 Waiver. Tenant and the City intend that this Ground Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, the City and Tenant each hereby waive the provisions of Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

ARTICLE 21 DAMAGE TO PERSON OR PROPERTY; HAZARDOUS SUBSTANCES; INDEMNIFICATION

21.01 Damage to Person or Property—General Indemnification. City will not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site, for any injury or damage to the Premises, or to any property of Tenant, or to any property of any other person, entity, or association on or about the Site, unless arising from the active gross negligence or willful misconduct of the City or any of its commissioners, officers, agents, or employees. Tenant will defend, hold harmless, and indemnify the City including, but not limited to, its boards, commissions, commissioners, departments, agencies, and other subdivisions, officers, agents, and employees (each, an "**Indemnified Party**" and collectively the "**Indemnified Parties**"), of and from all claims, loss, damage, injury, actions, causes of action, and liability of every kind, nature and description (collectively, "**Claims**") incurred in connection with or directly or indirectly arising from the Site, this Ground Lease, Tenant's or any occupant's tenancy, its or their use of the Site, including adjoining sidewalks and streets, and any of its or

their operations or activities thereon or connected thereto; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Ground Lease and further excepting only such Claims that are caused exclusively by the willful misconduct or active gross negligence of the Indemnified Parties. The foregoing indemnity will include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and the City's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within any indemnity provision set forth in this Ground Lease even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by the City and continues at all times thereafter. Tenant's obligations under this Article will survive the termination or expiration of this Ground Lease.

21.02 Hazardous Substances—Indemnification.

21.02(a) Tenant will indemnify, defend, and hold the Indemnified Parties harmless from and against any and all Claims of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to violation of any Environmental Law, or any Release, threatened Release, and any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site.

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

(i) "**Hazardous Substance**" has the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Ground Lease, 42 U.S.C. 9601(14), and in addition includes, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code 25316 and 25281(d), all chemicals listed under the California Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition does not include substances that occur naturally on the Site or commercially reasonable amounts of hazardous materials used in the ordinary course of construction and operation of a residential development, provided they are used and stored in accordance with all applicable Laws.

(ii) "**Environmental Law**" means all Laws governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Ground Lease.

(iii) "**Release**" means any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the

environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance.

21.03 Exculpation and Waiver. Tenant, as a material part of the consideration to be rendered to the City, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or active gross negligence. The Indemnified Parties will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss, or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (a) any act or omission of persons occupying adjoining premises or any part of the Premises adjacent to or connected with the Premises, (b) theft, (c) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (d) stopped, leaking, or defective building systems, (d) construction or Site defects, (f) damages to goods, wares, goodwill, merchandise, equipment, or business opportunities, (g) Claims by persons in, upon or about the Premises or any other City property for any cause arising at any time, (h) alleged facts or circumstances of the process or negotiations leading to this Ground Lease before the Effective Date and (i) any other acts, omissions, or causes.

21.04 Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Ground Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Ground Lease will remain effective. Therefore, with respect to the Claims released in this Ground Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

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

Tenant specifically acknowledges and confirms the validity of the release made above and the fact that Tenant was represented by counsel who explained the consequences of the release at the time this Ground Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

21.05 Insurance. The Indemnification requirements under this Ground Lease, or any other agreement between the City and Tenant, will in no way be limited by any insurance requirements under any such agreements.

21.06 Survival. The provisions of ARTICLE 21 will survive the expiration or earlier termination of this Ground Lease.

ARTICLE 22 INSURANCE

22.01 Insurance. The Tenant must maintain insurance meeting the requirements of this Article.

22.01(a) Insurance Requirements for Tenant. During the term of this Ground Lease, Tenant will procure and maintain insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of any work hereunder by the Tenant, its agents, representatives, employees, contractors, or subcontractors and the Tenant's use and occupancy of the Site and the Improvements.

22.01(b) Minimum Scope of Insurance. Coverage must be at least as broad as:

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

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

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

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

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

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

22.01(c) Minimum Limits of Insurance. Tenant must maintain limits no less than:

(i) General Liability: Commercial General Liability insurance with no less than One Million Dollars ($2,000,000) combined single limit per occurrence and Two Million Dollars ($4,000,000) annual aggregate limit for bodily injury and property damage, including coverage for blanket contractual liability (including tort liability and of another party and Tenant's liability of injury or death to persons and damage to property set forth in Section 21.01 above); personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on, alteration or improvement to the Site with risk of explosion, collapse, or underground hazards.

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

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

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

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

(vi) Pollution Liability and/or Asbestos Pollution Liability: Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than $1,000,000 per claim or occurrence and $2,000,000 aggregate per policy period of one year; this coverage must be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Tenant's contractor, provided that the policy must be "claims made" coverage and Tenant must require Tenant's contractor to maintain these minimum limits for no less than three (3) years beyond Completion of the Seismic Work.

(vii) Property Insurance:

(1) Before construction:

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

b. During the course of construction:

i. Builder's risk insurance, special form coverage, excluding earthquake[and flood, for one hundred percent (100%) of the then-current replacement cost of all completed improvements and City property in the care, custody, and control of the Tenant or its contractor, including coverage in transit and storage off-site; the cost

of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable Law; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-project basis; and with a deductible not to exceed Ten Thousand Dollars ($10,000) each loss, including the City and all subcontractors as loss payees.

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

(2) Upon completion of construction:

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

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

22.01(d) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of $25,000 must be declared to and approved by City's Risk Manager. At the option of City's Risk Manager, either: the insurer will reduce or eliminate the deductibles or self-insured retentions with respect to the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees; or the Tenant must procure a financial guarantee satisfactory to the City's Risk Manager guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

22.01(e) Other Insurance Provisions. The policies must contain, or be endorsed to contain, the following provisions:

(i) General Liability and Automobile Liability Coverage: The "City and County of San Francisco and their respective commissioners, members, officers, agents, and employees" are to be covered as additional insured with respect to: liability arising out of activities performed by or on behalf of the Tenant related to the Project; products and completed operations of the Tenant, premises owned, occupied or used by the Tenant related to the Project; and automobiles owned, leased, hired, or borrowed by the Tenant for the operations related to the Project. The coverage may not contain any special limitations on the scope of protection afforded to the City and its Commissioners, members, officers, agents, or employees.

(ii) Workers' Compensation and Property Insurance: The insured will agree to waive all rights of subrogation against the "City and County of San Francisco, and their

respective commissioners, members, officers, agents, and employees" for any losses in connection with this Project.

(iii) Claims-made Coverage: If any of the required insurance is provided under a claims-made form, Tenant will maintain such coverage continuously throughout the term of this Ground Lease and, without lapse, for a period of three years beyond the expiration of this Ground Lease, to the effect that, if occurrences during the contract term give rise to claims made after expiration of the Ground Lease, then those claims will be covered by the claims-made policies.

(iv) All Coverage. Each insurance policy required by this Article must:

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

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

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

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

(5) Any failure to comply with reporting provisions of the policies will not affect coverage provided to the City and its commissioners, members, officers, agents, or employees.

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

(7) The City reserves the right to require an increase in insurance coverage if the City determines that conditions (including, but not limited to, property conditions, market conditions, or commercially reasonable practice) show cause for an increase, unless Tenant demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Tenant.

22.01(f) Acceptability of Insurers. All insurers must have a Best's rating of no less than A-VIII or as otherwise approved by the City's Risk Manager.

22.01(g) Verification of Coverage. Tenant will furnish City with certificates of insurance and with original endorsements effecting coverage required by this clause at the

commencement of this Ground Lease and annually thereafter. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time.

22.01(h) Contractor, Subcontractors, and Consultants Insurance. Tenant must include all subcontractors and consultants as additional insureds under its policies or furnish separate certificates and endorsements for each. Tenant will require the subcontractor(s) and consultants to provide all necessary insurance and to name the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees and the Tenant as additional insureds. All coverage for subcontractors and consultants will be subject to all of the requirements stated herein unless otherwise approved by the City's Risk Manager.

ARTICLE 23 COMPLIANCE WITH SITE-RELATED AND LEGAL REQUIREMENTS

23.01 Compliance with Legal Requirements. From and after the Effective Date, Tenant will at its cost and expense, promptly comply with all applicable Laws now in force or that may later be in force, including, without limitation, the requirements of the fire department or other similar body now or later constituted and with any direction or occupancy certificate issued under any Law as any of them may relate to or affect the condition, use, or occupancy of the Site. If Tenant contests any of the foregoing, Tenant will not be obligated to comply therewith to the extent that the application of the contested Law is stayed by the operation of law or administrative or judicial order and Tenant indemnifies, defends, and holds harmless the Indemnified Parties against all Claims resulting from noncompliance.

23.02 Regulatory Approvals.

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

23.02(b) Tenant understands that the Seismic Work on the Premises and development of the Project will require approval, authorization, or permit by governmental agencies with jurisdiction, which may include the City's Planning Commission and/or Zoning Administrator and the Department of Building Inspection. Tenant must use good faith efforts to obtain and will be solely responsible for obtaining any approvals required for the Project in the manner set forth in this Section. Tenant will not seek any regulatory approval without first obtaining MOHCD's approval, which approval may not be unreasonably withheld or delayed. Throughout the permit process for any regulatory approvals, Tenant will consult and coordinate with MOHCD in Tenant's efforts to obtain permits. MOHCD will cooperate reasonably with Tenant in its efforts to obtain permits; provided, however, Tenant may not agree to the

imposition of conditions or restrictions in connection with its efforts obtain a permit from any other regulatory agency if the City is required to be a co-permittee under the permit or the conditions or restrictions could create any financial or other material obligations on the part of the City whether on or off of the Premises, unless in each instance MOHCD has approved the conditions previously in writing and in MOHCD's reasonable discretion. No approval by MOHCD will limit Tenant's obligation to pay all the costs of complying with conditions under this Section. Tenant must bear all costs associated with applying for and obtaining any necessary regulatory approval, as well as any fines, penalties or corrective actions imposed as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval.

23.02(c) With MOHCD's prior written consent, Tenant will have the right to appeal or contest any condition in any manner permitted by Law imposed upon any regulatory approval. In addition to any other indemnification provisions of this Ground Lease, Tenant must indemnify, defend, and hold harmless the City and its commissioners, officers, agents or employees from and against any and all Claims that may arise in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval or with the appeal or contest of any conditions of any regulatory approval, except to the extent damage arises out of the active gross negligence or willful misconduct of the City or its agents.

ARTICLE 24 ENTRY

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

24.01(a) to determine whether the Premises is in good condition and to inspect the Premises (including soil borings or other Hazardous Substance investigations);

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

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

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

24.01(e) to show the Premises to any prospective purchasers, brokers, Lenders, or public officials, or, during the last year of the Term of this Ground Lease, exhibit the Premises to prospective tenants or other occupants, and to post any reasonable "for sale" or "for lease" signs in connection therewith.

24.02 In the event of any emergency, as reasonably determined by the City, at its sole option and without notice, the City may enter the Premises and alter or remove any Improvements or Tenant's personal property on or about the Premises as reasonably necessary, given the nature of the emergency. The City will have the right to use any and all means the City considers appropriate to gain access to any portion of the Premises in an emergency, in which

case, the City will not be responsible for any damage or injury to any property, or for the replacement of any property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

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

24.04 Tenant will not be entitled to any abatement in Annual Rent if the City exercises any rights reserved in this Section, subject to Section 24.03 above.

24.05 The City will use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Tenant's use of the Premises as permitted by this Ground Lease.

ARTICLE 25 MORTGAGE FINANCING

25.01 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Ground Lease and subject to the prior written consent of the City in the form attached hereto as Attachment 3, which consent will not be unreasonably withheld, conditioned, or delayed, Leasehold Mortgages are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing the acquisition of the Project; refinancing of financing used to acquire or rehabilitate the Project; design, construction, renovation, or reconstruction of the Improvements; and any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Improvements under this Ground Lease and in connection with the operation of the Improvements; and costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Ground Lease. The City acknowledges and accepts Walker & Dunlop, LLC as the permitted permanent lender and its successor and/or assigns, including, but not limited to, the Federal Home Loan Mortgage Corporation ("**Freddie Mac**"), and no further consent from the City is required. The City acknowledges that Tenant intends that Freddie Mac provide permanent financing, provided that the there are no material changes to the terms of the permanent loan from what the City has reviewed, the City consents to the Leasehold Mortgage associated with the Freddie Mac permanent loan to Tenant for the Project and no further consent from the City will be required.

25.02 Holder Not Obligated to Construct. The holder of any mortgage, deed of trust, or other security interest authorized by Section 25.01 ("**Holder**" or "**Lender**"), including the successors or assigns of the Holder, is not obligated to Complete the Seismic Work or to guarantee such Completion; and no covenant or any other provision of this Ground Lease may be construed.to obligate the Holder. However, if the Holder undertakes to complete or guarantee the Completion of the Seismic Work, except as provided in Section 26.06(b), nothing in this Ground Lease will be deemed or construed to permit or authorize the Holder or its successors or assigns to devote the Site or any portion thereof to any uses, or to construct any Improvements on the

Site, other than those uses or Improvements authorized under Section 9.01 and any reasonable modifications in plans proposed by the Holder or its successors in interest proposed for the viability of the Project approved by the City in its reasonable discretion under Section 10.10. Except as provided in Section 26.06(b), to the extent any Holder or its successors in interest wish to change such uses or construct different improvements or materially change the Seismic Work, Holder or its successors in interest must obtain the advance written consent of the City.

25.03 Failure of Holder to Complete Construction. In any case where six (6) months after assumption of obligations under Section 25.02 above, a Lender, having first exercised its option to complete the construction, has not proceeded diligently with completion of the construction, the City will have all the rights against the Holder it would otherwise have against Tenant under this Ground Lease for events or failures occurring after such assumption; subject to any extensions of time granted under Section 10.10 of this Ground Lease.

25.04 Default by Tenant and City's Rights.

25.04(a) Right of City to Cure a Default or Breach by Tenant under a Leaschold Mortgage. In the event of a default or breach by Tenant under any Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of such default or breach, the City may, at its option, cure such breach or default during the one hundred ten (110) days after the date that the Lender files a notice of default. In such event, the City will be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by the City in curing the default or breach. The City will also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent such costs and disbursements are not reimbursed by Tenant. Any such lien will be subject to the lien of any then-existing Leasehold Mortgage authorized by this Ground Lease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Lender filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable Loan Documents, the City will also have the right to assign Tenant's interest in the Ground Lease to another entity, subject to all Lenders' written consent, and which consent may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage and the assignee meeting all reasonable underwriting standards of the Leasehold Mortgage.

25.04(b) Notice of Default to City. Tenant will use its best efforts to require Lender to give the City prompt written notice of any default or breach of the Leasehold Mortgage and each Leasehold Mortgage will provide for that notice to the City and s contain the City's right to cure as above set forth.

25.05 Cost of Mortgage Loans to be Paid by Tenant. Tenant covenants and affirms that it will bear all of the costs and expenses in connection with (a) the preparation and securing of any Leasehold Mortgage, (b) the delivery of any instruments and documents and their filing and recording, if required, and (c) all taxes and charges payable in connection with any Leasehold Mortgage.

ARTICLE 26 PROTECTION OF LENDER

26.01 Notification to City. Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in this ARTICLE 26, Tenant will cause each Lender to give written notice to the City of the Lender's address and of the existence and nature of its Leasehold Mortgage. Execution of Attachment 3 will constitute City's acknowledgement of Lender's having given such notice as is required to obtain the rights and protections of a Lender under this Ground Lease. The City hereby acknowledges Freddie Mac, as permanent lender, and is deemed to have given written notice as a Lender.

26.02 Lender's Rights to Prevent Termination. Subject to the terms and conditions of Section 26.03 below, each Lender has the right, but not the obligation, at any time before termination of this Ground Lease and without payment of any penalty other than the interest on unpaid rent, to pay all of the rents due under this Ground Lease, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant or necessary and proper to be done in the performance and observance of the agreements, covenants, and conditions of this Ground Lease to prevent a termination of this Ground Lease to the same effect as if the same had been made, done, and performed by Tenant instead of by Lender.

26.03 Lender's Rights When Tenant Defaults. If any event of default under this Ground Lease occurs and is continuing, and is not cured within the applicable cure period, the City will not terminate this Ground Lease or exercise any other remedy unless it first gives written notice of the event of default to Lender; and

26.03(a) If the event of default is a failure to pay a monetary obligation of Tenant, Lender will have sixty (60) days from the date that the written notice is given (or deemed given, each as provided in ARTICLE 38 below) from the City to Lender to cure the default; or

26.03(b) If the event of default is not a failure to pay a monetary obligation of Tenant, Lender will have one hundred twenty (120) days of written notice is given (or deemed given, each as provided in ARTICLE 38 below), by City to Lender to either (a) to remedy such default; or (b) to obtain title to Tenant's interest in the Site in lieu of foreclosure; or (c) to commence foreclosure or other appropriate proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in which case such event of default will be remedied or deemed remedied in accordance with Section 26.04 below. If, due to the nature of the default, the default is not capable of cure within one hundred twenty (120) days, then Lender may request from the City an extended period, together with the reasons for its request for extension. City will not unreasonably withhold its approval of such request.

26.03(c) All rights of the City to terminate this Ground Lease as the result of the occurrence of any uncured event of default is subject to, and conditioned upon, the City having first given Lender written notice of the event of default and Lender having failed to remedy such default or acquire Tenant's Leasehold Estate or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Section 26.03.

26.03(d) If the Ground Lease terminates because of a default by Tenant, then Lender shall have the right to request as new lease as provided in and on the terms and conditions of Section 26.09(c).

26.04 Default That Cannot be Remedied by Lender. Any event of default under this Ground Lease that in the nature thereof cannot be remedied by Lender will be deemed to be remedied as it pertains to Lender or any Subsequent Owner if (a) within one hundred twenty (120) days after receiving notice from the City setting forth the nature of such event of default, Lender has acquired Tenant's Leasehold Estate or has commenced foreclosure or other appropriate proceedings in the nature of foreclosure, (b) Lender is diligently prosecuting any such proceedings to completion, (c) Lender has fully cured any event of default arising from failure to pay or perform any monetary obligation (other than Indemnification Obligations) in accordance with Section 26.03, and (d) after gaining possession of the Improvements, Lender diligently proceeds to perform all other obligations of Tenant as and when due in accordance with the terms of this Ground Lease.

26.05 Court Action Preventing Foreclosure. If Lender is prohibited by any process or injunction issued by any court or because of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure, the times specified in Sections 26.03 and 26.04 above for commencing or prosecuting such foreclosure or other proceedings will be extended for the period of such prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy, then the City agrees to enter into a new ground lease with the Lender (or its designee) on the same terms set forth in this Ground Lease. For purpose of this Article, if there is more than one Lender, the City will offer the new lease to each Lender in the order of priority until accepted.

26.06 Lender's Rights to Record, Foreclose, and Assign. The City hereby agrees with respect to any Leasehold Mortgage, that:

26.06(a) the Lender may cause its Leasehold Mortgage to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate to an assignee from whom it may accept a purchase price; subject, however, to Lender's first securing written approval from City, which approval will not be unreasonably withheld, conditioned, or delayed and if the Subsequent Owner has elected to maintain the use restrictions of ARTICLE 9, the Subsequent Owner must be controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code so that the Premises receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code (to the extent such exemption is then generally available). Furthermore, Lender may acquire title to the Leasehold Estate in any lawful way, and if the Lender becomes the assignee, then Lender may sell and assign said Leasehold Estate subject to City approval (which may not be unreasonably withheld, conditioned, or delayed) and to the City's rights under Section 25.04.

26.06(b) each Subsequent Owner must take the Leasehold Estate subject to all of the provisions of this Ground Lease, and must, so long as and only so long as it is the owner of the Leasehold Estate, except as provided elsewhere in this Ground Lease, assume all of the obligations of Tenant under this Ground Lease; provided, however, that, subject to the rent

provisions of Section 26.07 below, the Subsequent Owner may operate and maintain [redacted] residential units without any limitations on the rents charged or the income of the occupants thereof, subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance; and

26.06(c) the City will mail or deliver to any Lender that has an outstanding Leasehold Mortgage a duplicate copy of all notices that the City may give to Tenant under this Ground Lease.

26.06(d) Notwithstanding any term to the contrary contained herein, for so long as Freddie Mac is the First Mortgage Lender with respect to the Leasehold Estate, the consent of Landlord shall not be required in connection with commencement of a foreclosure or deed in lieu of foreclosure by the First Mortgage Lender or for the first assignment following the First Mortgage Lender's acquisition of Tenant's interest in the Premises through foreclosure or exercise of remedies in lieu of foreclosure under the Leasehold Mortgage, provided, however, that any such assignment shall be to an entity (Subsequent Owner) controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Premises receives an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code (to the extent such exemption is then generally available) and such entity (Subsequent Owner) shall have elected to maintain the use restrictions of ARTICLE 9. Any subsequent assignment or transfer of this Ground Lease shall require the reasonable consent of Landlord.

26.07 Ground Lease Rent after Lender Foreclosure or Assignment. From and after the time that the Subsequent Owner acquires title to the Leasehold Estate, Annual Rent will be set as follows:

26.07(a) Any accrued Annual Rent at the time of foreclosure will be forgiven by the City, and will not be an obligation of the Lender, its assignee, or the Subsequent Owner. After foreclosure or assignment of the Leasehold Estate to the Lender in lieu of foreclosure, if the Lender continues to operate the Project subject to the use and occupancy restrictions of Section 9.01, then Annual Rent otherwise due may, at the option of the Lender, be deferred until the earlier of the date of the Lender's sale or assignment of the Project to a Subsequent Owner that does not agree to operate the Project subject to such restrictions or the date that is sixty (60) days after Lender ceases to operate the Project in accordance with those restrictions. All deferred Annual Rent will accrue, with simple interest at six percent (6%) per annum until paid.

26.07(b) If the Subsequent Owner exercises its rights under Section 26.06(b) to operate the Project without being subject to Section 9.01, then Annual Rent will be set at the then fair market rental value taking into account any affordability restrictions agreed to by the Subsequent Owner, if any, and the Base Rent will be increased to the new fair market rent under this Section 26.07(b) and the provisions of Section 6.02(g) will be suspended; provided, however, that the City will be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole discretion and, in such case, the Subsequent Owner will be required to reduce rent charged to tenants on a dollar for dollar basis, with respect to such aggregate units occupied by Very Low Income Households as the City and the Subsequent Owner may agree.

The fair market rental value will be determined by a jointly-commissioned appraisal (instructions prepared jointly by the Subsequent Owner and the City, with each party paying one half of the appraiser's fee) that will include a market land valuation, as well as a market land lease rent level. Absent a market land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%) of the then appraised market land value. If the parties cannot agree on the joint appraisal instructions, either party may invoke a neutral third-party process to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. But, after the neutral third party process, the Lender, in its sole discretion, may rescind its written notification of intent to not comply with Section 9.01 of this Ground Lease.

26.08 Permitted Uses After Lender Foreclosure. Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Premises must be operated in accordance with the uses specified in the building permit with all addenda, as approved by the City's Department of Building Inspection.

26.09 Preservation of Leasehold Benefits. Until such time as a Lender notifies the City in writing that the obligations of the Tenant under its Loan Documents have been satisfied, the City agrees:

26.09(a) That subject to Section 19.03(b) the City will not voluntarily cancel or surrender this Ground Lease, or accept a voluntary cancellation or surrender of this Ground Lease by Tenant, or amend this Ground Lease to materially increase the obligations of the Tenant or the rights of the City under this Ground Lease, without the prior written consent of the Lender (which may not be unreasonably withheld or delayed);

26.09(b) That the City will not enforce against a Lender any waiver or election made by the Tenant under this Ground Lease that has a material adverse effect on the value of the Leasehold Estate without the prior written consent of the Lender (which will not be unreasonably withheld or delayed);

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

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

26.10 No Merger. The Leasehold Estate will not merge with the fee interest in the Site, notwithstanding ownership of the leasehold and the fee by the same person, without the prior written consent of each Lender.

26.11 City Bankruptcy.

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

26.11(b) The City acknowledges that (i) the Tenant seeks to perform the Seismic Work on the existing Improvements on the Premises using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both the Tenant and the Lenders to sell the Premises free and clear of the Leasehold Estate. Therefore, the City waives its right to sell the City's fee interest in the Site under section 363(f) of the Bankruptcy Code, free and clear of the Leasehold Estate.

26.11(c) If a bankruptcy proceeding is filed by or on behalf of the City, the City agrees as follows:

(i) the Tenant will be presumed to have objected to any attempt by the City to sell the fee interest free and clear of the Leasehold Estate;

(ii) if Tenant does not so object, each Lender will have the right to so object on its own behalf or on behalf of the Tenant; and

(iii) in connection with any such sale, the Tenant will not be deemed to have received adequate protection under section 363(e) of the Bankruptcy Code, unless it has received and paid to each Lender the outstanding balance under its respective loan.

26.11(d) City recognizes that the Lenders are authorized on behalf of the Tenant to vote, participate in, or consent to any bankruptcy, insolvency, receivership, or court proceeding concerning the Leasehold Estate.

26.12 Limitation on Liability. The liability of a First Mortgage Lender shall be limited at all times to the value of its respective leasehold interests under this Ground Lease and to the Improvements. In the event of a foreclosure of the Leasehold Mortgage, First Mortgage Lender (i) except for nonmonetary defaults that are continuing after foreclosure or transfer and are capable of cure by the First Mortgage Lender, shall only be liable to Landlord for acts and omissions during the period in which First Mortgage Lender is the holder of title to the Leasehold Estate, and (ii) shall be automatically released by Landlord from the acts and omissions of Tenant occurring prior to its acquisition of title to the Leasehold Estate. This limitation on liability shall not extend to Subsequent Owners, except that if Freddie Mac as the First Mortgage Lender assigns Tenant's interest in the Premises through foreclosure or exercise of remedies in lieu of foreclosure under the Leasehold Mortgage, then the foregoing limitation on liability shall extend to Freddie Mac's initial assignee.

26.13 Lender May Exercise Extension. Notwithstanding any default under this Ground Lease (other than those that Subsequent Owner is required to cure under the terms of this Ground Lease) or any default under the Loan Documents, from and after the time that the Subsequent Owner acquires title to the Leasehold Estate, that Subsequent Owner will have the right to extend the Initial Term for the period provided in Section 2.03 upon delivery of the Extension Notice under the terms of Section 2.03.

ARTICLE 27 CONDEMNATION AND TAKINGS

27.01 Parties' Rights and Obligations to be Governed by Agreement. If, during the term of this Ground Lease, there is any condemnation of all or any part of the Premises or any interest in the Leasehold Estate is taken by condemnation, the rights and obligations of the parties will be determined under this ARTICLE 27, subject to the rights of any Lender. Accordingly, Tenant waives any right to terminate this Ground Lease upon the occurrence of a partial condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as those sections may from time to time be amended, replaced, or restated

27.02 Notice. In case of the commencement of any proceedings or negotiations that might result in a condemnation of all or any portion of the Premises during the Term, the party learning of such proceedings will promptly give written notice of the proceedings or negotiations to the other party. The notice will describe with as much specificity as is reasonable, the nature and extent of such condemnation or the nature of such proceedings or negotiations and of the condemnation that might result, as the case may be.

27.03 Total Taking. If the Site is totally taken by condemnation, this Ground Lease will terminate on the date the condemnor has the right to possession of the Site.

27.04 Partial Taking. If any portion of the Site is taken by condemnation, this Ground Lease will remain in effect, except that Tenant may, with Lender's written consent, elect to terminate this Ground Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Tenant's continued use of the Site. If Tenant elects to terminate this Ground Lease, Tenant must exercise its right to terminate under this paragraph by giving notice to the City within thirty (30) days after the City notifies Tenant of the nature and the extent of the taking. Tenant's termination notice must include the date of termination, which date may not be earlier than thirty (30) days or later than six (6) months after the date of Tenant's notice; except that this Ground Lease will terminate on the date the condemnor has the right to possession of the Site if that date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Ground Lease within the thirty (30) day notice period, this Ground Lease will continue in full force and effect.

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

27.06 Restoration of Improvements. If there is a partial taking of the Improvements and this Ground Lease remains in full force and effect under Section 27.04, then Tenant may, subject to the terms of the Leasehold Mortgage, use the proceeds of the taking to accomplish all necessary restoration to the Improvements.

27.07 Award and Distribution. Any compensation awarded, paid, or received on a total or partial condemnation of the Premises or threat of condemnation of the Premises will belong to and be distributed in the following order:

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

27.07(b) Second, to the Tenant in an amount equal to the then fair market value of Tenant's interest in the Improvements and its Leasehold Estate (including, but not limited to, the value of Tenant's interest in all subleases to occupants of the Site), such value to be determined as it existed immediately preceding the earliest taking or threat of taking of the Site; and;

27.07(c) Third, to the Landlord.

27.07(d) Notwithstanding anything to the contrary set forth in this Section, any portion of the compensation awarded that has been specifically designated by the condemning authority or in the judgment of any court to be payable to the City or Tenant on account of any interest in the Premises or the Improvements separate and apart from the condemned land value, the value of the City's reversionary interest in the Improvements, Tenant's Leasehold Estate, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term, will be paid to the City or Tenant, as applicable, as so designated by the condemning authority or judgment. If, while Freddie Mac is the First Mortgage Lender, a portion of the compensation specifically designated awarded by the condemning authority or in the judgment of a court is payable to the City for amounts in excess of the value of City's interest in the Site, then the City hereby assigns that excess amount to Freddie Mac as First Mortgage Lender for distribution as provided in Section 27.07(a) through 27.07(c) above.

27.08 Payment to Lenders. In the event the Improvements are subject to the lien of a Leasehold Mortgage on the date when any compensation resulting from a condemnation or threatened condemnation is to be paid to Tenant, the award will be disposed of as provided in the Leasehold Mortgages.

27.09 Temporary Condemnation. .If there is a condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term, this Ground Lease will remain in full force and effect, there will be no abatement of Rent, and the entire award will be payable to Tenant.

27.10 Personal Property; Goodwill. Notwithstanding Section 27.07, the City will not be entitled to any portion of any award payable in connection with the condemnation of the Personal Property of Tenant or any of its subtenants, or any moving expenses, loss of goodwill or

business loss or interruption of Tenant, severance damages with respect to any portion of the Premises remaining under this Ground Lease, or other damages suffered by Tenant.

ARTICLE 28 ESTOPPEL CERTIFICATE

The City or Tenant, as the case may be, will execute, acknowledge, and deliver to the other and/or any Lender, promptly upon request, its certificate certifying (a) that this Ground Lease is unmodified and in full force and effect (or, if there have been modifications, that this Ground Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which rent has been paid, (c) whether there are then existing any charges, offsets, or defenses against the enforcement by the City or Tenant to be performed or observed and, if so, specifying them, and (d) whether there are then existing any defaults by Tenant or the City in the performance or observance by Tenant or the City of any agreement, covenant, or condition on the part of Tenant or the City to be performed or observed under this Ground Lease, and whether any notice has been given to Tenant or the City of any default that has not been cured and, if so, specifying the uncured default.

ARTICLE 29 SURRENDER AND QUITCLAIM

29.01 Surrender.

29.01(a) Upon expiration or earlier termination of this Ground Lease, Tenant will surrender to the City the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for Casualty or Condemnation as described in ARTICLE 20 and ARTICLE 27). Ordinary wear and tear will not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Ground Lease. The Premises must be surrendered clean, free of debris, waste, and Hazardous Substances, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Ground Lease and any other encumbrances created or approved in writing by the City. On or before the expiration or earlier termination of this Ground Lease, Tenant at its sole cost will remove from the Premises, and repair any damage caused by removal of, Personal Property, including any signage. Improvements and Changes will remain in the Premises as City property and title to the Improvements and any Changes will be conveyed to the City as provided in ARTICLE 13 above.

29.01(b) If the Premises is not surrendered at the end of the Term or sooner termination of this Ground Lease, and in accordance with the provisions of this ARTICLE 29, Tenant will continue to be responsible for the payment of Annual Rent until the Premises is surrendered in accordance with this ARTICLE 29., and Tenant will indemnify, defend and hold harmless the Indemnified Parties from and against any and all Claims resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of the City to obtain possession of the Premises; any loss or liability resulting from any Claim against the City made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to the City due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

29.01(c) No act or conduct of the City or MOHCD, including, but not limited to, the acceptance of the keys to the Premises, will constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from the City to Tenant confirming termination of this Ground Lease and surrender of the Premises by Tenant will constitute acceptance of the surrender of the Premises and accomplish a termination of this Ground Lease.

29.02 Quitclaim. Upon the expiration or earlier termination of this Ground Lease, the Premises will automatically, and without further act or conveyance on the part of Tenant or the City, become the property of the City, free and clear of all liens and without payment therefor by the City, as provided in ARTICLE 13. Upon expiration or sooner termination of this Ground Lease, Tenant must surrender the Site to the City and, at the City's request, will execute, acknowledge, and deliver to the City a good and sufficient quitclaim deed other instrument disclaiming to any interest of Tenant in the Premises.

29.03 Abandoned Property. Any items, including Personal Property, not removed by Tenant will be deemed abandoned. The City may retain, store, remove, and sell or otherwise dispose of abandoned Personal Property, and Tenant waives all Claims against the City for any damages resulting from the City's retention, removal, and disposition of abandoned Personal Property; provided, however, that Tenant will be liable to the City for all costs incurred in storing, removing, and disposing of abandoned Personal Property and repairing any damage to the Premises resulting from its removal. Tenant agrees that the City may elect to sell abandoned Personal Property and offset against the sales proceeds the City's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993, the benefits of which Tenant waives.

29.04 Survival. Tenant's obligation under this ARTICLE 29 will survive the expiration or earlier termination of this Ground Lease.

ARTICLE 30 EQUAL OPPORTUNITY

In the selection of all contractors and professional consultants for the Project, Tenant must comply with the City's procurement requirements and procedures as described in the Contracting Manual (2006 Amendment) for Federally Funded Construction Projects Financed by the Mayor's Office of Housing, issued by MOHCD on November 18, 2002, as amended on May 22, 2007, as the same may be further amended from time to time, and with the requirements of the Small Business Enterprise Program ("**SBE Program**") as set forth in that certain Small Business Enterprise Program manual dated July 1, 2015, as it may be amended from time to time, according to the procedures established by the City's Contract Monitoring Division. The Project must comply with the training, hiring, and contracting requirements of Section 3 of the Housing and Community Development Act of 1968 and of the San Francisco Section 3 program as administered by MOHCD. Federal Section 3 requirements state that contracts and opportunities for job training and employment be given, to the greatest extent feasible, to local low-income residents. Local residents for this project are San Francisco residents. In addition, this project will be required to comply with hiring requirements as incorporated into the local Section 3 program and in conjunction with the City's low-income hiring requirements under San Francisco's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83).

ARTICLE 31 CITY PREFERENCE PROGRAMS

To the extent permitted by applicable Law, Tenant agrees to comply with the requirements of the City's current housing preference programs, as amended from time to time; provided, however, that such requirements will apply only to the extent permitted by the requirements of non-City funding approved by the City for the Project.

ARTICLE 32 LABOR STANDARDS PROVISIONS

Although the Parties acknowledge that the development of the Project is a private work of improvement, Tenant agrees that any person performing labor in the construction of the Seismic Work and any other Change to the Premises that Tenant performs or causes to be performed under this Ground Lease, will be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant will include in any contract for construction or demolition at the Project a requirement that all persons performing labor under the contract will be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant will require any contractor to provide, and will deliver to City upon request, certified payroll reports for all persons performing labor in the construction at the Project or any Change to the Premises.

ARTICLE 33 CONFLICT OF INTEREST

No commissioner, official, or employee of the City may have any personal or financial interest, direct or indirect, in this Ground Lease, and any such commissioner, official, or employee may not participate in any decision relating to this Ground Lease that affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested.

ARTICLE 34 NO PERSONAL LIABILITY

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

ARTICLE 35 ENERGY CONSERVATION

Tenant agrees that it will use its best efforts to maximize provision of, and incorporation of, both energy conservation techniques and systems and improved waste-handling methodology in the Seismic Work and any other Change.

ARTICLE 36 WAIVER

The waiver by the City or Tenant of any term, covenant, agreement or condition in this Ground Lease will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement, or condition in this Ground Lease, and no custom or practice

that may grow up between the parties in the administration of this Ground Lease may be construed to waive or to lessen the right of the City or Tenant to insist upon the performance by the other in strict accordance with the its terms. The subsequent acceptance of rent or any other sum by the City will not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, agreement, or condition of this Ground Lease, other than the failure of Tenant to pay the particular rent or other sum accepted, regardless of the City's knowledge of the preceding breach at the time of acceptance of such rent or other sum. Any waiver by the City or Tenant of any term or provision of this Ground Lease must be in writing.

ARTICLE 37 TENANT RECORDS

Upon reasonable notice during normal business hours, and as often as the City may deem necessary, Tenant will make available to the City and its authorized representatives for examination all records, reports, data, and information made or kept by Tenant regarding its activities or operations on the Site. Nothing contained in this Ground Lease will entitle the City to inspect personal histories of residents or lists of donors or supporters. To the extent that it is permitted by Law to do so, the City will respect the confidentiality requirements of Tenant in regard to the lists above of the names of Residential Occupants of the Premises furnished by Tenant under to ARTICLE 7 above.

ARTICLE 38 NOTICES AND CONSENTS

All notices, demands, consents, or approvals that may be given or are required to be given by either party to the other under this Ground Lease must be in writing and will be deemed to have been fully given when delivered in person to such representatives of the Tenant, and the City, or when deposited in the United States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and addressed

if to Tenant at:	Turk & Eddy Associates, L.P. c/o Tenderloin Neighborhood Development Corporation 201 Eddy Street San Francisco, CA 94102 Attn: Executive Director
With a copy to:	Goldfarb & Lipman LLP 1300 Clay Street, 11th Floor Oakland, CA 94612 Attn: Robert C. Mills
if to the City at:	San Francisco Mayor's Office of Housing and Community Development One South Van Ness Avenue, 5th Floor San Francisco, California 94103 Attn.: Director

or to such other address with respect to either party as that party may from time to time designate by notice to the other given under the provisions of this ARTICLE 38. Any notice

given under this ARTICLE 38 will be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt. Courtesy copies of notices may be delivered by email, but no notice will be deemed binding or given if given solely by email.

ARTICLE 39 HEADINGS

Any titles of the paragraphs, articles, and sections of this Ground Lease are inserted for convenience only and will be disregarded in construing or interpreting any of its provisions. "Paragraph," "article," and "section" may be used interchangeably.

ARTICLE 40 SUCCESSORS AND ASSIGNS

This Ground Lease will be binding upon and inure to the benefit of the successors and assigns of the City and Tenant and where the term "Tenant" or "City" is used in this Ground Lease, it means and includes their respective successors and assigns; provided, however, that the City will have no obligation under this Ground Lease to, and no benefit of this Ground Lease will accrue to, any unapproved successor or assign of Tenant where City approval of a successor or assign is required by this Ground Lease. If and when the City sells the Site to any third party, City will require such third party to assume all of the City's obligations under this Ground Lease arising on and after the transfer in writing for the benefit Tenant and its successors and assigns.

ARTICLE 41 TIME

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

ARTICLE 42 PARTIAL INVALIDITY

If any provisions of this Ground Lease are determined to be illegal or unenforceable, that determination will not affect any other provision of this Ground Lease and all the other provisions of this Ground Lease will remain in full force and effect.

ARTICLE 43 APPLICABLE LAW; NO THIRD PARTY BENEFICIARY

This Ground Lease is governed by and construed under the laws of the State of California. Other than the benefits and rights afforded to the Lenders, this Ground Lease is entered into solely among, between, and for the benefit of, and may be enforced only by, the parties hereto and does not create rights in any other third party.

ARTICLE 44 ATTORNEYS' FEES

If either the City or Tenant fails to perform any of its obligations under this Ground Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Ground Lease, the defaulting party or the party non-prevailing party in such dispute, as the case may be, will pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights under this Ground Lease (whether or not such action is prosecuted to a judgment). For purposes of this Ground Lease, reasonable attorneys' fees of the City's Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" also includes, without limitation, all fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which the fees were incurred .The term "costs" means the costs and expenses of counsel to the parties, which may include printing, duplicating, and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

ARTICLE 45 EXECUTION IN COUNTERPARTS

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

ARTICLE 46 BROKERS

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Ground Lease or Leasehold Estate. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, the party through whom the broker or finder makes a claim will be responsible for such commission or fee and will indemnify, defend and hold harmless the other party from any and all Claims. The provisions of this Section shall survive any termination of this Ground Lease.

ARTICLE 47 RECORDATION OF MEMORANDUM OF GROUND LEASE

This Ground Lease may not be recorded, but a memorandum of this Ground Lease will be recorded in the form attached hereto as Attachment 5 ("**Memorandum of Ground Lease**"). The parties will execute the memorandum in form and substance as required by a title insurance company insuring Tenant's leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive notice of the Ground Lease to subsequent purchasers and mortgagees.

ARTICLE 48 SURVIVAL

Termination or expiration of this Ground Lease will not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Ground Lease, the ability to collect any damages or sums due, and it will not affect any provision of this Ground Lease that expressly states it will survive termination or expiration of this Ground Lease.

ARTICLE 49 TRANSFER OF PARTNERSHIP INTERESTS IN TENANT

Tenant may not cause or permit any voluntary transfer, assignment, or encumbrance of its interest in the Site or Project or of any ownership interests in Tenant, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases, or occupancy agreements to Residential Occupants; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion, or (c) any transfer by foreclosure or assignment in lieu of foreclosure Any other transfer, assignment, encumbrance, or lease without the City's prior written consent will be voidable and, at the City's election, constitute a default under this Agreement. The City's consent to any specific assignment, encumbrance, lease, or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Ground Lease.

ARTICLE 50 CITY PROVISIONS

50.01 Non-Discrimination.

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

50.01(b) Subleases and Other Subcontracts. Tenant must include in all subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to the subtenant or other subcontractor in substantially the form of Section 50.01(a) above. In addition, Tenant must incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)–(k), and 12C.3 of the San Francisco Administrative Code and must require all subtenants and other subcontractors to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Ground Lease.

50.01(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Ground Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Ground Lease elsewhere within the United States,

discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits (collectively "**Core Benefits**"), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity under state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

50.01(d) Condition to Lease. As a condition to this Ground Lease, Tenant must execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Commission.

50.01(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by Parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Ground Lease as though fully set forth herein. Tenant must comply fully with and be bound by all of the provisions that apply to this Ground Lease under those Chapters of the Administrative Code, including, but not limited to, the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that under Section 12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Ground Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

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

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

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

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

50.05 Tropical Hardwood/Virgin Redwood Ban. Under Section 804(b) of the San Francisco Environment Code, the City and County of San Francisco 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 permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant will not use any items in the rehabilitation, development, or operation of the Premises or otherwise in the performance of this Ground Lease that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

50.06 Tobacco Product Advertising, Sales, Manufacture, and Distribution Ban. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products will be allowed on the Premises. The foregoing prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product, or on any sign. The foregoing prohibition will not apply to any advertisement sponsored by a state, local, or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as those capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

50.07 Pesticide Ordinance. Tenant must comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**"), which (a) prohibit the use of certain pesticides on City property, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (c) require Tenant to submit to the City's Department of the Environment an integrated pest management ("**IPM**") plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Ground Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant must comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing in this Ground Lease will prevent Tenant, acting through the City, from seeking a determination

from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

50.08 Compliance with City's Sunshine Ordinance. Tenant understands and agrees that under the City's Sunshine Ordinance (S.F. Admin. Code, Chapter 67) and the State Public Records Law (Cal. Gov. Code §§ 6250 *et seq.*), this Ground Lease and any and all records, information and materials submitted to the City hereunder are public records subject to public disclosure. Tenant hereby authorizes the City to disclose any records, information, and materials submitted to the City in connection with this Ground Lease as required by Law. Further, Tenant specifically agrees to conduct any meeting of its governing board that addresses any matter relating to the Project or to Tenant's performance under this Ground Lease as a passive meeting.

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

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

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

50.10(b) If Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, Tenant will have no obligation to comply with Section 50.10(a) above.

50.10(c) Tenant's failure to comply with the HCAO will constitute a material breach of this Ground Lease. If Tenant fails to cure its breach within thirty (30) days after receiving the City's written notice of a breach of this Ground Lease for violating the HCAO or, if the breach cannot reasonably be cured within the 30-day period and Tenant fails to commence efforts to cure within the 30-day period, or thereafter fails diligently to pursue the cure to completion, then the City will have the right to pursue the remedies set forth in Section

12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to the City.

50.10(d) Intentionally Omitted.

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

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

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

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

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

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

50.10(k) If Tenant is exempt from the HCAO when this Ground Lease is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with the City to reach $75,000, all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and MOHCD to be equal to or greater than $75,000 in the fiscal year.

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

50.12 Resource-Efficient Building Ordinance. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant will comply with the applicable provisions of such code sections as those sections may apply to the Premises.

50.13 Drug Free Work Place. Tenant acknowledges that under the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its agents, or assigns will be deemed a material breach of this Ground Lease.

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

50.15 Nondisclosure of Private Information. Tenant agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "**Nondisclosure of Private Information Ordinance**"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated and made a part of this Ground Lease as though fully set forth. Capitalized terms used in this section and not defined in this Ground Lease have the meanings assigned to those terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

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

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

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

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

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

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

50.15(d) Any failure of Tenant to comply with the Nondisclosure of Private Information Ordinance will be a material breach of this Ground Lease. In such an event, in addition to any other remedies available to it under equity or law, City may terminate this Ground Lease, debar Tenant, or bring a false claim action against Tenant.

50.16 Graffiti.

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

50.16(b) Tenant will remove all graffiti from the Premises and any real property owned or leased by Tenant in the City and County of San Francisco within forty-eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn, or painted on any building, structure, fixture, or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards, and fencing surrounding construction Premises, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code section 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 *et seq.*). Any failure of Tenant to comply with this section of this Ground Lease will constitute an event of default of this Ground Lease.

50.17 Incorporation. Each and every provision of the San Francisco Administrative Code described or referenced in this Ground Lease is hereby incorporated by reference as though fully set forth herein. Failure of Tenant to comply with any provision of this Ground Lease relating to any such code provision will be governed by ARTICLE 19 of this Ground Lease,

unless (i) such failure is otherwise specifically addressed in this Ground Lease or (ii) such failure is specifically addressed by the applicable code section.

50.18 Food Service Waste Reduction. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Ground Lease as though fully set forth herein. Accordingly, Tenant acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease, and shall instead use suitable Biodegradable/ Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Ground Lease. By entering into this Ground Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars ($100.00) liquidated damages for the first breach, Two Hundred Dollars ($200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars ($500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Ground Lease was made. Those amounts will not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Tenant's failure to comply with this provision.

50.19 Local Hire Requirements. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Improvements and Changes (as defined in this Ground Lease) are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than $750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant will contact City's Office of Economic Workforce and Development ("**OEWD**") to verify if the Local Hiring Requirements apply to the work (*i.e.*, whether the work is a "**Covered Project**").

Tenant will include, and will require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each contract must name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant will cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Ground Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

50.20 Criminal History in Hiring and Employment Decisions.

50.20(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "**Chapter 12T**"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Site.

50.20(b) Tenant will incorporate by reference the provisions of Chapter 12T in all subleases of a portion or all of the Premises, if any, and will require all subtenants to comply with its provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Ground Lease.

50.20(c) Tenant and subtenants (if any) may not inquire about, require disclosure of, or if such information is received base an Adverse Action (as defined in Chapter 12T) on an applicant's or potential applicant for employment, or employee's: (1) Arrest (as defined in Chapter 12T) not leading to a Conviction (as defined in Chapter 12T), unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

50.20(d) Tenant and subtenants (if any) may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Section 50.20(c) above. Tenant and subtenants (if any) may not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

50.20(e) Tenant and subtenants (if any) will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Site, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

50.20(f) Tenant and subtenants (if any) will post the notice prepared by the Office of Labor Standards Enforcement ("**OLSE**"), available on OLSE's website, in a conspicuous place at the Site and at other workplaces within San Francisco where interviews for job opportunities at the Site occur. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Site or other workplace at which it is posted.

50.20(g) Tenant and subtenants (if any) understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T or this Ground Lease, including but not limited to a penalty of $50 for a second violation and $100 for a subsequent violation for each

employee, applicant, or other person as to whom a violation occurred or continued, termination, or suspension in whole or in part of this Ground Lease.

50.20(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

50.21 Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code Section 23.61. Tenant will require its Contractors and Subcontractors performing **(i)** labor in connection with a "public work" as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or **(ii)** Covered Construction, at the Premises to **(1)** pay workers performing such work not less than the Prevailing Rate of Wages, **(2)** provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and **(3)** employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant will include, and will require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract must name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Ground Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, contact the City's Office of Labor Standards Enforcement.

50.22 Consideration of Salary History Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Agreement or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at https://sfgov.org/olse/consideration-salary-history.

50.23 Sugar-Sweetened Beverage Prohibition. Tenant agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Ground Lease.

50.24 Taxes, Assessments, Licenses, Permit Fees and Liens.

50.24(a) Tenant recognizes and understands that this Ground Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

50.24(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the Leasehold Estate created and to pay all other taxes, excises, licenses, permit charges, and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which must be paid when the same become due and payable and before delinquency.

50.24(c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

50.24(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Ground Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Tenant must provide a copy of this Ground Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Ground Lease to the County Assessor will be a default under this Ground Lease. Tenant will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

50.25 Vending Machines; Nutritional Standards. Tenant may not install or permit any vending machine on the Premises without the prior written consent of Landlord. Any permitted vending machine must comply with the food nutritional and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 50.25 will be deemed a material breach of this Ground Lease. Without limiting Landlord's other rights and remedies under this Ground Lease, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

50.26 San Francisco Packaged Water Ordinance. Tenant agrees to comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Tenant shall not sell, provide or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Agreement or on City property unless Tenant obtains a waiver from the

City's Department of the Environment. If Tenant violates this requirement, the City may exercise all remedies in this Agreement and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

50.27 All-Gender Toilet Facilities. If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact MOHCD for guidance.

ARTICLE 51 COMPLETE AGREEMENT

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

ARTICLE 52 AMENDMENTS

Neither this Ground Lease nor any terms or provisions hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by all Lenders and the party against which the enforcement of the change, waiver, discharge, or termination is sought. No waiver of any breach will affect or alter this Ground Lease, but each and every term, covenant, and condition of this Ground Lease will continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Any amendments or modifications to this Ground Lease, including, without limitation, amendments to or modifications to the exhibits to this Ground Lease, will be subject to the mutual written agreement of City and Tenant and all Lenders, and City's agreement may be made upon the sole approval of the City's Director of Property, or his or her designee; provided, however, material amendments, or modifications to this Ground Lease (a) changing the legal description of the Site, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Site from the uses authorized under this Ground Lease, and (e) any other amendment or modification which materially increases the City's liabilities or financial obligations under this Ground Lease will additionally require the approval of the City's Board of Supervisors.

ARTICLE 53 ATTACHMENTS

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

1. Legal Description of Site
2. Schedule of Performance
3. City Consent of Leasehold Mortgage

4. Seismic Work

5. Memorandum of Amended and Restated Ground Lease

6. Form of Income Certification Form

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS GROUND LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS GROUND LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS GROUND LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS GROUND LEASE ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS GROUND LEASE WILL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS GROUND LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS GROUND LEASE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, AND NO SUCH APPROVAL WILL CREATE ANY BINDING OBLIGATIONS ON CITY.

Signatures Appear on the Following Pages

IN WITNESS WHEREOF, the Tenant and the City have executed this Ground Lease as of the day and year first above written.

TENANT:

TURK & EDDY ASSOCIATES, L.P.,
a California limited partnership.

By: Turk & Eddy GP LLC,
a California limited liability company
its general partner

By: Turk Street, Inc.,
a California nonprofit corporation,
its sole member/manager

By: _____
Donald S. Falk, Executive Director

CITY AS LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

ATTACHMENT 1

LEGAL DESCRIPTION OF THE SITE

All that certain real property situated in the City and County of San Francisco, State of California, being more particularly described as follows:

249 Eddy Street

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

Commencing at a point on the Southerly line of Eddy Street, distant thereon 178 feet Easterly from the Easterly line of Jones Street; running thence Easterly along the Southerly line of Eddy Street 51 feet; thence at a right angle Westerly 51 feet and thence at a right angle Northerly 137 feet, 6 inches to the Southerly line of Eddy Street and the point of commencement.

Being a portion of 50 Vara Lot No. 1047.

APN: Lot 15A; Block 0339

161-165 Turk Street

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

Commencing at a point on the Southerly line of Turk Street, distant thereon 237 feet, 6 inches Westerly from the Westerly line of Taylor Street; running thence Westerly along the Southerly line of Turk Street 37 feet, 6 inches; thence at a right angle Southerly 137 feet, 6 inches; thence at a right angle Easterly 37 feet, 6 inches; and thence at a right angle Northerly 137 feet, 6 inches to the Southerly line of Turk Street and the point of commencement.

Being a portion of 50 Vara Lot No. 1049.

APN: Lot 017; Block 0343

ATTACHMENT 2

SCHEDULE OF PERFORMANCE

ATTACHMENT 3

CITY CONSENT OF LEASEHOLD MORTGAGE

Date:

Mayor's Office of Housing and Community Development of the
City and County of San Francisco
Attn: Director
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

RE: _____, San Francisco (LEASEHOLD MORTGAGE)

Dear Sir or Madam:

Under Section 25.01of the _____ Ground Lease, dated _____, 20__, between the City and County of San Francisco ("City") and_____ , a California _____, we are formally requesting the City's consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for the City to provide its consent:

Lender:

Principal Amount:

Interest:

Term:

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

Sincerely,

TURK & EDDY ASSOCIATES, L.P.,
a California limited partnership.

By: Turk & Eddy GP LLC,
a California limited liability company
its general partner

By: Turk Street, Inc.,
a California nonprofit corporation,
its sole member/manager

By: _____
Donald S. Falk, Executive Director

enc.

By signing this letter, the City consents to the leasehold mortgage, under the terms and conditions of Section 25.01 of the _____ Ground Lease, dated _____, 20___.

Mayor's Office of Housing and Community Development

_____
Daniel Adams, Acting Director

ATTACHMENT 4

SEISMIC WORK

ATTACHMENT 5

MEMORANDUM OF AMENDED AND RESTATED LEASE

Free Recording Requested under
Government Code Section 27383

When recorded, mail to:

Mayor's Office of Housing and Community Development
of the City and County of San Francisco
1 South Van Ness Avenue, Fifth Floor
San Francisco, California.94103
Attn: Director

MEMORANDUM OF AMENDED AND RESTATED GROUND LEASE

This Memorandum of Amended and Restated Ground Lease ("Memorandum") is entered into as of _____, 20__, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through the Mayor's Office Of Housing and Community Development ("City"), and TURK & EDDY ASSOCIATES, L.P., a California limited partnership ("Tenant"), with respect to that certain Amended and Restated Ground Lease (the "Lease") dated _____, 20__, between City and Tenant.

Under the Lease, City leases to Tenant and Tenant leases from City the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). As of the Effective Date of the Lease, the Lease fully amends and restates the Ground Lease from the City as successor-in-interest to the former Redevelopment Agency of the City and County of San Francisco to Tenant dated as of November 17, 2009 (the "**Agency Lease**"). The Lease term is a continuation of the term of the Agency Lease and will commence on the Effective Date and end on November 17, 2064, subject to a 44 year option to extend, unless terminated earlier or extended under the terms of the Lease.

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

The terms and provisions of the Lease are incorporated into this Memorandum as though fully set forth.

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

This Memorandum may be signed by the parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts will be deemed an original of this Memorandum.

Executed as of _____, 20__ in San Francisco, California.

TENANT:

TURK & EDDY ASSOCIATES, L.P.,
a California limited partnership.

By: Turk & Eddy GP LLC,
a California limited liability company
its general partner

By: Turk Street, Inc.,
a California nonprofit corporation,
its sole member/manager

By: _____
Donald S. Falk, Executive Director

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Deputy City Attorney

ATTACHMENT 6

FORM OF TENANT INCOME CERTIFICATION

See attached 7 pages

FREE RECORDING PURSUANT TO GOVERNMENT CODE SECTION 27383 AT THE REQUEST OF THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

WHEN RECORDED MAIL TO:

San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attn: Housing Division

249 Eddy Street: (APN: Lot 15A; Block 0339)
161-165 Turk Street: (APN: Lot 017; Block 0343)

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

TURK/ EDDY PRESERVATION PROPERTIES GROUND LEASE

by and between

THE REDEVELOPMENT AGENCY

OF THE CITY AND COUNTY OF SAN FRANCISCO

as Landlord

and

TURK & EDDY ASSOCIATES, L.P.

A CALIFORNIA LIMITED PARTNERSHIP

as Tenant

Dated as of November 17, 2009

TABLE OF CONTENTS

RECITALS

A. This GROUND LEASE ("**Ground Lease**") is entered into as of _____ ("**Agreement Date**"), by and between THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California (the "**Landlord**" or the "**Agency**"), and TURK & EDDY ASSOCIATES, L.P. a California limited partnership (the "**Tenant**"). Tenant is an affiliate of TENDERLOIN NEIGHBORHOOD DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation ("**TNDC**").

B. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq., the "**Law**"), the Agency undertakes programs for the reconstruction and rehabilitation of slums and blighted areas in the City and County of San Francisco (the "**City**").

C. TNDC applied to the Agency and received a loan in an amount not to exceed Seven Million Sixty-Four Thousand Eight Hundred Thirty-One Dollars ($7,064,831) ("**Agency Loan**") under the Tax Increment Affordable Housing fund to finance the acquisition of the land and a portion of the building and additional expenses of the real properties located at 249 Eddy Street, Block 0339, Lot 15A, and 161-165 Turk Street, Block 0343, Lot 017 in San Francisco, California.

D. The Premises is comprised of two properties; 249 Eddy Street is developed with 55 studio units and 161-165 Eddy Street has 22 studio and 5 one-bedroom apartments situated in the Tenderloin neighborhood funded as part of the Agency's Citywide Affordable Housing Program. At the onset, TNDC entered into a Purchase and Sale Agreement ("**PSA**") dated September 8, 2006 with Aspen Tenderloin Apartments Company, a California limited partnership, to purchase the Site.

E. TNDC purchased the Site and holds the fee title in trust for the Agency. At or prior to the close of Tenant's construction financing, TNDC will transfer fee title to the Site less the Improvements to the Agency as partial payment of the Loan for the credited amount of Three Million Seven Hundred Twenty-Eight Thousand Five Hundred Seventy-One Dollars

($3,728,571). TNDC will also concurrently transfer the Improvements to Tenant and Tenant will assume the remaining balance of the Agency Loan.

F. The Tenant intends to rehabilitate 82 units, including two managers' units, of affordable housing on the Site. Tenant anticipates that the project will be completed and occupied in 2010.

G. The rehabilitation plan will preserve the 55 studio units at 249 Eddy Street with approximately 30,185 gross square feet and the 22 studio units plus 5 one-bedroom units at 161-165 Eddy with approximately 17,400 gross square feet (the "**Project**"). The long-term financing plan for the Project includes the Agency paying for a portion of the acquisition and development costs, construction and permanent funding from a commercial lender acceptable to the Agency, "exchange" funds from the California Tax Credit Allocation Committee, Affordable Housing Program ("**AHP**") funds, income from operations and deferred developer fees.

H. On December 5, 2006, by Resolution No.158-2006, the Agency Commission authorized the execution of a loan to TNDC in an amount not to exceed Seven Million Sixty-Four Thousand Eight Hundred Thirty-One Dollars ($7,064,831.00) to finance a portion of the acquisition and additional costs associated with the purchase and development of the Site.

I. The Agency believes that the fulfillment of the terms and conditions of this Ground Lease are in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in full accord with the public purposes and provisions of applicable state and federal laws and requirements.

J. The Agency, on the basis of the foregoing and the undertakings of Tenant pursuant to this Ground Lease, is willing to lease the Site to Tenant for the purpose of continuing the Project in accordance with the provisions of the Agency Loan and this Ground Lease.

K. As evidenced by this Ground Lease, Landlord has agreed, and will require Tenant, to comply with the Agency requirements as included in this Ground Lease.

L. These recitals are incorporated by reference into the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual obligations of the parties hereto, the Landlord hereby leases to Tenant, and Tenant hereby leases from the Landlord, the Site, for

the term, and subject to the terms, covenants, agreements and conditions hereinafter set forth, to each and all of which the Landlord and Tenant hereby mutually agree.

ARTICLE 1: Definitions

Terms used herein have the meanings given them when first used or as set forth in this Article 1, unless the context clearly requires otherwise. Whenever an Attachment is referenced, it means an attachment to this Ground Lease unless otherwise specifically identified. Whenever a Section, Article or paragraph is referenced, it is a reference to this Ground Lease unless otherwise specifically referenced.

1.01 **Agency** means the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California and includes any successor public agency designated by or pursuant to law. The Agency is the owner of the Site.

1.02 **Agreement Date** means the date first set forth on the cover page.

1.03 **Area Median Income (or "AMI")** means the median household or family income for Housing and Urban Development Metro Fair Market Rent Area that contains San Francisco adjusted annually solely for household size, as determined pursuant to Section 50093 of the California Health and Safety Code.

1.04 **Below Market Rate ("BMR") Rent** means a monthly rent amount which does not exceed Thirty Percent (30%) of the Fifty Percent (50%) of AMI.

1.05 **Below Market Rate ("BMR") Tenant** means a household whose initial household income does not exceed Fifty percent (50%) AMI upon lease-up as adjusted solely for household size, but not for high cost areas; and whose subsequent household income does not exceed One Hundred Twenty percent (120%) of AMI based upon actual household size as determined by the Agency.

1.06 **Below Market Rate Affordable Unit (or "BMR Unit")** means a unit whose monthly rent is a BMR Rent.

1.07 **Citibank Loan** means the loan from Citibank, N.A. to Tenant and any extension, modification or refinancing thereof.

1.08 Critical Activity(ies) means an activity or item of work which, if delayed or extended, will delay Substantial Completion.

1.09 Environmental Law means and shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Ground Lease.

1.10 Event of Default is defined in Article 21.02 as to Landlord and Article 21.05 as to Tenant.

1.11 **Extended Term** is defined in Article 2(b).

1.12 First Lease Payment Year means the calendar year in which the Project receives a Certificate of Substantial Completion for all residential units.

1.13 First Mortgage Lender means the lender and its successors, assigns and participants or other entity holding the first deed of trust on the Leasehold estate.

1.14 Ground Lease means this Ground Lease of the Site to the Tenant from the Landlord, as amended from time to time.

1.15 Hazardous Substance shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Ground Lease, 42 U.S.C. 9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code Sections 25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code Section 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances which occur naturally on the Site.

1.16 HUD means the United States Department of Housing and Urban Development.

1.17 **Improvements** mean all physical construction, including all structures, fixtures and other improvements existing or to be constructed on the Site in accordance with the Landlord approved plans and specifications.

1.18 **Initial Term** is defined in Article 2(a).

1.19 **Landlord** means the Redevelopment Agency of the City and County of San Francisco and its successors and assigns.

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

1.21 **Leasehold Estate** means the estate held by the Tenant pursuant to and created by this Ground Lease, including Tenant's fee title interest in the Improvements.

1.22 **Leasehold Mortgage** means any mortgage, deed of trust, trust indenture, letter of credit or other security instrument, including but not limited to the deeds of trust securing the First Mortgage Lender, the subordinate mortgage loan in favor of the Agency and any subordinate mortgage loan funded through the Federal Home Loan Bank AHP program or any other approved lender, which are part of the such loan documents, and any assignment of the rents, issues and profits from the Site, or any portion thereof, which constitute a lien on the Leasehold Estate created by this Ground Lease and have been approved in writing by the Landlord substantially in the form of Attachment 2.

1.23 **Lender** means any entity holding a Leasehold Mortgage.

1.24 **Management Agent** is defined in Article 9.02(a).

1.25 **Management Plan** is defined in Article 9.02(a).

1.26 **Managing Partner** means TURK & EDDY GP LLC, a California limited liability company.

1.27 **Market Rate Tenant** means a household whose household income exceeds One Hundred Twenty percent (120%) of AMI adjusted solely for household size but not for high cost areas.

1.28 **Market Rate Unit** means a BMR Unit, which is occupied and/or leased by a Market Rate Tenant.

1.29 **Notice of Default** is defined in Article 21.03 as to Landlord and in Article 21.06 as to Tenant.

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

1.31 **Premises** mean the Site together with the Improvements thereon.

1.32 **Project** means the development, consisting of 55 studio units at 249 Eddy Street with approximately 30,185 gross square feet and the 22 studio units plus 5 one-bedroom units at 161-165 Eddy with approximately 17,400 gross square feet, and including two manager's units and other ancillary uses on the Site.

1.33 **Project Expenses** means: (a) all charges incurred by Tenant in the operation of the Project including but not limited to: lease payments, utilities, real estate taxes and assessments, and liability, fire and other hazard insurance premiums; (b) salaries, wages, and any other compensation due and payable to the employees or agents of Tenant who maintain, administer, operate, or provide services in connection with the Project, including all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required for such employees; (c) payments of required interest and principal on the first Leasehold Mortgage; (d) all other expenses incurred by Tenant to cover routine operating and service provision costs of the Project, including maintenance and repair and other Agency approved fees of any managing agent; (e) any extraordinary expenses as approved in advance in writing by the Landlord; (f) required deposits to the Replacement Reserve, Operating Reserve and any other reserve account required by any Lender, subject to the Agency's prior written approval; and (g) an asset management fee payable to Managing Partner in the annual amount of $15,000 which shall increase at a rate of three percent (3.5%) per year.

1.34 **Project Income** means all revenue, income, receipts, and other consideration actually received from leasing the Improvements and Project. Project Income shall include, but not be limited to: all rents, fees and charges paid by tenants, or by rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index

adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; and the proceeds of business interruption or similar insurance. Project Income shall also include the fair market value of any goods or services provided in consideration for the leasing or other use of any portion of the Site and Project. Project Income shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances, or interest on reserves.

1.35 **Release** means any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance.

1.36 **Right of First Refusal** is defined in Article 16.03.

1.37 **Site** means the real properties located at 249 Eddy Street, Block 0339, Lot 15A, and 161-165 Turk Street, Block 0343, Lot 017 in San Francisco, California and is shown in the *Site Legal Description*, Attachment1.

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

1.39 **Substantial Completion** means the completion of the Improvements necessary to receive a temporary certificate of occupancy and/or a complete sign-off on the job card for the Project from all applicable City agencies and department.

1.40 **Substantial Completion Date** means a complete sign-off on the job card for the Project from all applicable City agencies and department on or before April 1, 2011.

1.41 **Surplus Cash** means the excess of Project Income over Project Expenses in any given Lease Year.

1.42 **Tenant** means Turk & Eddy Associates, L.P., a California limited partnership, including any legal name change of the Tenant. Tenant's principal address is 201 Eddy Street, San Francisco, California 94102, Attention: Managing Partner.

1.43 **Term** is defined in Article 2(c).

1.44 **Unit** means and includes all BMR Units and Market Rate Units.

1.45 **Vacate** means and includes, without limitation, departure from a Unit at the termination (whether at the end of a term or upon default) of the lease; abandonment of the Unit; or sublease or assignment of the Unit (whether or not such sublease or assignment complies with the terms and conditions of the lease).

ARTICLE 2: Term

(a) Initial Term. The term of this Ground Lease shall commence upon the Agreement Date and shall end fifty-five (55) years from that date, unless terminated earlier pursuant to this Ground Lease ("**Initial Term**").

(b) Option for Extension. Provided that the Tenant is not in default of the terms of its obligations to the Agency either at the time of giving of an Extension Notice, as described in subparagraph (c) below, or on the last day of the term (the "**Termination Date**"), the Term of this Ground Lease may be extended at the option of the Tenant for one forty-four (44) year period as provided below ("**Extended Term**").

(c) Notice of Extension. Not later than one hundred eighty (180) days prior to the Termination Date, the Tenant may notify the Agency in writing that it wishes to exercise its option to extend the term of this Ground Lease (an "**Extension Notice**"). The extended term shall be for 44 years from the Termination Date, which option the Tenant may exercise only once, for a total Ground Lease term of not to exceed ninety-nine (99) years. The term of this Ground Lease shall be the Initial Term plus the extended term, if any ("**Term**").

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

(e) Right of First Refusal. If, following the term of this Ground Lease, or any extensions of this Ground Lease, the Agency desires to sell its interest in the Site, the Tenant will have the right of first refusal to negotiate for the purchase of the Site provided that the Tenant agrees to maintain the Site as a very low income housing development for fifty (50) years from the date of purchase.

ARTICLE 3: Financing

Tenant shall submit to the Landlord evidence satisfactory to the Landlord that Tenant has sufficient funds and commitments for construction and permanent financing, and/or such other evidence of capacity to proceed with the rehabilitation of the Improvements in accordance with this Ground Lease, as is acceptable to the Landlord. The Landlord hereby acknowledges receipt and sufficiency of such funds and financing commitments.

ARTICLE 4: Rent

4.01 Annual Rent

(a) Tenant shall pay the Landlord Three Hundred Forty Thousand Dollars ($340,000) per year for lease of the Site, consisting of Base Rent and Residual Rent, as defined in Articles 4.02 and 4.03 below, without offset of any kind and without necessity of demand, notice or invoice from the Landlord (together, "**Annual Rent**"). Annual Rent shall be reset on the seventeenth anniversary of the date of this Ground Lease and every fifteen (15) years thereafter, and shall be equal to ten percent (10%) of the appraised fair market value of the Site as determined by an MAI appraiser selected by and at the sole cost of the Landlord.

(b) If the parties cannot agree on Annual Rent, either party may invoke a neutral third-party process to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco taking into account the affordability restrictions contained in Article 8 or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. Provided, however, that after the neutral third party process, Tenant (in its discretion with the written consent of the holders of all Leasehold Mortgages) terminate this Ground Lease in accordance with the terms of this Ground Lease.

4.02 Base Rent

(a) "**Base Rent**", means in any given Lease Year commencing with the year construction of the Project is complete as evidenced by a notice of Substantial Completion for all of the residential units ("**First Lease Payment Year**"), FIFTEEN THOUSAND DOLLARS ($15,000). Base Rent shall be due and payable in arrears on January 31st of each Lease Year; provided, however, Base Rent for the First Lease Payment Year shall be due on the January 31st

of the following calendar year, and shall be equal to $15,000 times the number of days in the First Lease Year, divided by 365; and provided, further, that in the event that the Tenant or any Subsequent Owner fails to comply with the provisions of Article 11.02, after notice and applicable cure periods, Base Rent shall be increased to the full amount of Annual Rent.

(b) If the Project does not have sufficient operating revenues to pay Base Rent in any given Lease Year after the payment of all ordinary and necessary operating expenses, funding of Landlord-approved reserves, and required debt service to the First Mortgage Lender and the Landlord has received written notice from Tenant regarding its inability to pay Base Rent from operating revenues, the unpaid amount shall be deferred and all such deferred amounts shall accrue without interest until paid ("**Base Rent Accrual**"). The Base Rent Accrual shall be due and payable each year from and to the extent operating revenue is available to make such payments and, in any event, upon the earlier of sale of the Project or termination of this Ground Lease.

(c) There shall be a late payment penalty of two percent (2%) for each month or any part thereof if Base Rent payment is delinquent. The Tenant may request in writing that the Landlord waive such penalties by describing the reasons for Tenant's failure to pay Base Rent and Tenant's proposed actions to insure that Base Rent will be paid in the future. The Landlord may, in its sole discretion, waive in writing all or a portion of such penalties if it finds that Tenant's failure to pay Base Rent was beyond Tenant's control and that Tenant is diligently pursuing reasonable solutions to such failure to pay.

4.03 Residual Rent

"**Residual Rent**" means, in any given Lease Year, the Annual Rent less the Base Rent. Residual Rent shall be due in arrears on April 15th of each Lease Year payable only to the extent of Surplus Cash as provided in Article 6.02(g) below, and any unpaid Residual Rent shall not accrue. However, in the event that Surplus Cash is insufficient to pay the full amount of the Residual Rent, Tenant shall certify to the Landlord in writing by April 15 that available Surplus Cash is insufficient to pay Residual Rent and Tenant shall provide to Landlord any supporting documentation reasonably requested by Landlord to allow Landlord to verify the insufficiency.

4.04 Triple Net Lease

This Ground Lease is a triple net lease and the Tenant shall be responsible to pay all costs, charges, taxes, impositions and other obligations related thereto. If the Landlord pays any such amounts after reasonable notice is given to Tenant that such amounts are due, whether to cure a default or otherwise protect its interests hereunder, the Landlord will be entitled to be reimbursed by Tenant the full amount of such payments as additional Base Rent within thirty (30) days of written demand by Landlord. Failure to timely pay the additional Base Rent shall be an Event of Default.

ARTICLE 5: Landlord Covenants

The Landlord is duly created and validly existing in good standing under the law, and has full right, power and authority to enter into and perform its obligations under this Ground Lease. The Landlord is a public body, corporate and politic, duly created and validly existing in good standing under the law, and has full right, power and authority to enter into and perform its obligations under this Ground Lease. The Landlord covenants and warrants that the Tenant and its tenants shall have, hold and enjoy, during the Term, peaceful, quiet and undisputed possession of the Site leased without hindrance or molestation by or from anyone so long as the Tenant is not in default under this Ground Lease.

ARTICLE 6: Tenant Covenants

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

6.01 Limited Partnership /Authority

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

6.02 Use of Site and Rents

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

6.02(a) Permitted Uses

Except as provided in Articles 28.06 and 28.07, Tenant shall devote the Site to, exclusively and in accordance with, the uses specified in this Ground Lease, which are the only uses permitted by this Ground Lease.

6.02(b) Non-Discrimination

Tenant shall not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the Improvements, or any part thereof, nor shall Tenant itself establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Occupants, subtenants or vendees on the Site or Improvements, or any part thereof, except to the extent permitted by law or required by funding source. Tenant shall not discriminate against tenants with certificates or vouchers under the Section 8 program or any successor rent subsidy program.

6.02(c) Non-Discriminatory Advertising

All advertising (including signs) for sublease of the whole or any part of the Site shall include the legend "**Equal Housing Opportunity**" in type or lettering of easily legible size and design.

6.02(d) Access for Disabled Persons

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

6.02(e) Equal Opportunity Marketing Plan

Tenant shall submit a Fair Housing Marketing Plan to be approved by the Agency. The Fair Housing Marketing Plan must follow HUD Development Guidelines for such plans.

6.02(f) Lead Based Paint

Tenant agrees to comply with the regulations issued by the Secretary of HUD set forth in 24 CFR Part 35 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in certain residential structures undergoing federally assisted construction and require the elimination of lead-based paint hazards.

6.02(g) Permitted Uses of Surplus Cash

Within one hundred twenty (120) days of the end of each Fiscal Year following the Substantial Completion Date, Tenant shall apply all Project Income to pay all Project Expenses in the order listed in the definition of Project Expenses, prior to the calculation of Surplus Cash. Any Project Income remaining after payment of Project Expenses shall be deemed Surplus Cash. If the Tenant is found by the Agency to be in compliance with all applicable requirements and agreements, Tenant shall use Surplus Cash to make the following payments: First to Base Rent Accrual, if any, then one-third (1/3) of remaining Surplus Cash to Tenant as an incentive management fee in an amount not to exceed $500 per unit per year, to a maximum of $50,000 (**"Incentive Management Fee"**). The remaining two-thirds (2/3) of Surplus Cash, together with any additional Surplus Cash after payment of the Borrower's Incentive Management Fee, shall be allocated to the Agency. The Agency's portion of Surplus Cash will be applied first to Residual Rent and, if any Surplus Cash remains, to repayment of the Agency Loan Amount.

6.03 Landlord Deemed Beneficiary of Covenants

In amplification, and not in restriction, of the provisions of the preceding Articles, it is intended and agreed that the Landlord shall be deemed beneficiary of the agreements and covenants provided in Article 6 for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Landlord for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Landlord has any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The Landlord shall have the right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to

enforce the curing of such breach of covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

6.04 BMR Tenants Beneficiaries of Affordability Covenants

Tenant declares and agrees that the BMR Tenants are the intended beneficiaries of the covenants and restrictions set forth in Article 8, *Affordability Restrictions,* which enhance and increase their enjoyment and use of the Project and the BMR Units.

ARTICLE 7: Annual Income Computation And Certification

Forty-five days after recordation of a Notice of Completion by the Tenant for all residential units, and on May 31st of each year thereafter, Tenant will furnish to the Landlord a list of all of the names of the persons who are Occupants of the Improvements, the specific unit which each person occupies, the household income of the Occupants of each unit, the household size and the rent being charged to the Occupants of each unit. If any state or federal agency requires an income certification for Occupants of the Improvements containing the above-referenced information, the Landlord agrees to accept such certification in lieu of Attachment 13 as meeting the requirements of this Ground Lease. In addition to such initial and annual list and certification, Tenant agrees to provide the same information and certification to the Landlord regarding each Occupant of the Improvements not later than ten (10) business days after such Occupant commences occupancy.

ARTICLE 8: Affordability Restrictions

8.01 Affordability Levels for BMR Units

(a) This Project is 100% affordable and each unit (except 2 manager's units) shall be occupied and available for rental by BMR Tenants. The Tenant shall give first priority to certificate of preference holders pursuant to the Agency's Property Owner and Occupant Preference Program also referred to as Property Owner and Occupant Preference Programs attached as Attachment 11. Any such certificate holder shall meet Tenant's tenant selection requirements, including, but not limited to, eligibility under any rental subsidy contract to which Tenant is a party.

(b) When a BMR Unit is vacated, for any reason whatsoever, a BMR Unit shall be rented or otherwise made available at the BMR Rent to another BMR Tenant.

8.02 Rent Levels for BMR Units

The total charges for rent and utilities to each Qualified Tenant occupying a BMR Unit shall not exceed the BMR Rent.

8.03 Duration, Distribution and Compliance with Laws

(a) The BMR Units shall be maintained for the entire Term of this Ground Lease.

(b) The operation of the BMR Units shall comply with all applicable federal and state laws.

8.04 Market Rate Tenants

From the Effective Date and annually thereafter, the Tenant must certify ongoing compliance with the income eligibility and rent affordability requirements in this Ground Lease. The initial income (i.e., income at the time of initial occupancy of BMR Unit) of a BMR Tenant shall not exceed 50% of AMI and subsequent income shall not exceed 120% of AMI. If a BMR Tenant becomes a Market Rate Tenant because its household income exceeds 120% of the AMI, then the Market Rate Tenant must vacate the Unit within one hundred twenty (120) days unless: (1) the IRS pursuant to IRS Code Section 42 or other funding sources would prohibit his/her/their eviction based upon his/her/their status as Market Rate Tenants. Any future vacancies in such units will be filled with BMR Tenants.

8.05 Annual Report

(a) On an annual basis, on or before February 15th of each Lease Year, Tenant shall submit a report (the "**Annual Report**") which will include a census report and occupancy report which shall set forth the vacancy rate for the Project during the Lease Year just ended (and more frequently if requested by the Landlord). In addition, the Annual Report shall: (1) identify household name, household size, the income level of all occupants; (2) unit size; (3) move-in dates; and (4) the amount of rent paid by each BMR Tenant. In addition to the Annual Report, the Tenant shall provide all information reasonably requested by the Landlord so that the Landlord can verify that each occupant of an BMR Unit is a BMR Tenant and is paying no more than the BMR Rent as required under this Ground Lease.

(b) The Annual Report shall be based on information supplied by the BMR Tenant in a certified statement on a form provided or approved by the Landlord. (See *Income Computation and Certification Form*, attached as Attachment 13.)

8.06 Excess Rent

In the event that and to the extent that the Tenant receives rents or other payments from the operation of the BMR Units in excess of what Tenant is permitted to charge and receive pursuant to this Ground Lease, after Thirty (30) day written notice by the Landlord to Tenant, Tenant agrees and covenants to pay to the BMR Tenant the full amount of such excess immediately on demand by the Landlord.

ARTICLE 9: Project Management

9.01 Project Operations

Tenant shall operate the Project to provide clean, suitable and decent housing to the BMR Tenants and other Occupants at the highest possible occupancy rate at all times during the term of this Ground Lease. The Project will at all times be managed by an experienced, licensed agent or operator with demonstrated ability to manage and operate the Project in a manner that will provide decent, safe and sanitary housing to the BMR Tenants within the budget provided and for the funds available.

9.02 Selection of Management Agent

(a) If desired by Tenant or required by Landlord, the Project shall be managed by an experienced manager (the "**Management Agent**") reasonably acceptable to the Landlord, with demonstrated ability to operate the Project in a manner that will provide decent, safe, and sanitary housing, all pursuant to a management plan (the "**Management Plan**"). The Tenant shall submit its Management Plan for Landlord approval of the identity of any proposed Management Agent.

(b) Tenant shall submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the Landlord to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, and the Landlord agrees with the

form of Management Plan, the Landlord shall approve the proposed Management Agent and Management Plan by notification to Tenant in writing. Unless the proposed Management Agent and/or Management Plan is/are disapproved by the Landlord within Thirty (30) days, they shall be deemed approved. If Tenant is to manage the Site as improved, then the Management Plan shall be submitted when requested by the Landlord. Tenant's failure to comply with the Management Plan, after the expiration of any applicable cure periods, shall constitute a default under this Ground Lease.

(c) Landlord hereby accepts and approves TNDC as the current Management Agent for the Project.

9.03 Annual Performance Review

Tenant shall cooperate with the Landlord in an annual review of the management practices. The purpose of each annual review will be to enable the Landlord to determine if the Project is being operated and managed in accordance with the requirements and standards of this Ground Lease.

9.04 Replacement of Management Agent

(a) If as a result of the annual review, the Landlord determines in its reasonable judgment that the Project is not being operated and managed in accordance with any of the requirements and standards of this Ground Lease, the Landlord may deliver written notice to the Tenant of the need to replace the Management Agent. Within Fifteen (15) days of receipt by Tenant of such written notice, Landlord and Tenant shall meet in good faith to consider methods for improving the operating status of the Project, including, without limitation, replacement of the Management Agent.

(b) If, after such meeting, the Landlord elects to request the replacement of the Management Agent, the Landlord shall so notify the Tenant in writing within Fifteen (15) days following the meeting. The Tenant shall, subject to any contractual agreement, promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in this Article and approved by the Landlord pursuant to this Article and acceptable to the First Leasehold Mortgage holder. If, after such a meeting, the Landlord and Tenant cannot agree on a replacement Management Agent, the Tenant shall promptly dismiss the Management Agent and the Landlord shall

designate three (3) replacement Management Agents that are acceptable to the Landlord and with demonstrated ability to manage the Project, from which Tenant shall appoint the Management Agent.

(c) Any contract for the operation or management of the Project entered into by the Tenant shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Article is an Event of Default.

ARTICLE 10: Condition Of Site - "As Is"

Neither the Landlord, nor any employee, agent or representative of the Landlord has made any representation, warranty or covenant, expressed or implied, with respect to the Site, its physical condition, the condition of any improvements, any environmental laws or regulations, or any other matter, affecting the use, value, occupancy or enjoyment of the Site other than as set forth explicitly in this Ground Lease. The Tenant understands and agrees that notwithstanding any such representation, warranty or covenant, expressed or implied which may or may not have been made; it being expressly understood that the Site is being leased in an **"AS IS"** condition with respect to all matters.

ARTICLE 11: Improvements And Permitted Uses

11.01 Scope of Development and Schedule of Performance

Tenant agrees to undertake and complete all physical construction to the Improvements and on the Site, if any, as approved by the Landlord within the timeframe stated in the Schedule of Performance.

11.02 Permitted Uses and Occupancy Restrictions

The permitted uses of the Project are limited to eighty (80) residential dwelling units, plus two (2) manager's units and common areas. Upon the completion of construction, one hundred percent (100%) of the residential units, with the exception of the two (2) manager's units, in the Project shall be occupied or held vacant and available for rental by BMR Tenants except as provided for in Article 8.04.

ARTICLE 12: Construction Of Improvements

12.01 General Requirements and Rights of Landlord

(a) Construction documents for the construction of the Improvements by Tenant (the "**Construction Documents**") shall be prepared by a person registered in and by the State of California to practice architecture and shall be in conformity with this Ground Lease, including any limitations established in the Landlord's approval of the schematic drawings, if any, preliminary construction documents, and final construction documents for the Premises, and all applicable Federal, State and local laws and regulations. The architect shall use, as necessary, members of associated design professions, including engineers and landscape architects. The Construction Documents consist of the Project plans and specifications prepared by the architect, each of which the Landlord has approved.

(b) The architect must provide: (i) an Architect's Certificate (Accessibility for the Disabled) certifying that the Improvements have been designed in accordance with all **applicable** local, state and federal laws and regulations relating to accessibility for the disabled; (ii) an Architects Certification for Code Compliance certifying that the Improvements have been rehabilitated in compliance with all applicable local building codes; and (iii) an Architect's Certification that Construction Complies with Approved Construction Documents certifying that the Improvements have been rehabilitated in compliance with the Construction Documents approved by the Agency and/or the City. The architect certifications shall be substantially in the form of Exhibits Q, R and S respectively.

12.02 Landlord Approvals and Limitation Thereof

The Construction Documents must be approved by the Landlord in the manner set forth below:

12.02(a) Compliance with Ground Lease

The Landlord's approval with respect to the Construction Documents is limited to determination of their compliance with this Ground Lease, ("**Redevelopment Requirements**"). The Construction Documents shall be subject to general architectural review and guidance by the Landlord as part of this review and approval process.

12.02(b) Landlord Does Not Approve Compliance with Construction Requirements

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

12.02(c) Landlord Determination Final and Conclusive

The Landlord's determination respecting the compliance of the Construction Documents with Redevelopment Requirements shall be final and conclusive (except that it makes no determination and has no responsibility for the matters set forth in Article 12.02(b), above).

12.03 Construction to be in Compliance with Construction Documents and Law

12.03(a) Compliance with Landlord and City Approved Documents

The construction shall be in strict compliance with the Landlord-approved and City-approved Construction Documents.

12.03(b) Compliance with Local, State and Federal Law

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

12.04 Approval of Construction Documents by Landlord

Tenant shall submit and the Landlord shall approve or disapprove the Construction Documents referred to in this Ground Lease within the times established by the Landlord. Failure by the Landlord either to approve or disapprove within the times established the Landlord shall entitle Tenant to a day for day extension of time for completion of any Critical Activities delayed as a direct result of Landlord's failure to timely approve or disapprove the Construction Documents.

12.05 Disapproval of Construction Documents by Landlord

If the Landlord disapproves the Construction Documents in whole or in part as not being in compliance with the Redevelopment Requirements, Tenant shall submit new or corrected plans which are in compliance within thirty (30) days after written notification to it of disapproval, and the provision of Article 12.04 relating to approval, disapproval and re-submission of corrected Construction Documents shall continue to apply until the Construction Documents have been

approved by the Landlord; provided, however, that in any event Tenant must submit satisfactory Construction Documents (i.e., approved by the Landlord) no later than the date specified therefore in the Schedule of Performance attached to this Lease.

12.06 Final Construction Documents to be Approved by Landlord

The Final Construction Documents, including all drawings, specifications and other related documents necessary for the construction of the Improvements in accordance with the requirements of this Ground Lease must be approved by the Landlord.

12.07 Issuance of Building Permits

(a) Tenant shall have the sole responsibility for obtaining all necessary building permits and shall make application for such permits directly to the City's Department of Building Inspection. Tenant shall report permit status every thirty (30) days to the Landlord. Failure to timely file and to diligently pursue issuance of permits shall be a breach of this Ground Lease.

(b) The Tenant is advised that if the Project is in a Redevelopment Project Area then the Central Permit Bureau forwards all building permits to the Agency for Agency approval of compliance with Redevelopment Requirements. The Agency's approval of compliance with Redevelopment Requirements is limited and does not include Article 12.02(b) matters. Agency evidences such compliance by signing the permit and returning the permit to the Central Permit Bureau for issuance directly to the Tenant. Approval of any intermediate permit, however, is not approval of compliance with all Redevelopment Requirements necessary for a full and final building permit.

12.08 Performance and Payment Bonds

Prior to commencement of rehabilitation of the Improvements, Tenant shall deliver to the Landlord performance and payment bonds, each for the full value of the cost of construction of the Improvements, which bonds shall name the Landlord as co-obligee, or such other completion security which is acceptable to the Landlord.

12.09 Landlord Approval of Changes after Commencement of Construction

Once construction has commenced, the only Construction Document matters subject to further review by the Landlord will be requests for any material changes in the Construction Documents which affect matters previously approved by the Landlord. For purposes of determining

materiality in the Construction Documents, any single change order of $10,000 or more in value and any change order which causes the aggregate value of all change orders to exceed $100,000 shall be considered material and require the Landlord's prior written approval unless waived in writing by the Landlord. Permission to make such changes shall be requested by Tenant in writing directed to the Landlord, and if to Agency, Attention: Housing Program Manager, with a copy to the Architecture Division Manager. The Landlord through its Deputy Executive Director for Housing shall reply in writing giving approval or disapproval of the changes within ten (10) business days after receiving such request. If the request is disapproved, the reply must specify the reasons for the disapproval.

12.10 Times for Construction

Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any part thereof, that Tenant and such successors and assigns shall promptly begin and diligently prosecute to completion the rehabilitation of the Improvements thereon, and that such construction shall in any event commence and thereafter diligently continue and shall be completed no later than the dates specified by Landlord in the Schedule of Performance, subject to Force Majeure unless such dates are extended by the Landlord.

12.11 Force Majeure

For the purposes of any of the provisions of this Ground Lease, neither the Landlord nor Tenant, as the case may be, shall be considered in breach or default of its obligations, nor shall there be deemed a failure to satisfy any conditions with respect to the beginning and completion of construction of the Improvements, or progress in respect thereto, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions, due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials and unusually severe weather or delays of subcontractors due to such causes. It being the purposes and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for the satisfaction of conditions to this Ground Lease including those with respect to construction of the Improvements, shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph shall

have notified the other party thereof in writing of the cause or causes thereof within thirty (30) days after the beginning of any such enforced delay and requested an extension for the period of the enforced delay; and, provided further, that this paragraph shall not apply to, and nothing contained in this paragraph shall extend or shall be construed to extend, the time of performance of any of Tenant's obligations to be performed prior to the commencement of construction, nor shall the failure to timely perform pre-commencement of construction obligations extend or be construed to extend Tenant's obligations to commence, prosecute and complete construction of the Improvements in the manner and at the times specified in this Ground Lease.

12.12 Reports

Subsequent to commencement of construction of the Improvements and until completion, Tenant shall make a report in writing to the Landlord every three (3) months, in such detail as may reasonably be required by the Landlord, as to the actual progress of the Tenant with respect to such construction. During such period the work of the Tenant shall be subject to inspection by representatives of the Landlord, at reasonable times and upon reasonable advance notice.

12.13 Access to Site

Tenant shall permit access to the Site to the Landlord and the City whenever and to the extent necessary to carry out the purposes of the provisions of this Ground Lease, at reasonable times and upon reasonable advance notice.

12.14 Notice of Completion

Promptly upon completion of the rehabilitation of the Improvements in accordance with the provisions of this Ground Lease and the issuance of a final certificate of occupancy for the Project, Tenant shall submit to Landlord for approval a Notice of Completion ("**NOC**"), and record such approved NOC in the San Francisco Recorder's Office. Tenant shall provide Landlord with a copy of the recorded NOC.

12.15 Completion of Improvements

In the event Lender or a successor thereto forecloses, obtains a deed in lieu of foreclosure or otherwise takes control over the Project and undertakes construction of the Improvements ("**New Developer**"): (a) such New Developer shall not be bound by the provisions of the Schedule of Performance with respect to any deadlines for the completion of the Improvements but shall only

be required to complete the Improvements with due diligence and in conformance with a new Schedule of Performance as agreed upon by the New Developer and the Landlord; (b) such New Developer shall only be required to complete the Improvements in accordance with this Ground Lease and all applicable building codes and ordinances, and the approved Construction Documents; and (c) Landlord and New Developer shall negotiate in good faith such reasonable amendments and reasonable modifications to Article 12 of this Lease as the parties mutually determine to be reasonably necessary based upon the financial and construction conditions then existing.

ARTICLE 13: Title to the Improvements

Fee title to any Improvements shall be vested in Tenant and shall remain vested in Tenant during the Term of this Ground Lease. Subject to the rights of any Lenders and as further consideration for the Landlord entering into this Ground Lease, at the expiration or earlier termination of this Ground Lease, fee title to all the Improvements shall vest in the Landlord without further action of any party, without any obligation by the Landlord to pay any compensation therefore to Tenant and without the necessity of a deed from Tenant to the Landlord. However, if the Tenant exercises its Right of First Refusal pursuant to Article 16.03 and purchases the Site then title to the Improvements shall remain with Tenant.

ARTICLE 14: Completion Of Improvements

14.01 Certificate of Completion - Issuance

Promptly after completion of the construction of the Improvements in accordance with the provisions of this Ground Lease, and upon the request of Tenant, the Landlord will furnish Tenant with an appropriate instrument so certifying. Such certification by the Landlord shall be a conclusive determination of satisfaction and termination of the agreements and covenants of this Ground Lease with respect to the obligation of Tenant, and its successors and assigns, to construct the Improvements in accordance with Landlord approved Final Construction Documents (including any approved change orders) and the dates for the beginning and completion thereof; provided, however, that such determination shall only be withheld because of failure to carry out specific requirements of the Redevelopment Requirements or this Ground Lease; provided further, that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of Tenant to any Lender, or any

insurer of a mortgage, securing money loaned to finance the construction or any part thereof; provided further, that Landlord issuance of any Certificate of Completion does not relieve Tenant or any other person or entity from any and all City requirements or conditions to occupancy of the Improvements, which requirements or conditions must be complied with separately.

14.02 Certifications to be Recordable

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

14.03 Certification of Completion - Non-Issuance Reasons

If the Landlord shall refuse or fail to provide any certification in accordance with the provisions of Article 14.01, the Landlord shall provide Tenant with a written statement, within fifteen (15) days after written request by Tenant, indicating in adequate detail in what respects Tenant has failed to complete the construction of the Improvements in accordance with the provisions of this Ground Lease or is otherwise in default hereunder and what measures or acts will be necessary, in the opinion of the Landlord, for Tenant to take or perform in order to obtain such certification.

ARTICLE 15: Changes To The Improvements

15.01 Post Completion Changes

The Landlord has a particular interest in the Site and in the nature and extent of the permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the following particular controls on the Site and on the Improvements: during the Term of this Ground Lease, neither Tenant, nor any voluntary or involuntary successor or assign, shall make or permit any change in the Improvements, as "**Change**" is hereinafter defined, unless the express prior written consent for any change shall have been requested in writing from the Landlord and obtained, and, if obtained, upon such terms and conditions as the Landlord may require. The Landlord agrees not to withhold or delay its response to such a request unreasonably.

15.02 Definition of Change

"**Change**" as used in Article 15 means any alteration, modification, addition and/or substitution of or to the Site, the Improvements, and/or the density of development which differs materially from that which existed upon the completion of construction rehabilitation of the Improvements in accordance with this Ground Lease, and shall include without limitation the exterior design,

exterior materials and/or exterior color. For purposes of the foregoing, exterior shall mean and include the roof of the Improvements. Changes shall not include repairs, maintenance and interior alterations in the normal course of operation of a multi-family housing development.

15.03 Enforcement

The Landlord shall have any and all remedies in law or equity (including without limitation restraining orders, injunctions and/or specific performance), judicial or administrative, to enforce the provisions of Article 15, including without limitation any threatened breach thereof or any actual breach or violation thereof.

ARTICLE 16: Assignment, Sublease or Other

16.01 Assignment, Sublease or Other Conveyance by Tenant

Tenant may not sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its interest in this Ground Lease or in the Improvements or any portion thereof, other than to Lender(s), or allow any person or entity to occupy or use all or any part of the Site, other than leases to BMR Tenants in the ordinary course of business and, as applicable, commercial tenants or service providers nor may it contract or agree to do any of the same, without the prior written approval of the Landlord, which approval shall not be unreasonably withheld or delayed. Tenant may sell, assign, convey, sublease or transfer its interests in this Ground Lease and in the Improvements to Tenderloin Neighborhood Development Corporation or any affiliate of Tenderloin Neighborhood Development Corporation or its successor in interest with prior thirty (30) day written notice to the Landlord.

16.02 Assignment, Sublease or Other Conveyance by Landlord

The parties acknowledge that any sale, assignment, transfer or conveyance of all or any part of the Landlord's interest in the Site, the Project, the Improvements, or this Ground Lease, is subject to this Ground Lease. The Landlord will require that any purchaser, assignee or transferee expressly assume all of the obligations of the Landlord under this Ground Lease by a written instrument recordable in the Official Records of the City. This Ground Lease shall not be affected by any such sale, and Tenant shall attorn to any such purchaser or assignee. In the event that the Landlord intends to sell all or any part of the Site, the Landlord shall notify Tenant of the proposed terms of such sale not later than ninety (90) days before the anticipated close of

escrow. Tenant shall have sixty (60) days from the giving of such notice to exercise a right of first refusal to purchase the Site on the same terms and conditions of such proposed sale.

16.03 Tenant's Right of First Refusal

If the Landlord desires to sell its interest in the Site, the Tenant will have the right of first refusal to negotiate for the purchase of the Site ("**Right of First Refusal**"), provided that the Tenant agrees: (1) to pay the fair market value for the Site as established by an appraisal; and (2) to maintain the Site for rental to BMR Tenants for fifty (50) years from the date of purchase. The foregoing notwithstanding, Tenant's Right of First Refusal shall not apply to a transfer of the Site by the Landlord to the City or any political subdivision of the City.

ARTICLE 17: Taxes

Tenant agrees to pay, or cause to be paid, when due to the proper authority, any and all valid taxes, assessments and similar charges on the Site which become effective after the execution of this Ground Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Site. Tenant shall not permit any such taxes, charges or other assessments to become a defaulted lien on the Site or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to the Landlord. In the event of any such contest, Tenant shall hold harmless, defend and indemnify the Landlord against all loss, cost, expense or damage resulting there from, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment or other similar charge. The Landlord shall furnish such information as Tenant shall reasonably request in connection with any such contest provided that such information is otherwise available to the public.

ARTICLE 18: Utilities

Tenant shall procure water and sewer service from the City and electricity, telephone, natural gas and any other utility service from the City or utility companies providing such services, and shall pay all connection and use charges imposed in connection with such services. As between the Landlord and Tenant, Tenant shall be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service.

ARTICLE 19: Maintenance

Tenant, at all times during the Term hereof, shall maintain or cause to be maintained the Project in good condition and repair to the reasonable satisfaction of the Landlord, including the exterior, interior, substructure and foundation of the Improvements and all fixtures, equipment and landscaping from time to time located on the Site or any part thereof. The Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Site or any buildings or improvements now or hereafter located thereon.

ARTICLE 20: Liens

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

ARTICLE 21: Default and Remedies

21.01 Application of Remedies

The provisions of Article 21 shall govern the parties' remedies for breach of this Ground Lease.

21.02 Breach by Landlord

The occurrence of any one of the following events or circumstances shall constitute an event of default ("**Event of Default**") by Landlord under this Ground Lease:

(a) Landlord breaches or threatens to breach any material provision of this Ground Lease.

21.03 Notice to Landlord and Cure Period

(a) Upon the occurrence of an Event of Default by Landlord, the Tenant shall notify Landlord in writing of the Landlord's purported breach and give Landlord Thirty (30) days from receipt of such notice to cure such breach ("**Notice of Default**"). However, if the breach is not reasonably susceptible to cure within a Thirty (30) day period, Landlord must begin to cure within Thirty (30) days and thereafter diligently prosecute such cure to completion.

(b) In the event that Landlord does not cure within Thirty (30) days, or if the breach is not reasonably susceptible to cure within Thirty (30) days, begin to cure within Thirty (30) days and thereafter diligently prosecute such cure to completion, then, the Tenant shall have the remedies set forth in Article 21.04 below.

21.04 Remedies of Tenant

For an Event of Default by Landlord which has not been cured during the applicable cure period, Tenant shall have the following remedies:

(a) Termination. Tenant, with the prior written consent of all Leasehold Mortgage holders, shall have the right to terminate this Ground Lease upon Sixty (60) days written notice to Landlord.

(b) Damages. Tenant may sue Landlord for compensatory damages suffered as a direct result of Landlord's breach, including reasonable attorneys fees and cost pursuant to Article 47. However, under no circumstances shall Tenant be entitled to consequential or exemplary damages from Landlord.

(c) Injunctions and Specific Performance. Tenant shall have the right to institute legal action for restraining orders, injunctions and/or specific performance of the terms of this Ground Lease to the extent that such action is available at law or in equity with respect to such default.

(d) Other Remedies. Subject to the limitations in subparagraphs (b) and (e), Tenant shall be entitled to exercise all other remedies permitted at law or in equity.

(e) Nonliability of Landlord's Members, Officials and Employees. No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, for any default by Landlord or for any amount which may become due to Tenant or any successor in interest under the terms of this Ground Lease.

21.05 Breach by Tenant

The occurrence of any one of the following events or circumstances shall constitute an event of default ("**Event of Default**") by Tenant under this Ground Lease:

(a) Tenant fails to pay Rent, including any Reimbursables as additional rent when due.

(b) Tenant fails to comply with the Permitted Use of Surplus Cash in Article 602(g).

(c) Tenant fails to comply with the Affordability Restrictions set forth in Article 8.

(d) Tenant voluntarily or involuntarily assigns, transfers or attempts to transfer or assign this Ground Lease or any rights in this Ground Lease, or in the Improvements, except as permitted by this Ground Lease.

(e) Tenant, or its successor in interest, fails to pay real estate taxes or assessments on the Improvements or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Ground Lease, or shall suffer any levy or attachment to be made, or any material supplier's or mechanic's lien or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged; provided, however, that Tenant shall have the right to contest any tax or assessment pursuant to Article 17, Taxes and Article 20, Liens, upon the posting of an adequate bond or other security, to contest any such lien or encumbrance. In the event of any such contest, Tenant

shall protect, indemnify and hold Landlord harmless against all losses and damages, including reasonable attorneys' fees and costs resulting therefrom.

(f) Tenant shall be adjudicated bankrupt or insolvent or shall make a Transfer in defraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceeding of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act.

(g) Tenant breaches or threatens to breach any material provision of this Ground Lease.

21.06 Notice to Tenant and Cure Period

(a) Upon the occurrence of an Event of Default by Tenant, the Landlord shall notify Tenant and Lender in writing of the Tenant's purported breach and give Tenant Thirty (30) days from receipt of such notice to cure such breach ("**Notice of Default**"). However, if the breach is not reasonably susceptible to cure within a Thirty (30) day period, Tenant must begin to cure within Thirty (30) days and thereafter diligently prosecute such cure to completion.

(b) In the event that Tenant does not cure within Thirty (30) days, or if the breach is not reasonably susceptible to cure within Thirty (30) days, begin to cure within Thirty (30) days and thereafter diligently prosecute such cure to completion, then, the Landlord shall have the remedies set forth in Article 21.07 below.

21.07 Remedies of Landlord

For an Event of Default by Tenant which has not been cured during the applicable cure period, Landlord shall have the following remedies:

(a) Termination. Landlord shall have the right to terminate this Ground Lease upon Sixty (60) days written notice to Tenant.

(b) Damages. Landlord may sue Tenant for damages suffered as a direct result of Tenant's breach, including reasonable attorneys fees and cost pursuant to Article 47.

(c) Injunctions and Specific Performance. Landlord shall have the right to institute legal action for restraining orders, injunctions and/or specific performance of the terms of this

Ground Lease to the extent that such action is available at law or in equity with respect to such default.

(d) Other Remedies. Subject to the limitations in subparagraph (e), Landlord shall be entitled to exercise all other remedies permitted at law or in equity.

(e) Nonliability of Tenant's Members, Officials and Employees. No member, official or employee of Tenant shall be personally liable to Landlord, or any successor in interest, for any default by Tenant or for any amount which may become due to Landlord or any successor in interest under the terms of this Ground Lease. The foregoing notwithstanding, this nonliability shall not apply to events of theft, misappropriation, embezzlement or fraud committed by individual(s).

21.08 Rights and Remedies Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Ground Lease, the rights and remedies of the parties to this Ground Lease, whether provided by law, in equity or by this Ground Lease, shall be cumulative, and the exercise by either party of any one or more of such rights or remedies shall not preclude the exercise by such parties of any other or further rights or remedies for the same or any other default or breach by the other party. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Ground Lease shall be effective beyond the particular obligation of the other party or condition to its own obligation expressly waived and to the extent thereof, or a waiver in respect to any other rights of the party making the waiver or any other obligations of the other party.

ARTICLE 22: Damage and Destruction

22.01 Insured Casualty

If the Improvements or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant hereunder, Tenant shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to the condition thereof prior to such damage or destruction; provided, however, that if more than fifty percent (50%) of the Improvements are destroyed or are so damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds

necessary to accomplish the restoration, Tenant, with the prior written consent of all Lenders, may terminate this Ground Lease within thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. In the event Tenant is required or elects to restore the Improvements, all proceeds of any policy of insurance required to be maintained by Tenant under this Ground Lease shall be used by Tenant for that purpose and Tenant shall make up from its own funds or obtain additional financing as reasonably approved by the Landlord any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost thereof. In the event Tenant elects to terminate this Ground Lease pursuant to its right to do so under this Article 22.01, or elects not to restore the Improvements, the insurance proceeds shall be disbursed in the order set forth in Article 22.03 below.

22.02 Uninsured Casualty

If: (i) more than 50% of the Improvements are damaged or destroyed and ten percent (10%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the Improvements cannot be completed or operated on an economically feasible basis; and (iii) there is not available to Tenant any feasible source of third party financing for restoration reasonably acceptable to Tenant; then Tenant may, with the prior written consent of all Lenders, other than the Agency, terminate this Ground Lease upon ninety (90) days written notice to the Landlord. If it appears that the provisions of this Article 22.02 may apply to a particular event of damage or destruction, Tenant shall notify the Landlord promptly and not consent to any settlement or adjustment of an insurance award without the Landlord's written approval, which approval shall not be unreasonably withheld or delayed. In the event that Tenant terminates this Ground Lease pursuant to this Article 22.02, all insurance proceeds and damages payable by reason of the casualty shall be divided among Landlord, Tenant and Lenders in accordance with the provisions of Article 22.03. If Tenant does not have the right, or elects not to exercise the right, to terminate this Ground Lease as a result of an uninsured casualty, Tenant shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to their condition prior to such damage or destruction in accordance with the provisions of Article 22.01, and shall be entitled to all available insurance proceeds.

22.03 Distribution of the Insurance Proceeds

In the event of an election by Tenant to terminate and surrender as provided in either Articles 22.01 or 22.02, the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by Tenant hereunder shall be as follows:

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

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

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

(d) The remainder to Tenant.

22.04 Clean Up of Housing Site

In the event the Tenant terminates this Ground Lease pursuant to the provisions of Articles 22.01 or 22.02 and the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Article 22.03(b), Tenant shall have the obligation to pay the portion of such costs not covered by the insurance proceeds.

ARTICLE 23: Damage to Person or Property; Hazardous Materials; Indemnification

23.01 Damage to Person or Property -General Indemnification

Landlord shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site, for any injury or damage to the Improvements, or to any property of Tenant, or to any property of any other person, entity or association on or about the Site, unless arising from any gross negligence or willful misconduct of Landlord, or any of their commissioners, officers, agents or employees. Tenant shall defend, hold harmless and indemnify

the Landlord, the City and their respective commissioners, officers, agents, and employees, of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising from its tenancy, its use of the Site, including adjoining sidewalks and streets, and any of its operations activities thereon or connected thereto; provided, however, that Article 23 shall not be deemed or construed to and shall not impose an obligation to indemnify and save harmless the Landlord, the City or any of their commissioners, officers, agents or employees from any claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or gross negligence by the person or entity seeking such indemnity.

23.02 Hazardous Materials –Indemnification

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

(b) For purposes of this Article 23.02, the following definitions shall apply:

(i) "**Hazardous Substance**" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. '9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code Section 25316 and Section 25281(d), all chemicals listed pursuant to the California Health & Safety Code '25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances which occur naturally on the Site.

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

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

ARTICLE 24: Insurance and Fidelity Bond

24.01 Insurance

24.01(a) Insurance Requirements for Tenant

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

24.01(b) Minimum Scope of Insurance

Coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 0) or other form approved by Agency's Risk Manager.

(2) Insurance Services Office form number CA 00 0 covering Automobile Liability, code 1 "any auto."

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

(4) Tenant shall require that all architectural and engineering professional consultants for the Project have liability insurance covering negligent acts, errors and omissions.

Property Liability Insurance against all risks of direct physical loss to the Project.

24.01(c) Minimum Limits of Insurance

Coverage shall maintain limits no less than:

(1) General Liability: $2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this project/location, the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of $1,000,000 for bodily injury by accident, and $1,000,000 per person and in the annual aggregate for bodily injury by disease.

(4) Professional Liability: $1,000,000 per occurrence during the course of new construction or remodeling in excess of $100,000 covering all negligent acts, errors and omissions in Tenant's architectural and engineering professional design services. Tenant shall provide evidence of such required insurance for ten (10) years after completion of construction.

(5) Property Insurance:

(a) During the course of construction, builder's risk insurance in the Full Completed Value of the Project.

(b) Following completion of construction, casualty insurance in the Full replacement value of the Project with no coinsurance penalty provision.

(6) Review of Minimum Limits: At no less than every five years during the Term, Landlord through its Risk Manger may reasonably adjust the Minimum Limits of coverage required in Article 24.01(b), after reviewing applicable insurance coverage of similar projects in the area.

24.01(d) Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by Landlord's Risk Manager. At the option of Landlord's Risk Manager, either: the insurer shall

reduce or eliminate such deductibles or self-insured retentions as respects the Landlord, its officers, employees and volunteers; or the Tenant shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

24.01(e) Other Insurance Provisions

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

(1) General Liability and Automobile Liability Coverage:

(a) The "San Francisco Redevelopment Agency, the City and County of San Francisco and their respective officers, agents, employees and Commissioners", are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Tenant; products and completed operations of the Tenant, premises owned, occupied or used by the Tenant; or automobiles owned, leased, hired or borrowed by the Tenant. The coverage shall contain no special limitations on the scope of protection afforded to the Landlord, the City and County of San Francisco and their respective officers, agents, employees or Commissioners.

(b) The Tenant's insurance coverage shall be primary insurance as respects the Landlord, the City and County of San Francisco and their respective officers, agents, employees and Commissioners. Any insurance or self-insurance maintained by the Landlord, the City and County of San Francisco and their respective officers, agents, employees or Commissioners shall be excess of the Tenant's insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Landlord, the City and County of San Francisco and their respective officers, agents, employees or Commissioners.

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

(2) Workers' Compensation and Employers Liability Coverage: The insurer shall agree to waive all rights of subrogation against the Landlord, the City and County of San Francisco and their respective officers, agents, employees and Commissioners for losses arising from work performed by the Tenant for the Landlord.

(3) All Coverage: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to Landlord.

24.01(f) Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A:VII or as otherwise approved by the Landlord's Risk Manager.

24.01(g) Verification of Coverage

Tenant shall furnish Landlord with certificates of insurance and with original endorsements effecting coverage required by this clause at the commencement of this Ground Lease and annually thereafter. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Landlord reserves through its Risk Manager the right to require complete, certified copies of all required insurance policies, at any time.

24.01(h) Subcontractors

Tenant shall furnish separate certificates and endorsements for each subcontractor and consultant. All coverage for subcontractors and consultants shall be subject to all of the requirements stated herein unless otherwise approved by the Landlord's Risk Manager.

ARTICLE 25: Compliance with Site-Related Legal Requirements

25.01 Compliance with Legal Requirements

Tenant shall at its cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted, with any direction or occupancy certificate issued pursuant to any law by any public officer or officers, insofar as any thereof relates to or affects the condition, use or occupancy of the Site. In the event Tenant contests any of the foregoing, Tenant shall not be obligated to comply therewith to the extent that the application of the contested law, statute, ordinance, rule, regulation or requirement is stayed by the operation of law or administrative or judicial order and

Tenant indemnifies the Landlord against all loss, cost, expense or damage resulting from noncompliance.

ARTICLE 26: Entry

The Landlord and its authorized agents shall have the right at all reasonable times during normal business hours and after forty-eight (48) hours written notice to Tenant (except in the event of an emergency when no written notice is required), to go on the Site for the purpose of inspecting the same or for the purpose of posting notices of nonresponsibility or for police or fire protection.

ARTICLE 27: Mortgage Financing

27.01 No Encumbrances Except for Development Purposes

Notwithstanding any other provision of this Ground Lease and subject to the prior written consent of the Landlord, in the form attached hereto as Attachment 2, which consent shall not be unreasonably withheld or delayed, Leasehold Mortgages are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing the acquisition, design, construction, renovation or reconstruction of the Improvements and any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Improvements under this Ground Lease and in connection with the operation of the Improvements, and costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Ground Lease.

27.02 Holder Not Obligated to Construct

The holder of any mortgage, deed of trust or other security interest authorized by Article 27.01 ("**Holder**" or "**Lender**"), including the successors or assigns of such Holder, is not obligated to complete any construction of the Improvements or to guarantee such completion; nor shall any covenant or any other provision of this Ground Lease be construed so to obligate such Holder. However, in the event the Holder does undertake to complete or guarantee the completion of the construction of the Improvements, subject to Article 28.06(b), nothing in this Ground Lease shall be deemed or construed to permit or authorize any such Holder or its successors or assigns to devote the Site or any portion thereof to any uses, or to construct any Improvements thereon, other than those uses or Improvements authorized under this Ground Lease subject to any reasonable modifications in plans proposed by any Holder or its successors in interest proposed

for the viability of the Project, subject to the approval of Landlord which approval shall not be unreasonably withheld. To the extent any Holder or its successors in interest wish to change such uses or construct different improvements, subject to Article 28.06(b), that Holder or its successors in interest must obtain the written consent of the Landlord.

27.03 Failure of Holder to Complete Construction

In any case where six months after assumption of obligations pursuant to Article 27.02 above, a Lender, having first exercised its option to complete the construction, has not proceeded diligently with completion of the construction, the Landlord shall be afforded the rights against such Holder it would otherwise have against Tenant under this Ground Lease for events or failures occurring after such assumption: provided, however, if Lender has proceeded diligently with construction, the Schedule of Performance shall not apply to Lender if such Schedule of Performance has been replaced by the new Schedule of Performance pursuant to Article 12.15 of this Agreement, which new Schedule of Performance will apply to Lender

27.04 Default by Tenant and Landlord's Rights

27.04(a) Right of Landlord to Cure a Default or Breach by Tenant under a Leasehold Mortgage

In the event of a default or breach by Tenant of its obligations under any Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of such default or breach, the Landlord may, at its option, cure such breach or default at any time prior to one hundred nineteen (119) days after the date on which the Lender files a notice of default. In such event, the Landlord shall be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by the Landlord in curing the default or breach. The Landlord shall also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and disbursements. Any such lien shall be subject to the lien of any then existing Leasehold Mortgage authorized by this Ground Lease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Lender filing a notice of default, the Landlord shall also have the right to assign Tenant's interest in the Ground Lease to another entity, subject to such Lender's written consent, but which may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant

under the Leasehold Mortgage; provided that Landlord shall not exercise this right during the initial 15 year compliance period under Section 42 of the Internal Revenue Code.

27.04(b) Notice of Default to Landlord

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

27.05 Cost of Mortgage Loans to be Paid by Tenant

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

ARTICLE 28: Protection of Lender

28.01 Notification to Landlord

Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in Article 28, each Lender shall give written notice to the Landlord of the Lender's address and of the existence and nature of its Leasehold Mortgage. Execution of Attachment 2 shall constitute Landlord's acknowledgement of Lender's having given such notice as is required to obtain the rights and protections of a Lender under this Ground Lease. The Landlord hereby acknowledges that the First Mortgage Lender and the Landlord are deemed to have given such written Notice.

28.02 Lender's Rights to Prevent Termination

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

28.03 Lender's Rights When Tenant Defaults

(a) Should any event of default under this Ground Lease occur, and not be cured within the applicable cure period, the Landlord shall not terminate this Ground Lease nor exercise any other remedy hereunder unless it first gives written notice of such event of default to Lender and:

(i) If such event of default is a failure to pay a monetary obligation of Tenant, Lender shall have failed to cure such default within sixty (60) days from the date of written notice from the Landlord to Lender; or

(ii) If such event of default is not a failure to pay a monetary obligation of Tenant, Lender shall have failed, within sixty (60) days of receipt of said written notice, either (a) to remedy such default; or (b) to obtain title to Tenant's interest in the Site in lieu of foreclosure; or (c) to commence foreclosure or other appropriate proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in which case such event of default shall be remedied or deemed remedied in accordance with Article 28.04 below.

(b) All rights of the Landlord to terminate this Ground Lease as the result of the occurrence of any such event of default shall be subject to, and conditioned upon, the Landlord having first given Lender written notice of such event of default and Lender having failed to remedy such default or acquire Tenant's Leasehold Estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Article 28.03.

28.04 Default Which Cannot be Remedied by Lender

Any event of default under this Ground Lease which in the nature thereof cannot be remedied by Lender shall be deemed to be remedied if (i) within sixty (60) days after receiving notice from the Landlord setting forth the nature of such event of default, or prior thereto, Lender shall have acquired Tenant's Leasehold Estate created hereby or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) Lender shall diligently prosecute any such proceedings to completion, (iii) Lender shall have fully cured any event of default arising from failure to pay or perform any monetary obligation in accordance with the terms of this Ground

Lease, and (iv) after gaining possession of the Improvements, Lender shall diligently proceed to perform all other obligations of Tenant as and when the same are due in accordance with the terms of this Ground Lease.

28.05 Court Action Preventing Lender's Action

If Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Articles 28.03 and 28.04 above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition. If this Ground Lease is terminated or rejected by Tenant in bankruptcy or for any other reason, the Landlord agrees to enter into a new ground lease with the Lender on the same terms set forth in this Ground Lease.

28.06 Lender's Rights to Record, Foreclose and Assign

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

(a) the Lender may cause the Leasehold Mortgage to be recorded and enforced, and upon foreclosure, the successful bidder at the foreclosure sale may retain the leasehold estate or sell and assign the Leasehold Estate to an assignee from whom it may accept a purchase price ("**Subsequent Owner**"). The sale or assignment to the Subsequent Owner shall be subject to the written approval from Landlord, which approval shall not be unreasonably withheld. The Subsequent Owner shall either elect to:

(i) maintain the use restrictions of Articles 6 and 8, if said Subsequent Owner is controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Project receives an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code and pay an annual rent using the same or similar formula for Annual Rent under Article 4.01; or

(ii) refuse to maintain the use restrictions of Articles 6 and 8, and be subject to an annual rent as set forth in Article 28.07(b), wherein the existing BMR Tenants have the right to remain in their Units and the Agency has the right to subsidize

the rent of any BMR Tenant by paying to the Subsequent Owner the difference between the BMR Rent and the rent charged by the Subsequent Owner.

(b) the Landlord shall mail or deliver to any Lender which has an outstanding Leasehold Mortgage a duplicate copy of all notices which the Landlord may from time to time give to Tenant pursuant to this Ground Lease.

28.07 Ground Lease Rent After Lender Foreclosure or Assignment

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

(a) Any accrued Annual Rent at the time of foreclosure shall be forgiven by the Landlord, and shall not remain an obligation of the Lender, its assignee, or the Subsequent Owner. Subsequent to foreclosure, the Lender or its assignee shall pay Annual Rent in accordance with this Ground Lease.

(b) If the Subsequent Owner exercises its rights under Article 28.06(a)(ii) to operate the Project without being subject to Articles 6 and 8, Annual Rent shall be set at the then fair market rental value taking into account any affordability restrictions agreed to by the Subsequent Owner, if any, and the Base Rent shall be increased to the new fair market rent and the provisions of Article 6.02(g) shall be suspended; provided, however, that the Landlord shall be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole discretion and, in such case, the Subsequent Owner will reduce rent charged to BMR Tenants on a dollar for dollar basis, with respect to such aggregate units occupied by Very Low Income Households as the Landlord and the Subsequent Owner shall agree. The fair market rental value shall be determined by a jointly-commissioned appraisal (instructions prepared jointly by the Subsequent Owner and the Landlord, with each party paying one half of the appraiser's fee) that will include a market land valuation, as well as a market land lease rent level. Absent a market land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%) of the then appraised market land value. If the parties cannot agree on the joint appraisal instructions, either party may invoke a neutral third-party process to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association.

28.08 Permitted Uses After Lender Foreclosure

Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Premises shall be operated in accordance with the uses specified in the building permit with all addenda, as approved by the Landlord and/or the City.

ARTICLE 29: Condemnation and Takings

29.01 Parties' Rights and Obligations to be Governed by Agreement

If, during the term of this Ground Lease, there is any condemnation of all or any part of the Site or any interest in the Leasehold Estate is taken by condemnation, the rights and obligations of the parties shall be determined pursuant to Article 29, subject to the rights of any Lender.

29.02 Total Taking

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

29.03 Partial Taking

If any portion of the Site is taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may, with Lender's written consent, elect to terminate this Ground Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Tenant's continued use of the Site. If Tenant elects to terminate this Ground Lease, Tenant must exercise its right to terminate pursuant to this paragraph by giving notice to the Landlord within thirty (30) days after the Landlord notifies Tenant of the nature and the extent of the taking. If Tenant elects to terminate this Ground Lease as provided in this Article 29.03, Tenant also shall notify the Landlord of the date of termination, which date shall not be earlier than thirty (30) days not later than six (6) months after Tenant has notified the Landlord of its election to terminate; except that this Ground Lease shall terminate on the date the condemnor has the right to possession of the Site if such date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Ground Lease within such thirty (30) day notice period, this Ground Lease shall continue in full force and effect.

29.04 Effect on Rent

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

29.05 Restoration of Improvements

If there is a partial taking of the Improvements and this Ground Lease remains in full force and effect pursuant to Article 29.03, Tenant may, subject to the terms of the Leasehold Mortgage of the First Mortgage Lender, use the proceeds of the taking to accomplish all necessary restoration to the Improvements.

29.06 Award and Distribution

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

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

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

29.07 Payment to Lenders

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

ARTICLE 30: Estoppel Certificate

The Landlord or Tenant, as the case may be, shall execute, acknowledge and deliver to the other and/or to Lender, promptly upon request, its certificate certifying (a) that this Ground Lease is unmodified and in full force and effect (or, if there have been modifications, that this Ground Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which rent has been paid, (c) whether there are then existing any charges, offsets or defenses

against the enforcement by the Landlord or Tenant to be performed or observed and, if so, specifying the same, and (d) whether there are then existing any defaults by Tenant or the Landlord in the performance or observance by Tenant or the Landlord of any agreement, covenant or condition hereof on the part of Tenant or the Landlord to be performed or observed and whether any notice has been given to Tenant or the Landlord of any default which has not been cured and, if so, specifying the same.

ARTICLE 31: Quitclaim

Upon expiration or sooner termination of this Ground Lease, Tenant shall surrender the Site to the Landlord and, at the Landlord's request, shall execute, acknowledge, and deliver to the Landlord a good and sufficient quitclaim deed with respect to any interest of Tenant in the Site. Title to the Improvements shall vest automatically in the Landlord as provided in Article 13 herein.

ARTICLE 32: Equal Opportunity

Tenant agrees to comply with the Nondiscrimination and Equal Benefits Policy and related requirements attached hereto as Attachment 4.

ARTICLE 33: Operational Rules for Certificate Holder's Priority Program

Tenant agrees to comply with the requirements of the Agency's Property Owner and Occupant Preference Program as set forth on Attachment 11.

ARTICLE 34: Agency Prevailing Wage Policy (Labor Standards)

Tenant agrees to comply with the requirements of the Agency's Prevailing Wage Policy (Labor Standards) as set forth on Attachment 7.

ARTICLE 35: Agency Minimum Compensation And Health Care Accountability Policies

Tenant agrees that the Tenant and its subtenants, if any, will comply with the provisions of the Agency's Minimum Compensation Policy ("**MCP**") and Health Care Accountability Policy ("**HCAP**") (together, the "**Policies**") as set forth in Attachments 5 and 6 respectively. Notwithstanding this requirement, the Agency recognizes that the Project, which consists of residential housing is not subject to the Policies.

ARTICLE 36: Conflict of Interest

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

ARTICLE 37: No Personal Liability

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

ARTICLE 38: Energy Conservation

Subject to the availability of funding, Tenant agrees that it will use its best efforts to maximize provision of, and incorporation of, both energy conservation techniques and systems and improved waste-handling methodology in the construction of the Improvements.

ARTICLE 39: Waiver

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

ARTICLE 40: Tenant Records

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

ARTICLE 41: Notices And Consents

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

to Tenant:	Turk & Eddy Associates, L.P.. c/o Tenderloin Neighborhood Development Corporation 201 Eddy Street San Francisco, CA 94102 Attn: Managing Partner
With a copy to:	Tenderloin Neighborhood Development Corporation 201 Eddy Street San Francisco, CA 94102 Attn: Executive Director
to Landlord:	San Francisco Redevelopment Agency One South Van Ness Ave, 5th Floor San Francisco, California 94103 Attn.: Executive Director

or to such other address with respect to either party as that party may from time to time designate by notice to the other given pursuant to the provisions of this Article 41. Any notice given pursuant to this Article 41 shall be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt.

ARTICLE 42: Headings

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

ARTICLE 43: Successors And Assigns

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

ARTICLE 44: Time

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

ARTICLE 45: Partial Invalidity

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

ARTICLE 46: Applicable Law

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

ARTICLE 47: Attorneys' Fees

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

ARTICLE 48: Execution In Counterparts

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

ARTICLE 49: Recordation Of Memorandum Of Ground Lease

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

ARTICLE 50: Complete Agreement

This Ground Lease represents the complete agreement between the parties as to the matters described herein, and there are no oral understandings between the Tenant and the Landlord affecting this Ground Lease not set forth herein. This Ground Lease supersedes all previous

///

///

/// **REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

///

///

///

///

///

///

///

///

///

///

negotiations, arrangements, agreements and understandings between the Tenant and the Landlord with respect to this Ground Lease of the Site.

IN WITNESS WHEREOF, the Tenant and the Landlord have executed this Ground Lease as of the day and year first above written.

TENANT:

TURK & EDDY ASSOCIATES, L.P.,
a California limited partnership

By: TURK & EDDY GP LLC,
a California limited liability company

By: TURK STREET, INC.
its sole member / manager

By: _____
Donald S. Falk
Its: Executive Director

LANDLORD:

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO,
a public body corporate and politic

By: _____
Amy Lee
Its: Deputy Executive Director
Finance and Administration

APPROVED AS TO FORM:

By: _____
James B. Morales 2/3/10
Agency General Counsel

Authorized by Agency Resolution No. 134-2009, adopted November 17, 2009

LIST OF ATTACHMENTS

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

1. Legal Description of the Site
2. Agency Consent of Leasehold Mortgage
3. Schedule of Performance
4. Nondiscrimination and Equal Benefits Policy
5. Minimum Compensation Policy
6. Healthcare Accountability Policy
7. Agency Prevailing Wage Policy (Labor Standards)
8. Small Business Enterprise Agreement
9. Construction Workforce Policy
10. Permanent Workforce Policy
11. Property Owner and Occupant Preference Programs
12. Form of Annual Monitoring Report
13. Income Computation and Certification Form

ATTACHMENT 1

Legal Description of the Site

All that certain real property situated in the City and County of San Francisco, State of California, being more particularly described as follows:

249 Eddy Street

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

Commencing at a point on the Southerly line of Eddy Street, distant thereon 178 feet Easterly from the Easterly line of Jones Street; running thence Easterly along the Southerly line of Eddy Street 51 feet; thence at a right angle Westerly 51 feet and thence at a right angle Northerly 137 feet, 6 inches to the Southerly line of Eddy Street and the point of commencement.

Being a portion of 50 Vara Lot No. 1047.

APN: Lot 15A; Block 0339

161-165 Turk Street

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

Commencing at a point on the Southerly line of Turk Street, distant thereon 237 feet, 6 inches Westerly from the Westerly line of Taylor Street; running thence Westerly along the Southerly line of Turk Street 37 feet, 6 inches; thence at a right angle Southerly 137 feet, 6 inches; thence at a right angle Easterly 37 feet, 6 inches; and thence at a right angle Northerly 137 feet, 6 inches to the Southerly line of Turk Street and the point of commencement.

Being a portion of 50 Vara Lot No. 1049.

APN: Lot 017; Block 0343

ATTACHMENT 2
AGENCY CONSENT OF LEASEHOLD MORTGAGE

Date:

San Francisco Redevelopment Agency
Attn: Executive Director
One South Van Ness Avenue
San Francisco, CA 94103

RE: 249 Eddy Street and 161-165 Turk Street, San Francisco (LEASEHOLD MORTGAGE)

Dear Sir or Madam:

Pursuant to Section 27.01 of the 249 Eddy Street and 161-165 Turk Street Ground Lease, dated November 17, 2009, between the Redevelopment Agency of the City and County of San Francisco ("Agency") and Turk & Eddy Associates, L.P., by Turk & Eddy, G.P., LLC, by Turk Street, Inc., its sole member / manager, we are formally requesting the Agency's consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for the Agency to provide its consent:

Lender: _____
Principal Amount: _____
Interest: _____
Term: _____

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

Sincerely,

_____
Printed Name and Title

Attachments as indicated

By signing this letter, the Agency consents to the leasehold mortgage, pursuant to the terms and conditions of Section 27.01 of the 249 Eddy Street and 161-165 Turk Street Ground Lease dated November 17, 2009.

San Francisco Redevelopment Agency

_____
Amy Lee
Deputy Executive Director

ATTACHMENT 3

SCHEDULE OF PERFORMANCE

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
A.	***Entitlements***		
1.	Negative Declaration under CEQA		
2.	Section 106 and NEPA Clearance	11/09	01/10
3.	HazMat Investigation(s) Complete	12/08	**Completed**
4.	Geotechnical Investigation(s) Complete	12/07	**Completed**
5.	Design Review Complete	09/08	**Completed**
6.	Building Permit Obtained	08/09	12/09
B.	***Financing Milestones***		
1.	Construction Financing Committed*	06/09	12/09
2.	Developer Fee Contribution ($262,184)	4/11	7/11
3.	AHP Commitment Obtained	12/08	**Completed**
4.	CDLAC/TCAP Allocation Obtained**	09/07	**Completed**
5.	10% of Project Cost Incurred	10/07	**Completed**
C.	***Acquisition/Construction Milestones***		
1.	Site Acquisition	01/07	**Completed**
2.	Ground Lease	12/09	02/10
3.	Construction/Rehabilitation Begins	11/09	03/10***
4.	Construction/Rehabilitation Complete	11/10	03/11
5.	A complete sign-off on the job card for the Project from all applicable City agencies and department	11/10	04/11
6.	Occupancy of 95% of Units	04/11	07/11

* Conditional commitment from Citibank for construction and permanent financing

**Tax Credits exchanged for cash pursuant to federal ARRA program. Exchange/TCAP funds awarded July 8, 2009.

*** In order to meet TCAP final disbursement deadline of February 17, 2012, the following deadline is estimated.

SAN FRANCISCO REDEVELOPMENT AGENCY

DECLARATION FORM

Nondiscrimination in Contracts and Benefits

1. Nondiscrimination—Protected Classes

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

• race	☐ Yes	☐ No
• color	☐ Yes	☐ No
• creed	☐ Yes	☐ No
• religion	☐ Yes	☐ No
• ancestry	☐ Yes	☐ No
• national origin	☐ Yes	☐ No
• age	☐ Yes	☐ No
• sex	☐ Yes	☐ No
• sexual orientation	☐ Yes	☐ No
• gender identity	☐ Yes	☐ No
• marital status	☐ Yes	☐ No
• domestic partner status	☐ Yes	☐ No
• disability	☐ Yes	☐ No
• AIDS or HIV status	☐ Yes	☐ No

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?

☐ Yes ☐ No

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

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

a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?

☐ Yes ☐ No

b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?

☐ Yes ☐ No

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

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

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	☐	☐	☐
• Pension	☐	☐	☐
• Bereavement	☐	☐	☐
• Family leave	☐	☐	☐
• Parental leave	☐	☐	☐
• Employee assistance programs	☐	☐	☐
• Relocation and travel	☐	☐	☐
• Company discounts, facilities, events	☐	☐	☐
• Credit union	☐	☐	☐
• Child care	☐	☐	☐
• Other _____	☐	☐	☐
• Other _____	☐	☐	☐

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

(1) Have you taken all reasonable measures? ☐ Yes ☐ No

(2) Do you provide a cash equivalent? ☐ Yes ☐ No

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

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

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

Executed this _____ day of _____, 200___, at _____, _____.
(City) (State)

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

(For General Correspondence) _____

Remittance Address: _____

(If different from above address) _____

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

Signature: _____

Phone Number: _____ Federal Tax Identification Number: _____

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

☐ Check here if your address has changed.

☐ Check here if your organization is a non-profit.

☐ Check here if your organization is a governmental entity.

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

Please return this form to: San Francisco Redevelopment Agency, One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103

ATTACHMENT 5
MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Redevelopment Agency of the City and County of San Francisco adopted the Minimum Compensation Policy (MCP), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to provide the following to their employees covered by the MCP on Agency contracts and subcontracts for services: For Commercial Business MCP the wage rate is $11.54. For Nonprofit MCP the wage rate is $11.03 ;12 days' paid vacation per year (or cash equivalent); 10 days off without pay per year.

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

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

- in each contract, the contractor will agree to abide by the MCP and to provide its employees the minimum benefits the MCP requires, and to require its subcontractors subject to the MCP to do the same.

- if a contractor does not provide the MCP minimum benefits, the Agency can award a contract to that contractor only if the contract is exempt under the MCP, or if the contract has received a waiver from the Agency.

What this form does. If you can assure the Agency now that, beginning with the first Agency contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same, this will help the Agency's contracting process. The Agency realizes that it may not be possible to make this assurance now.

If you cannot make this assurance now, please do not return this form.

For more information, the complete text of the MCP is available from the Agency's Contract Compliance Department by calling (415) 749-2400.

Routing. Return this form to: Contract Compliance Department, San Francisco Redevelopment Agency, 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Agency contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the MCP to our covered employees, and will ensure that our subcontractors also subject to the MCP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ _____

Signature Date

_____

Print Name

_____ _____

Company Name Phone

ATTACHMENT 6

HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

What the Ordinance does. The San Francisco Redevelopment Agency adopted the San Francisco Health Care Accountability Policy (the "HCAP"), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to the Agency, contractors and subcontractors that enter into leases with the Agency, and parties providing services to tenants and sub-tenants on Agency property to choose between offering health plan benefits to their employees or making payments to the Agency or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the Agency Commission (2) pay the Agency $3.00 per hour for each hour the employee works on the covered contract or subcontract or on property covered by a lease (but not to exceed $120 in any week) and the Agency will appropriate the money for staffing and other resources to provide medical care for the uninsured, or (3) participate in a health benefits program developed by the Agency.

The Agency may require contractors to submit reports on the number of employees affected by the HCAP.

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

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

What this form does. If you can assure the Agency now that, beginning with the first Agency's contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same, this will help the Agency contracting process. The Agency realizes that it may not be possible to make this assurance now.

If you cannot make this assurance now, please do not return this form.

For more information, (1) see the complete text of the HCAP, available from the Agency's Contract Compliance Department at: (415) 749-2400.

Routing. Return this form to: Contact Compliance Department, San Francisco Redevelopment Agency, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Agency contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the HCAP to our covered employees, and will ensure that our subcontractors also subject to the HCAP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ _____

Signature Date

_____

Print Name

_____ _____

Company Name Phone

ATTACHMENT 7
PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

11.1 **Applicability**. These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Loan Agreement (LOAN) between the Developer and the Agency of which this Attachment and these Labor Standards are a part.

11.2 **All Contracts and Subcontracts shall contain the Labor Standards. Confirmation by Construction Lender**.

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

(b) Before close of escrow under the LOAN and as a condition to close of escrow, the Developer shall also supply a written confirmation to the Agency from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.

11.3 **Definitions**. The following definitions shall apply for purposes of this Attachment:

(a) "Contractor" is the Developer if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds $10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Improvements.

(b) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.

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

11.4 **Prevailing Wage**.

(a) All Laborers and Mechanics employed in the construction of the Improvements will be paid unconditionally and not less often than once a

week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §11.5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of escrow closing the Agency shall provide the Developer with a copy of the applicable Wage Determination.

All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.

(b) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.

(c) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Developer that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §11.8. The Executive Director of the Agency may require the Developer to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §11.4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

(d) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

11.5 **Permissible Payroll Deductions**. The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

(a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.

(b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.

(c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.

(d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:

1. The deduction is not otherwise prohibited by law; and

2. It is either:

   a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or

   b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and

3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and

4. The deduction shall serve the convenience and interest of the employee.

(e) Any authorized purchase of United States Savings Bonds for the employee.

(f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.

(h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments, provided that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

11.6 **Apprentices and Trainees**. Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

11.7 **Overtime**. No Contractor contracting for any part of the construction of the Improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.

11.8 **Payrolls and Basic Records**.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

(b) 1. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Developer acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.

2. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

(c) The Contractor shall make the records required under this §11.8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on

the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

11.9 **Occupational Safety and Health**. No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

11.10 **Equal Opportunity Program**. The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in the LOAN including the Construction Work Force Agreement and the Permanent Work Force Agreement. Any conflicts between the languages contained in these Labor Standards and shall be resolved in favor of the language set forth herein, except that in no event shall less than the prevailing wage be paid.

11.11 **Nondiscrimination Against Employees for Complaints**. No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

11.12 **Posting of Notice to Employees**. A copy of the Wage Determination referred to in subsection (a) of §11.4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Developer at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

11.13 **Violation and Remedies**.

(a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.

(b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by §11.2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §11.8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Developer with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.

(c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Developer, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Developer shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Developer, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Developer fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the Improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Developer shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §11.14.

(d) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the Improvements provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.

(e) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

11.14 **Arbitration of Disputes.**

(a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.

(b) The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.

(c) The arbitration shall take place in the City and County of San Francisco.

(d) Arbitration may be demanded by the Agency, the Developer or the Contractor.

(e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Developer, or as appropriate to one or the other if the Developer or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §11.4) and copies of all notices sent or received by the Agency pursuant to §11.13. Such material shall be made part of the arbitration record.

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

(g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.

(h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Developer shall pay the Contractor from money withheld.

(i) Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

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

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

EQUAL OPPORTUNITY	The contractor must take equal opportunity to provide employment opportunities to minority group persons
NON-DISCRIMI-NATION	and women and shall not discriminate on the basis of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.
PREVAILING WAGE	You shall not be paid less than the wage rate attached to this Notice for the kind of work you perform.
OVERTIME	You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 8 a day or 40 a week, whichever is greater.
APPRENTICES	Apprentice rates apply only to employees registered under an apprenticeship or trainee program approved by the Bureau of Apprenticeship and Training or the California Division of Apprenticeship Standards.
PROPER PAY	If you do not receive proper pay, write San Francisco Redevelopment Agency 1 South Van Ness Avenue, Floor 5 San Francisco, CA 94103 or call Contract Compliance Specialist **Kimberly Wilson** at **415-749-2425**

ATTACHMENT 8

SMALL BUSINESS ENTERPRISE AGREEMENT

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

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

II. **APPLICATION**. This SBE Program applies to all Agency-Assisted Contractors and Contractors and their subcontractors seeking Agency assisted Contracts.

III. **GOALS.** The Agency's SBE Participation Goals are:

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

A. **Trainee Hiring Goal**. In addition to the goals set forth above in Section III, there is a trainee hiring goal for architects, designers and other professional services consultants as follows:

Trainees	Design Professional Fees
0	$ 0 – $99,000
1	$ 100,000 – $249,999
2	$ 250,000 – $499,999
3	$ 500,000 – $999,999
4	$1,000,000 – $1,499,999
5	$1,500,000 – $1,999,999
6	$2,000,000 - $4,999,999
7	$5,000,000 - $7,999,999
8	$8,000,000 – or more

IV. **TERM.** The obligations of the Agency-Assisted Contractor and/or Contractor(s) with respect to SBE Program shall remain in effect until completion of all work to be performed by the Agency-Assisted Contractor in connection with the original construction of the site and any

tenant improvements on the site performed by or at the behest of the Agency-Assisted Contractor.

V. FIRST CONSIDERATION. First consideration will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: (1) Project Area SBEs, (2) Local SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-local SBEs (outside of San Francisco). Non-local SBEs should be used to satisfy participation goals only if Project Area SBEs or Local SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-local SBEs.

VI. CERTIFICATION. Only businesses certified by the Agency as SBEs will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the Policy (as defined in Section VII below).

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

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

Agency-Assisted Contract means, as applicable, the Development and Disposition Agreement ("**DDA**"), Land Disposition Agreement ("**LDA**"), Lease, Loan and Grant Agreements, and Operations Agreement that the Agency executed with for-profit or non-profit entities.

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

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

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

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

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

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

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

Project Area means an area of San Francisco that meets the requirements under Community Redevelopment Law, Health and Safety Code Section 33320.1. These areas are described in the Policy with specific street boundaries and include the Bayview Industrial Triangle, Hunters Point, Bayview Hunters Point, Hunters Point Shipyard, India Basin Industrial Park, Golden Gateway, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, Transbay, Western Addition Area A-2, and Yerba Buena Center.

Small Business Enterprise (SBE) means an economically disadvantaged business that: is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; has average gross annual receipts in the three years immediately preceding its application for certification as a SBE that do not exceed the following limits: (a) construction--$14,000,000; (b) professional or personal services--$2,000,000 and (c) suppliers--$2,000,000; and is (or is in the process of being) certified by the Agency as a SBE.

Survey Area means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas are described in the Policy with specific street boundaries and include Mid-Market and Visitacion Valley.

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

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

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

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

B. **Pre-Solicitation Meeting**. For construction contracts estimated to cost $300,000 or more, hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors for the purpose answering questions about the selection process and the specifications and requirements. Representatives of the Contract Compliance Department will also participate.

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

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

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

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

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

H. **Other Assistance.** Assist SBEs in their efforts to obtain bonds, lines of credit and insurance. The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.

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

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

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

L. **Replacement of SBE.** If during the term of this SBE Agreement, it becomes necessary to replace an SBE due to the failure or inability of the SBE to perform the required services or timely delivery the required supplies, then First Consideration should be given to another certified SBE, if available, as a replacement.

X. ADDITIONAL PROVISIONS

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

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

XI. PROCEDURES

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

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

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

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

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

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

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

4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.

5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.

6. A description of the assistance provided to SBEs with respect to bonding, lines of credit, etc.

7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.

8. A description of any divisions of work undertaken to facilitate SBE participation.

9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.

10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.

11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

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

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

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

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

XII. ARBITRATION OF DISPUTES.

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

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

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

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

E. **Selection of Arbitrator**. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA

shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

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

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

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

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

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

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

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

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

subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

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

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

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

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

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

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

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

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

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

_____ Agency

_____ Agency-Assisted Contractor

XIII. AGREEMENT EXECUTION

Note: If you are seeking Agency certification as a SBE, you should fill out the "Application for SBE Certification". If you are already an Agency certified SBE, you should execute the "SBE Eligibility Statement".

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

_____ Signature

_____ Date

_____ Print Your Name

_____ Title

_____ Company Name and Phone Number

ATTACHMENT 9
CONSTRUCTION WORK FORCE AGREEMENT

I. **PURPOSE.** The purpose of the Agency and the Owner entering into this Construction Work Force Agreement is to ensure equal employment opportunities for minority group persons and women in the construction work force involved in constructing any of the phases upon the Site covered by the LOAN. To achieve this purpose, the Agency and the Owner adopt the standards and requirements set forth below, which are modeled on the standards and requirements of Executive Order 11246 and its implementing regulations including those contained in 41 Code of Federal Regulations ("CFR") 60-1.4, 60-4.2 and 60-4.3.

II. **WORK FORCE GOALS.**

A. The goals set forth below are expressed as a percentage of each Contractor's total hours of employment and training by trade on the Site. The goals represent the level of minority and female utilization each Contractor should reasonably be able to achieve in each construction trade in which it has employees on the Site. The Owner agrees, and will require each Contractor (regardless of tier), to use its good faith efforts to employ minority group persons and women to perform construction work upon the Site at a level at least consistent with said goals.

B. Goals

1. Goal for minority group participation in each trade: ***25.6 percent*** of the total hours worked in the trade.

2. Goal for female participation in each trade: ***6.9 percent*** of the total hours worked in the trade.

3. Goal for participation of San Francisco residents in each trade: ***50 percent*** of the total hours worked in the trade. Residents of the _____ shall be given first consideration for hiring followed by other San Francisco residents.

C. If a conflict arises, achieving the ethnic and gender goals shall take precedence over achieving the residency goal set forth in Section II.B.3.

The goals set forth in Section II.B shall be amended to reflect goals issued by the Agency shall either reflect the availability of minority group persons and/or women in the relevant labor area to perform construction work generally or by trade, or, be designed to correct the effects of past discrimination in situations where the Agency concludes that the facts establish a prima facie case of discrimination against a minority group or women, or otherwise meet the current judicial standards for setting employment goals. A judicial finding of discrimination shall not be a prerequisite to the establishment of new goals by the

Agency. If the Owner believes that the new goals violate applicable legal standards, the Owner may challenge the goals either through arbitration under Attachment H or in a de novo court action.

D. Amendments to the goals shall be prospective and go into effect 20 days after the Agency mails written notice of the amendments to the Owner. New goals shall not be applied retroactively.

E. Although paragraph B establishes a single goal for minority group persons and a separate, single goal for women, each Contractor is required to provide equal employment opportunity and to take equal opportunity for all ethnic groups, both male and female, and all women, both minority and non-minority. Consequently, a Contractor may be in violation of this Construction Work Force Agreement if a particular ethnic group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goal for women generally, the Contractor may be in violation if a specific ethnic group of women is underutilized.) If the Agency determines, after affording a Contractor notice and an opportunity to be heard, that the Contractor has violated its obligations under this paragraph, the Agency may set, for that Contractor, work force participation goals by particular ethnic group, e.g., Blacks, Latinos, etc.

F. Each Contractor is individually required to comply with its obligations under this Construction Work Force Agreement, and to make a good faith effort to achieve each goal in each trade in which it has employees employed at the Site. (See Section IV below.) The overall good faith performance by other contractors or subcontractors toward a goal does not excuse any covered Contractor's failure to make good faith efforts to achieve the goals.

G. The Contractor shall not use the goals or equal opportunity standards to discriminate against any person because of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

H. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS").

III. **INCORPORATION.** Whenever the Owner, the general contractor, any prime contractor, or any subcontractor at any tier subcontracts a portion of the work on the Site involving any construction trade, it shall set forth verbatim and make binding on each

subcontractor which has a contract in excess of $10,000 the provisions of this Construction Work Force Agreement, including the applicable goals for minority group and female participation in each trade.

IV. EQUAL OPPORTUNITY REQUIREMENTS.

A. Each Contractor shall take specific equal opportunities to ensure equal employment opportunity ("EEO"). The evaluation of the Contractor's compliance with this Construction Work Force Agreement shall be based upon its good faith efforts to achieve maximum results from its actions. Each Contractor shall document these efforts fully, and shall implement equal opportunity steps at least as extensive as the following:

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at the Site. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment with specific attention given to minority group persons or women working at the Site.

2. Provide written notification to community based organization and any other organizations identified for the Contractor by the Agency when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

3. Maintain a current file of the names, addresses and telephone numbers of each off-the-street, minority group, female or resident applicant and each minority, female and resident referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

4. Provide immediate written notification to the Agency when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority group person, a woman or a resident sent or requested by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

5. Develop on-the-job training opportunities and/or participate in training programs which expressly include minority group persons and women, including apprenticeship, trainee and upgrading programs relevant to the Contractor's employment needs, especially those funded or approved by

BAT or DAS. The Contractor shall provide notice of these programs to the sources compiled under Section IV.A.2 above.

6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority group and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at the Site.

7. Review, prior to beginning work at the Site and at least annually thereafter, the Contractor's EEO policy and equal opportunity obligations under the LOAN and this Construction Work Force Agreement with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter. The Agency's contract compliance staff shall be invited to attend the meeting held prior to the beginning of work at the Site.

8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

9. Direct its recruitment efforts, both oral and written, to local minority group, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

10. Encourage present minority and female employees to recruit other minority group persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the Site and in other areas of a Contractor's work force.

11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

12. Conduct, at least annually, an inventory and evaluation of minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training etc., such opportunities.

13. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.

14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the genders.

15. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and equal opportunity obligations.

B. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their equal opportunity obligations under Section IV.A.1 through 15. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section IV.A.1 through 15 provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minority group persons and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force composition, makes a good faith effort to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

V. ADDITIONAL PROVISIONS.

A. The failure by a union with which the Contractor has a collective bargaining agreement, to refer either minority group persons or women shall not excuse the Contractor's obligations under this Construction Work Force Agreement.

B. A Contractor shall not enter into any subcontract with any person or firm that the Contractor knows or should have known is debarred from government contracts pursuant to Executive Order 11246.

C. No employee to whom the equal opportunity provisions of this Construction Work Force Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to Attachment H of the LOAN or this Schedule.

D. Each Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Contractor's EEO policy is being carried out.

VI. DOCUMENTATION AND RECORDS.

A. Submission of certified payrolls to the Agency. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a report providing the information contained in the Agency's Optional Form of payroll report for the week preceding the previous week on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors.

B. Instructions for coding certified payrolls. In addition to maintaining the information required by Section VI.C, each Contractor shall include, on the weekly payroll submissions, the code designating each employee's craft, skill level, protected class status and domicile in accordance with the following table:

Table for Coding Crafts, Minority Group Persons,

Women and Residents on Certified Payrolls

CRAFT CODE	DESCRIPTION	CRAFT CODE	DESCRIPTION
1	Electrician	22	Carpet, Linoleum, Vinyl Tile Layer
2	Iron Worker	23	Elevator Constructor
3	Sheet Metal Worker	24	Cement Mason
4	Asbestos Wrkr/Heat & Frost Insulator	25	Laborer or Allied Worker
5	Plumber, Pipe or Steamfitter	26	Glazier & Glassmaker
6	Refrigeration	27	Painter, Paperhanger, Taper
7	Boilermaker	28	Sign Installer
8	Sprinkler Fitter	29	Scrapper
9	Brick, Caulk, Marble, Point, Terrazzo	30	Awning Installer
10	Hod Carrier	31	Drapery Hanger
11	Terrazzo Finisher	32	Low Voltage Electrician
12	Plasterer	33	Towboat Operator-Marine Engineer

13	Lather	34	Towboat Deckhand-Inland Boatworker
14	Carpenter or Drywall Hanger	35	Owner/Operator - Truck
15	Mill Worker or Cabinetmaker	36	Owner/Operator - Heavy Equipment
16	Millwright	37	Upholsterer
17	Roofer	38	Teamster, Construction
18	Pile Driver	39	Janitor
19	Surveyor/Operating Engineer	40	Environmental Control System Installer
20	Tile (Ceramic)/Marble Finisher	41	Window Cleaner
21	Tile (Ceramic)Setter	89	Security Guard

CODE	DESCRIPTION	CODE	DESCRIPTION
D	San Francisco-Domiciled	B	Black
R	Project Area Resident	I	American Indian
S	Latino	C	Caucasian/White
O	Asian/Pacific Islander	W	Woman

C. Required records. For each employee, the Contractor's payroll or similar record shall contain the name, address, whether an employee lives in the Project Area, telephone numbers, construction trade, classification, union affiliation (if any), employee identification number, Social Security number, gender, race, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hourly wage rates (including rates of contributions for costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, the contractor shall not be required to maintain separate records.

D. Additional information. The report required by Section VI.B shall be accompanied by:

1. A statement of any problems encountered by the Contractor in obtaining minority, female or resident referrals from any union and

2. A statement of the reasons why the Contractor failed to meet the ethnic and gender employment goals (if the goals were not met), the reasons why the contractor failed to meet the 50 percent San Francisco residency goal (if that goal was not met) and the reasons why the contractor was not able to perform any of the equal opportunity steps set forth in Section IV.A.1 through 15 (if any of the steps were not taken).

E. Inspection of records. The Contractor shall make the records required under this section available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job.

F. Failure to submit reports. If a Contractor fails or refuses to provide the reports to the General Contractor as required by Section VI.A, the Agency, upon notice from the General Contractor or the Owner, shall consider but not be required to institute arbitration proceedings against the noncompliant Contractor.

G. Submission of good faith effort documentation. If the Contractor's good faith efforts are at issue, the Contractor shall provide the Agency with the documentation of its efforts as required by Section IV.A.

ARBITRATION OF DISPUTES.

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

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

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

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

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

F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

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

H. **Burden of Proof**. The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.

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

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

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

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

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

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

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

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

M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.

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

was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

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

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

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

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

_____ Agency

_____ Owner

VII. PRECONSTRUCTION MEETING.

A. Prior to the commencement of construction, the general contractor, any prime contractor, or any subcontractor at any tier shall attend a preconstruction meeting convened by the Agency and to which outreach organizations are invited to review the reporting requirements, the prospective construction work force composition and any problems that may be anticipated in meeting the construction work force goals.

B. Any subcontractor at any tier, who does not attend such a meeting shall not be permitted on the job site. The Agency shall convene additional preconstruction meetings within 24 hours of the Contractor's request. The Contractor shall endeavor to include as many prospective subcontractors as possible at these meetings in order not to protract unduly the number of meetings.

C. Failure to comply with this preconstruction meeting provision may result in the Agency ordering a suspension of work by the prime contractor and/or the subcontractor until the breach has been cured. Suspension under this provision is not subject to arbitration.

VIII. TERM. The obligations of the Owner and the Contractors with respect to their construction work forces, as set forth in Attachment ___ of this LOAN and this Construction Work Force Agreement, shall remain in effect until completion of all work to be performed by the Owner in connection with the construction of any of the phases.

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

_____ _____

Signature Date

_____ _____

Print Your Name Title

_____

Company Name and Phone Number

EXHIBIT U
PERMANENT WORK FORCE AGREEMENT

I. PURPOSE. The purposes of the Agency and the Owner in entering into this Permanent Work Force Agreement are to ensure:

A. that minority group persons and women are provided equal opportunity for and are not discriminated against in employment in the Owner's permanent work force that occupies the improvements on the Site covered by the OPA and in the work forces of businesses which lease space in the Site.

B. that San Francisco residents obtain ***50 percent*** of the permanent jobs in the work forces of the Owner and tenants at the Site.

C. that residents of San Francisco residents are given first consideration for employment by the Owner and tenants for permanent employment at the Site.

II. APPLICATION OF THIS SCHEDULE TO TENANTS. The Owner shall include verbatim in its leases and require the incorporation verbatim in all subleases for space in the Site the provisions of this Permanent Work Force Agreement. The lease shall make the incorporated provisions binding on and enforceable by the Agency against the tenant to the same extent as these provisions are binding on and enforceable against the Owner; except that:

A. Unless agreed otherwise by the Agency, a tenant with ***26 or more*** employees shall submit its workforce plan through the Owner to the Agency not later than 90 days prior to hiring any permanent employees to work on the tenant's premises; rather than pursuant to the requirements set forth in Section V.B.

B. A tenant with 25 or less employees shall not be required to submit an workforce plan pursuant to Section IV, but instead shall undertake and document in writing the good faith efforts it made to meet the goals and first consideration in employment requirements set forth in Section III. The Agency's Contract Compliance Department shall determine if such a tenant has exercised good faith efforts.

C. A tenant with less than 25 employees shall submit to the Agency the reports required by Section VII of not later than 60 days after it opens for business and annually thereafter.

III. GOALS AND OBJECTIVES.

A. The Owner and each tenant shall:

1. make good faith efforts to achieve in each job category in its permanent

work force at the Site an ethnic and gender mix that reflects the composition of the civilian work force of the City and County of San Francisco. These goals are not to be perceived as inflexible quotas, but rather as objectives to be pursued by the mobilization of available resources and by good faith efforts to fulfill the respective equal opportunity plans.

2. make good faith efforts to employ 50 percent of its work force at the Site in each job category from residents of the City and County of San Francisco.

3. as provided in Section IV.B.1, give first consideration for employment at the Site to _____ area residents and then to other residents of San Francisco.

B. If a conflict arises, achieving the ethnic and gender goals set forth in subparagraph A.1 shall take precedence over the San Francisco residency goal and the requirement to give first consideration in employment as set forth in subparagraphs A.2 and A.3 respectively, of this Section III.

IV. PERMANENT WORKFORCE PLAN.

A. The Owner and each tenant with more than 26 employees, whether or not it is a federal contractor, shall prepare and adopt a plan for its permanent work force at the Site.

B. The workforce plan shall contain the following:

1. Detailed procedures for ensuring that San Francisco residents who are equally or more qualified than other candidates obtain first consideration for employment. These procedures shall include specific recruiting, screening and hiring procedures (e.g., phased hiring) which ensure that qualified San Francisco residents receive offers of employment prior to other equally or less qualified candidates. If a candidate(s) who is entitled to first consideration is not selected for the position, the Owner or tenant shall have the burden of establishing to the Agency and the arbitrator (if the matter is taken to arbitration), that the candidate who was selected was better qualified for the position than the candidate(s) who was entitled to first consideration.

2. Where it is a reasonable expectation that 10 percent or more of the employees in any job category will regularly work less than 35 hours per week, detailed procedures for ensuring that minority group persons, women and San Francisco residents do not receive a disproportionate share of the part time work.

3. An agreement that not more than 15 percent of the positions in any job category will be filled by persons transferred from other facilities operated

by the Owner, without the prior approval of the Agency. The Agency shall grant approval upon a showing that transfers in excess of 15 percent do not unreasonably interfere with the objective of creating new jobs for San Francisco residents and that such transfers further legitimate business needs of the Owner. Transfers shall be counted in determining if the Owner has met the employment goals for each ethnic group and women.

4. Where required by the Agency, detailed procedures for utilizing Outreach Organizations as meaningful referral sources for job applicants.

V. ARBITRATION OF DISPUTES.

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

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

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

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

E. **Selection of Arbitrator.** One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in

this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

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

H. **Burden of Proof.** The burden of proof with respect to Permanent Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.

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

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

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

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Permanent Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Permanent Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Permanent Work Force Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

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

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

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

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

M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Permanent Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.

N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be

awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

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

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

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

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

_____ _____

Agency Owner

VII. REPORTS.

A. The Owner and each tenant shall prepare, for its Site work force, reports for each job category which show by race, gender, residence and, where required by the Agency, by transfer/non-transfer and referral source:

1. Current work force composition;
2. applicants;
3. job offers;
4. hires;
5. rejections;
6. pending applications;
7. promotions and demotions; and
8. employees working, on average, less than 35 hours per week.

B. The reports shall be submitted quarterly to the Agency, unless otherwise required by the Agency. In this regard the Owner and each tenant agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, the Agency may require daily, weekly or monthly reports containing all or some of the above information. The Owner and each tenant further agrees that the above reports may not be sufficient for monitoring the Owner's or tenant's performance in all circumstances, that they will negotiate in good faith concerning additional reports, and that the arbitrator shall have authority to require additional reports if the parties cannot agree.

VIII. TERM. The obligations of the Owner and its tenants with respect to their permanent work forces as set forth in the OPA and this Permanent Work Force Agreement shall arise from the date the Owner or its tenants first assigns employees to the Site on a permanent basis and remain in effect for three years thereafter.

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

_____ _____

Signature Date

_____ _____

Print Your Name Title

_____

Company Name and Phone Number

ATTACHMENT 10
PERMANENT WORK FORCE AGREEMENT

I. PURPOSE. The purposes of the Agency and the Owner in entering into this Permanent Work Force Agreement are to ensure:

A. that minority group persons and women are provided equal opportunity for and are not discriminated against in employment in the Owner's permanent work force that occupies the improvements on the Site covered by the OPA and in the work forces of businesses which lease space in the Site.

B. that San Francisco residents obtain ***50 percent*** of the permanent jobs in the work forces of the Owner and tenants at the Site.

C. that residents of San Francisco residents are given first consideration for employment by the Owner and tenants for permanent employment at the Site.

II. APPLICATION OF THIS SCHEDULE TO TENANTS. The Owner shall include verbatim in its leases and require the incorporation verbatim in all subleases for space in the Site the provisions of this Permanent Work Force Agreement. The lease shall make the incorporated provisions binding on and enforceable by the Agency against the tenant to the same extent as these provisions are binding on and enforceable against the Owner; except that:

A. Unless agreed otherwise by the Agency, a tenant with ***26 or more*** employees shall submit its workforce plan through the Owner to the Agency not later than 90 days prior to hiring any permanent employees to work on the tenant's premises; rather than pursuant to the requirements set forth in Section V.B.

B. A tenant with 25 or less employees shall not be required to submit an workforce plan pursuant to Section IV, but instead shall undertake and document in writing the good faith efforts it made to meet the goals and first consideration in employment requirements set forth in Section III. The Agency's Contract Compliance Department shall determine if such a tenant has exercised good faith efforts.

C. A tenant with less than 25 employees shall submit to the Agency the reports required by Section VII of not later than 60 days after it opens for business and annually thereafter.

III. GOALS AND OBJECTIVES.

A. The Owner and each tenant shall:

1. make good faith efforts to achieve in each job category in its permanent

PROPERTY OWNER AND OCCUPANT PREFERENCE PROGRAM

(CERTIFICATE OF PREFERENCE PROGRAM)

OF THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

As amended and restated pursuant to Agency Resolution No. 57-2008 (June 3, 2008)

Effective October 1, 2008

TABLE OF CONTENTS

I. INTRODUCTION.

The Redevelopment Agency of the City and County of San Francisco ("Agency") initially established a preference program for displaced residents and businesses in the 1960's when the Agency was implementing its federally-funded urban renewal program.[1] The Agency created a program whereby displaced residents and businesses of certain project areas received "Certificates of Preference" and were thus entitled to a priority in the renting or buying of Agency-owned or approved property. The preference was in addition to other relocation benefits (i.e., fair market value for acquired property, relocation assistance, replacement housing units) that the displacees may have received; it was also subject to otherwise applicable eligibility requirements that the Agency imposed on the renting or buying of the property.

The Certificate of Preference Program has special significance in the Western Addition A-2 and Hunters Point Redevelopment Project Areas, which were subject to massive urban renewal programs that the federal government funded and that involved the widespread clearance and relocation of communities.[2] These programs were replicated across the country and caused wide-spread social, economic, cultural, political, and emotional upheaval that has been documented in the affected communities.[3] In light of the unique social and individual losses associated with urban renewal, the Agency provides enhanced preferences to those who were directly or indirectly affected by the redevelopment activities in the Western Addition A-2 and Hunters Point Redevelopment Project Areas.

The Agency has statutory obligations under the California Community Redevelopment Law to provide preferences to low- and moderate-income displacees in Agency-assisted housing and to businesses for the purposes of reentering the project area.[4] The Agency has fulfilled these obligations through this Certificate of Preference Program and through separately-adopted business re-entry policies that are part of redevelopment plan approvals.[5] Historically, the Certificate of Preference Program has applied only in the Western Addition A-2,

---

[1] See Rules Governing Business Preferences for the Western Addition Redevelopment Project Area A-2, Agency Resolution No. 136-63 (Oct. 22, 1963); Property Owner and Occupant Preference Policy for Reestablishment in the Western Addition Redevelopment Project A-2, Agency Resolution No. 103-67 (July 25, 1967).

[2] The Agency redeveloped other older project areas that relied on urban renewal funds and that involved widespread acquisition and clearance of property, but some of these project areas have long expired, e.g., the Western Addition A-1 Redevelopment Project Area, or are subject to separate relocation policies that did not rely on the Certificate of Preference Program, e.g., Special Assistance Available to Businesses and Industries and Business Preference Rules for the Yerba Buena Center Redevelopment Project Area D-1, Agency Resolution No. 108-1965 (Aug. 17, 1965).

[3] See generally M. Fullilove, Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It (Ballantine Books 2004).

[4] California Health and Safety Code, Section 33339.5 (Reentry in business in redeveloped areas); California Health and Safety Code, Section 33411.3 (Availability of low- and moderate-income units to displaced persons of low- and moderate-income).

[5] See List of Separately-Adopted Business Preference and Re-Entry Policies, attached as Exhibit 1.

Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan), Stockton-Sacramento, and Bayview Industrial Triangle Redevelopment Project Areas,[6] although the Rincon Point-South Beach Redevelopment Project Area also has its own Certificate of Preference Program.[7] In other redevelopment project areas, the Agency did not use the Certificate of Preference Program, but implemented the separately-adopted business re-entry policies and directly relied on the statutory obligations to provide preferences to lower income displaced residents. Accordingly, the Certificate of Preference Program is only one means by which the Agency has fulfilled its statutory obligations to provide displaced persons with a priority in the renting or buying of property.

This Property Owner and Occupant Preference Program, as amended and restated, ("Amended and Restated Program") codifies and clarifies recent amendments that the Agency Commission authorized in Agency Resolution No. 57-2008 (June 3, 2008).[8] These amendments include extending the duration of certain residential certificates, expanding the housing opportunities for certain displacees who did not receive certificates at the time of displacement because they were not then eligible, e.g., minor children and adults who were not heads of the household, revising the appeals process when the Agency denies a certificate, providing an enhanced education and outreach program to identify displacees, and reaffirming existing policies that only persons displaced by Agency action are eligible for a certificate and that a displacee may establish eligibility even though his or her name does not appear on Agency records. In addition, the Agency Commission authorized Agency staff to continue exploring the future expansion of the certificate program to certain persons who did not live in the household at the time of displacement, but who may be the grandchildren of the original displaced heads of household, i.e., children of the persons who were children themselves at the time of displacement. The Agency Commission did not authorize an immediate expansion of the certificate program to include these "grandchildren;" rather it directed Agency staff to continue investigating, among other things, the feasibility of expanding eligibility in light of the supply of affordable housing and the ability of the Agency to meet existing demand. When Agency staff completes its review of the issues associated with the "grandchildren" expansion, it will make appropriate amendments to the program.

This Amended and Restated Program is divided into two separate sections: a program of preference for residential displacees and another program for business displacees. The residential program applies to all existing project areas, but has special provisions for certain project areas affected by urban renewal. The business program applies only to certain existing project areas that do not have a

[6] The Stockton-Sacramento Redevelopment Project Area expired in 2004; under the terms of the then-existing Property Owner and Occupant Preference Program, certificates of preference from that project area expired two years later in 2006.

[7] Property owner and occupant re-entry preference program for the Rincon Point-South Beach Redevelopment Project Area, Agency Resolution No. 330-1980 (Oct. 28, 1980).

[8] Agency Resolution No. 57-2008 is attached as Exhibit 2.

separately-adopted business re-entry policy, namely the Western Addition A-2, Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan), and Bayview Industrial Triangle Redevelopment Project Areas. In all other project areas, separate re-entry policies remain in effect and are not affected by this Amended and Restated Program.

II. RESIDENTIAL CERTIFICATE OF PREFERENCE PROGRAM.

A. Purpose.

1. To give certain preferences in consideration for housing to persons displaced by Agency action or action on behalf of the Agency.

2. To give enhanced preferences in consideration for housing opportunities to those persons affected by urban renewal programs in the Western Addition A-2 and Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan (the "Urban Renewal Project Areas").

3. To implement, for all project areas, statutory requirements under the Community Redevelopment Law (Health & Safety Code § 33411.3) requiring the Agency to give priority to displaced low- and moderate-income households in Agency-assisted housing and in other housing for low- and moderate-income households.

4. To supplement other rights and benefits that may be available to displaced persons, such as relocation benefits under the Relocation Assistance and Property Acquisition Guidelines, 25 Cal. Code of Regulations, Sections 6000 et seq.

B. Definitions.

1. "Agency-Assisted Housing Units" means those units that the Agency must make available to displaced persons under Section 33411.3 of the Health and Safety Code, i.e., low- or moderate-income housing units developed (i) with any Agency assistance, (ii) pursuant to Section 33413 of the Health and Safety Code, or (iii) in any redevelopment project area.

2. "Certificate" or "Certificate of Preference" is Agency documentation that a person or business is eligible for a preference described in this Program.

3. "Displaced Person" means a person who was a legal occupant of a building and who permanently moved him or herself from the property as a result of acquisition of the property (i) by the Agency, (ii) by a private entity under contract with or on behalf of

the Agency, or (iii) as a result of receipt of a notice of intention to acquire by the Agency. Displaced person also includes a person who moves as a result of the rehabilitation, demolition, or other displacing activity that the Agency or any person having an agreement with or acting on behalf of the Agency undertakes of real property on which the person is in lawful occupancy. A Displaced Person may be an owner or a tenant in lawful occupancy of the property from which he/she was displaced.

4. "Residential A Certificate Holder" means a Displaced Person who lived in an Urban Renewal Project Area and who is eligible to receive a Certificate of Preference based either: (i) on his or her status as a head of household at the time of displacement, or (ii) on his or her intent to live separate and apart from the household after displacement; and whose name appears on Agency records, e.g., the Site Occupant Record.

5. "Residential C Certificate Holder" means a Displaced Person who lived in an Urban Renewal Project Area and who is eligible to receive a Certificate based on his or residency in a household at the time of Agency displacement, but who was ineligible for a Residential A Certificate of Preference. To qualify for a Residential C Certificate, the person's name must appear on the Agency's Site Occupant Record for a dwelling unit or the person must be able to prove, to the reasonable satisfaction of the Agency, that he or she resided in the household at the time of displacement.

6. "Residential G Certificate Holder" means a Displaced Person a) who is the head of household or who demonstrates to the reasonable satisfaction of the Agency that he or she intends to live separate and apart from the household after displacement; b) who lived in the City and County of San Francisco other than an Urban Renewal Project Area at the time of displacement; and c) who has not been provided by the Agency with permanently affordable replacement housing in an Agency-Assisted Housing Unit.

7. "Residential Certificate" means Agency documentation that a person is eligible for a Residential A, C, or G Certificate.

8. "Residential Certificate of Preference Holder" or "Residential Certificate Holder" means all classes of residential certificate holders, i.e., Residential A, C, and G Certificate Holders.

9. "Site Occupant Record" means the Agency's record of the occupants of a building at the time of Agency displacement. The Agency or a designated agent of the Agency is responsible for

completing the Site Occupancy Record ("SOR") for each displaced household.

10. "Urban Renewal Project Area" means the Western Addition A-2 or Hunters Point (i.e., Area A of the Bayview Hunters Point Redevelopment Project Area) Redevelopment Project Areas.

11. "Used" means a) in the case of a rental or purchase of a cooperative share, means the execution of a lease or rental agreement; or b) in the case of a purchase, the execution of a deed by the Agency or a third party pursuant to an agreement with the Agency requiring priority in sales to Certificate Holders.

C. Use of Residential Certificates.

A Residential Certificate entitles a Displaced Person, in accordance with the California Health and Safety Code Section 33411.3, to receive a priority in the renting or buying of an Agency-Assisted Housing Unit, subject to the following conditions:

1. The Displaced Person must meet the income eligibility and other requirements for the Agency-assisted housing unit.

2. Residential Certificate Holders are eligible to use a Certificate to receive a priority: 1) in the renting of, or buying of a cooperative share in, Agency-Assisted Housing Unit; and 2) in the buying of an Agency-Assisted Housing Unit. All classes of Residential Certificate Holders thus have the opportunity to exercise the Certificate twice: once for a rental or cooperative share opportunity and again for a homeownership opportunity, provided, however, that a person who is otherwise eligible for a Residential G Certificate Holder is not eligible for a Certificate if the Agency has provided the displaced household with affordable housing in an Agency-Assisted Housing Unit.

3. Residential Certificate Holders have the above-described preferences for the renting or buying of Agency-Assisted Housing Units in the following descending order of priority, provided, however, that a redevelopment plan or Agency Commission action may change this order of priority for a particular project area or project:

   a. A Displaced Person with the earliest date of displacement.

b. A Displaced Person seeking to use a Certificate for a housing development in the Project Area from which the person was displaced.

c. A Displaced Person seeking to use a Certificate for a housing development either in a Project Area from which the person was not displaced or in any other part of the City.

4. The Certificate entitles the holder to preferential consideration only; the Residential Certificate Holder must still meet the otherwise applicable selection criteria on which the owner/agent shall make the final decision.

D. Exercising Certificate Opportunities.

1. As described in Section II.C.2 above, a Residential Certificate Holder has two opportunities to exercise a Certificate: once for rental or cooperative share opportunity and again for a homeownership opportunity. If the Residential Certificate Holder is successful in obtaining a unit through the use of the Certificate, he or she exercises (i.e., extinguishes) the right to use the Certificate for that particular type of housing, but may still use the certificate for a different tenure type.

a. In the case of a rental or cooperative share opportunity, to exercise a Residential Certificate means to secure successfully a tenancy in, or the purchase of a cooperative share in, an Agency-Assisted Housing Unit, as shown by the execution of a lease or other evidence of occupancy.

b. In the case of a homeownership opportunity, to exercise a Residential Certificate means to execute a deed and the closing of escrow for an Agency-Assisted Housing Unit.

2. A Residential G Certificate is exercised if the Agency provides the Residential Certificate Holder with affordable housing in an Agency-Assisted Housing Unit.

E. Application of Residential Certificate Program to a Particular Project.

The Agency shall require that developers and property managers of Agency-Assisted Housing Units extend preferences to Residential Certificate Holders upon initial occupancy of a housing project or upon the vacancy of previously-occupied units in the project. The terms and conditions by which the developer or property manager will implement

these preferences shall be consistent with this Amended and Restated Program and shall appear in the affirmative marketing plan or similar documents for the project.

F. Duration of the Effectiveness of the Residential Certificate.

A Residential Certificate remains effective until the Residential Certificate Holder has completely exercised his or her Certificate as described in Section II. D; provided, however, that Certificates that have not been fully exercised have the following time limitations:

1. The Residential A and C Certificates shall be valid until seven years after completion of an Urban Renewal Project Area (i.e., Jan. 1, 2016), unless the Agency Commission approves five year extensions of these Certificates. The Agency shall not approve more than two five-year extensions.

2. The Residential G Certificate shall be valid until five years after the Agency displacement.

III. BUSINESS CERTIFICATE OF PREFERENCE PROGRAM.

A. Purpose.

1. To give certain re-entry preferences in consideration for business opportunities to businesses displaced by Agency action or action on behalf of the Agency.

2. To implement, for those project areas without separately-adopted business re-entry policies,[9] statutory requirements under the Community Redevelopment Law (Health & Safety Code § 33339.5) requiring the Agency to extend reasonable preferences to persons who were engaged in business in a redevelopment project area to reenter in business within the redeveloped area if they otherwise meet the requirements prescribed by the redevelopment plan.

3. To supplement other rights and benefits that may be available to displaced businesses, such as relocation benefits under the Relocation Assistance and Property Acquisition Guidelines, 25 Cal. Code of Regulations, Sections 6000 et seq.

[9] Western Addition A-2, Hunters Point (Area A of the Bayview Hunters Point Redevelopment Project Area), and the Bayview Industrial Triangle Redevelopment Project Areas.

B. Definitions.

1. "Business Occupant" means: 1) the owner or renter of a building that was situated on real property in the Western Addition A-2, Hunters Point, or Bayview Industrial Triangle Redevelopment Project Areas and that was acquired by the Agency after the date of (i) the adoption of the redevelopment plans or (ii) the receipt of funds for acquisition of property for these project areas, whichever date occurred earlier; or 2) a tenant engaged in business in a building whose owner entered into an Owner Participation Agreement with the Agency to extensively rehabilitate the property and the tenant received the Agency's Notice of Displacement that was required under the then-applicable federal regulations. Acquisition by the Agency includes both purchase and acquisition by eminent domain/condemnation.

2. "Business Certificate of Preference Holder" means a Business Occupant who was engaged in business in a building at the time the Agency acquired the property. To be eligible for a Business Certificate of Preference, a property owner must have been the owner of record that executed the grant deed to the Agency or the owner of record in the eminent domain at the time the Agency acquired the property. If the property owner was a corporation, partnership or other legal entity, the Certificate will be listed in the corporation or the partnership's name. If there was more than one owner of record, only one certificate will be issued.

3. "Certificate" or "Certificate of Preference" is Agency documentation that a person or business is eligible for a preference described in this Program.

4. "Displaced Business" means a person who was a legal occupant of a building and who permanently moved his or her business from the property as a result of acquisition of the property (i) by the Agency, (ii) by a private entity under contract with or on behalf of the Agency, or (iii) as a result of receipt of a notice of intention to acquire by the Agency. Displaced business also includes a person who moves as a result of the rehabilitation, demolition, or other displacing activity that the Agency or any person having an agreement with or acting on behalf of the Agency undertakes of real property on which the person is in lawful occupancy. A Displaced Person may be an owner or a tenant in lawful occupancy of the property from which he/she was displaced.

C. Use of Business Certificates.

The Business Certificate Program applies only to the Western Addition A-2, Hunters Point, and Bayview Industrial Triangle Redevelopment Project Areas. Other redevelopment project areas have separate business re-entry and preference policies that implement Section 33339.5 of the California Health and Safety Code.[10]

1. Agency-Owned Property.

The Agency may offer property that it owns for purchase and development. The Agency selects developers of such parcels based on the extent to which the proposed development serves the needs of the Project Area and the City and County of San Francisco and satisfies the requirements of the request for proposals/ qualifications, if any. The Agency may extend preferences to Business Certificate Holders who were displaced from the project area in which the Agency-owned property is located. The major factors for evaluating proposals will include:

a. Economic feasibility of the proposal.

b. The financial capacity of the developer and the demonstrated ability of the development design team.

c. The ability of the developer to proceed expeditiously with development of the site.

d. Architectural quality and degree of compliance with design objectives of the offering.

e. Other factors included in the offering.

When the Agency determines that proposals from applicants with Business Certificates and from those without Business Certificates are substantially equivalent, the Agency shall give preference to the proposal associated with the Business Certificate.

2. Rehabilitated Structures.

In the event the Agency acquires structures for rehabilitation, the Agency may sell these structures to the Business Certificate Holder who has the highest qualified bid, who complies with the terms of offering, and who was displaced from the project area in which the rehabilitated structure was located; provided, however that these

[10] See List of Separately-Adopted Business Preference and Re-Entry Policies, attached as Exhibit 1.

Business Certificate Holders will not receive a preference in bidding on a residential rehabilitation offering unless there are at least two units and the property will be used to engage in business; and provided further that a Business Certificate of Preference Holder may not use priority to bid on rehabilitation offering if the intended use is for private residency.

3. Privately-Owned Commercial Space.

A Business Certificate only entitles the Business Certificate Holder who desires to rent business space from a private property owner to a preferential consideration if the space meets the requirements of the redevelopment plan and if the Agency has required the owner to provide a preference to Business Certificate Holders who were displaced from the project area in which the privately-owned commercial space is located. The owner of the business space makes the final determination on the business mix, rental rates and terms and conditions.

4. Priority of Business Certificates.

Business Certificate Holders have the above-described preferences; provided, however, that a redevelopment plan or Agency Commission action may change or eliminate the priority for a particular project area or project; and provided further that in situations where the Agency or private property owner receives applications from multiple Business Certificate Holders having equal qualifications, the Business Certificate Holder with the earliest date of displacement from the project area in which the business opportunity is located will receive priority.

D. Timing of Eligibility Determination.

When a Business Certificate is to be used for priority in preferential offerings, eligibility must be established and a certificate issued prior to the bid opening or the specified deadline for the development proposal.

E. Use of Business Certificates by Partnerships or Corporations.

1. A partnership or corporation in which a Business Certificate Holder has an ownership interest, may use the Certificate in the purchase of property provided:

a. The Business Certificate Holder owns outright, fifty-one percent (51%) or more of the partnership or corporation. If two or more Certificate Holders have an ownership interest in the partnership or corporation, the total percentages of ownership held by all the certificate holders must be at least 51%. In the event such partnership or corporation uses the certificate, each certificate holder, regardless of percentage of ownership, shall be deemed to have exercised his or her certificate.

b. The fifty-one percent (51%) or more ownership interest was not funded by a loan from the partnership, corporation, or any member or shareholder thereof and the Business Certificate Holder so declares in writing under penalty of perjury if required by the Agency.

c. The Business Certificate Holder must sign a non-collusion affidavit if persons other than Business Certificate Holders own the partnership or corporation.

d. The Business Certificate Holder shall not intend to sell his or her interest in the corporation or partnership at the time the Certificate is used and the Certificate Holder shall so declare in writing under penalty of perjury, if required by Agency.

e. The Business Certificate Holder shall not sell his or her interest in the corporation or partnership unless the Agency has issued a certificate of completion of new improvements and/or rehabilitation and the transfer or assignment complies with Agency anti-speculation restrictions or other conditions limiting transfer.

F. Limitations on Use of Certificate.

Business Certificate Holders may only use the Certificate. The Business Certificate of Preference cannot be used by any other person than the named recipient.

G. Exceptions to Preference.

The Agency may authorize an offering or commercial space that does not give priority to Certificate Holders, but the authorization must clearly state

that the Agency will not require preferences to holders of Business Certificates. However, persons who have, or are eligible to have, a certificate and who are successful in responding to a special disposition offering, either individually, jointly, or as members of a partnership or corporation, will be deemed to have exercised their certificate if they hold the minimum percentage of ownership specified in the special disposition.

H. Duration of the effectiveness of the Certificate.

Business Certificates shall be valid until two years after the completion of the Project Area from which the business was displaced.

IV. APPLICATION FOR AND NON-TRANSFERABILITY OF CERTIFICATES.

Application for all Certificates of Preference must be made to the Agency. A Certificate is not transferable voluntarily, by inheritance, by operation of law, or otherwise. A Certificate applicant is not entitled to certificate priorities until a Certificate has actually been issued. When a Certificate is requested and proof of eligibility cannot be established by Agency records, the burden shall be upon the applicant to supply the Agency with the necessary documentation.

V. REVIEW AND APPEALS PROCEDURE.

A. Persons and Entities Entitled to Reconsideration ("Complainants"). A person or business who is denied a Certificate of Preference may seek reconsideration of the Agency's decision within thirty days of receipt of the Agency's written determination of denial by filing a written statement explaining the basis for the person's eligibility for a Certificate of Preference. If a person has not received a written determination from the Agency within a reasonable period of time following the filing of an application for a Certificate of Preference, that person may also file for a reconsideration under this Section.

B. Informal Settlement. The Agency shall schedule, within sixty (60) days of receipt of a request for reconsideration, an informal settlement meeting with the complainant to consider the request for reconsideration. At the meeting, the complainant shall personally present, to the Agency, any documentation or other information justifying the person's eligibility for a Certificate of Preference under these Rules. The purpose of the meeting is to discuss the matter informally and attempt to settle without an appellate hearing. The Agency will prepare a summary of such informal discussion (the "Summary Statement") no later than thirty (30) days from the date of the last meeting. The Summary Statement will specify the names of the participants, dates of meeting, the Agency's decision regarding the complainant's eligibility for a Certificate of Preference, and will specify the procedure by which an appellate hearing may be obtained if the

complainant is not satisfied. The Summary Statement shall either be delivered personally to the complainant or sent by regular mail to the complainant's address or such other address as the complainant specifies.

C. Procedures to Obtain Administrative Review. A person that has received a Summary Statement affirming the Agency's denial of a Certificate of Preference may petition for administrative review ("Petitioner"). The Petitioner must submit a written request for administrative review to the Agency's Deputy Executive Director of Housing or his or her designee within fourteen (14) days from the date of the Summary ("Petition"). The Petition must provide the specific facts on which the complainant relies to establish eligibility for a Certificate of Preference.

D. Hearing Officer. A neutral hearing officer shall conduct the administrative review. The hearing officer may not be a person who approved the decision to deny the Certificate of Preference or a subordinate of that person. As of the date of these amended rules, the Agency intends to use the Administrative Law Judges of the San Francisco Residential Rent Stabilization and Arbitration Board to review these matters.

E. Scheduling of Hearing. The Hearing Officer shall hold the hearing within forty-five (45) days of the date of the filing of the Petition. The Agency shall ensure that written notice, by mail, of the date, time and place of the hearing is given at least ten (10) days prior to the date of the hearing. This notice shall also include these procedures governing the hearing.

F. Postponements.

(a) The Hearing Officer may grant a postponement of a hearing only for good cause and in the interest of justice.

(b) "Good cause" shall include, but is not limited, to the following:

(1) the illness of a party, an attorney or other authorized representative of a party, or a material witness of a party;

(2) verified travel outside of San Francisco scheduled before the receipt of notice of the hearing; or,

(3) any other reason which makes it impractical to appear on the scheduled date due to unforeseen circumstances or verified pre-arranged plans which cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause."

(c) Parties may agree to a postponement at any time. Where the parties have agreed to a postponement, the Hearing Officer shall be notified in writing at the earliest date possible.

(d) Requests for postponement of a hearing must be made in writing at the earliest date possible, with supporting documentation attached. The person requesting a postponement should notify the other parties of the request and provide them with any supporting documentation.

G. Absence of Parties.

If a party fails to appear at a properly noticed hearing or fails to file a written excuse for non-appearance prior to a properly noticed hearing, the Hearing Officer may, as appropriate: continue the case, decide the case on the record in accordance with these rules; dismiss the case with prejudice; or proceed to a hearing on the merits.

H. Conduct of Hearing.

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If a party does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. In the absence of a timely and proper objection, relevant hearsay evidence is admissible for all purposes. Proffered hearsay evidence to which timely and proper objection is made is admissible for all purposes, including as the sole support for a finding, if (a) it would otherwise be admissible under the rules of evidence applicable in a civil action or (b) the Hearing Officer determines, in his or her discretion, that, based on all the circumstances, it is sufficiently reliable and trustworthy. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

I. Burden of Proof. In any proceeding before the Hearing Officer, the Petitioner shall have the burden of proving that he or she meets the eligibility requirements for a Certificate of Preference under these Rules.

J. Stipulations. The parties, by stipulation in writing filed with the Hearing Officer, may agree upon the facts or any portion thereof involved in the hearing. The parties may also stipulate as to the testimony that would be given by a witness if the witness were present. The Hearing Officer may require additional evidence on any matter covered by stipulation.

K. Record of Proceedings. All proceedings before the Hearing Officer shall be recorded by tape or other mechanical means.

L. Personal Appearances and Representation by Agent. In any proceeding before the Hearing Officer, each party may appear personally or by an attorney, or by a representative designated in writing by the party, other than an attorney.

M. Decisions of the Hearing Officer. The Hearing Officer shall make written findings of fact and a written decision as to whether the Petitioner is eligible for a Certificate of Preference. A copy of the decision will be sent to the Petitioner and the Agency.

(a) The decision of the Hearing Officer to issue a Certificate of Preference shall be binding on the Agency, and the Agency shall promptly issue a Certificate of Preference consistent with the Hearing Officer's decision.

(b) A decision by the Hearing Officer that the Petitioner is not entitled to a Certificate of Preference shall not affect any rights the Petitioner may have to a trial de novo or judicial review in any judicial proceedings which may thereafter be brought in the matter.

VI. OUTREACH.

The Agency shall provide outreach to persons who are potentially eligible Residential Certificate Holders. The Agency shall also provide education to Residential Certificate Holders on how to exercise a Certificate and information on location of the opportunities to exercise a Certificate for rental or ownership housing.

VII. REPORTING.

Agency staff shall annually report to the Agency Commission on the status of the Residential Certificate Program including but not limited to the number of outstanding certificates, the number of Residential Certificate Holders for which the Agency currently has addresses, the number of new certificates issued, and the number of Residential Certificate Holders exercised in the past 12 months to purchase or rent new housing.

VIII. PRIOR CERTIFICATES; EFFECTIVE DATE OF PROGRAM.

A. All non-exercised, validly issued Certificates issued prior to the effective date of this program shall be honored. However, this Amended and Restated Program shall govern the manner of exercising and prioritizing.

B. The effective date of this Amended and Restated Program is October 1, 2008.

IX. AMENDMENTS TO CERTIFICATE PROGRAM.

The Agency Commission or the Executive Director may amend, from time to time, this Amended and Restated Certificate Program.

LIST OF SEPARATELY-ADOPTED BUSINESS PREFERENCE AND RE-ENTRY POLICIES

Business Occupant Re-Entry Policy, Bayview Hunters Point Redevelopment Project, Agency Resolution No. 34-2006 (March 7, 2006);

Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in the Transbay Redevelopment Project, Agency Resolution No. 17-2005 (Jan. 25, 2005);

Amended Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business occupants for the South of Market Redevelopment Project, Agency Resolution No. 150-2005 (Oct. 4, 2005);

Business Reentry Preference Program for the Mission Bay North Redevelopment Project Area, Agency Resolution No. 187-98 (Sept. 17, 1998);

Business Reentry Preference Program for the Mission Bay South Redevelopment Project Area, Agency Resolution No. 192-98 (Sept. 17, 1998);

Business Occupant Re-Entry Preference Program, Hunters Point Shipyard Redevelopment Project, Agency Resolution No. 93-97 (June 17, 1997);

Property owner and occupant re-entry preference program for the Rincon Point-South Beach Redevelopment Project Area, Agency Resolution No. 330-1980 (Oct. 28, 1980);

Rules for Business Preference and Reentry for the Butchertown Redevelopment Project ("India Basin"), Agency Resolution No. 238-1968 (Dec. 10, 1968)

Special Assistance Available to Businesses and Industries and Business Preference Rules for the Yerba Buena Center Redevelopment Project Area D-1, Agency Resolution No. 108-1965 (Aug. 17, 1965)

EXHIBIT 1

RESOLUTION NO. 57-2008

Adopted as Amended at the Commission Meeting of June 3, 2008

AUTHORIZING THE EXECUTIVE DIRECTOR 1) TO AMEND THE CERTIFICATE OF PREFERENCE PROGRAM BY EXTENDING THE PROGRAM'S TERMINATION DATE, EXPANDING BENEFITS TO EXISTING CERTIFICATE HOLDERS, AND AMENDING APPEAL PROCEDURES GOVERNING DENIAL OF CERTIFICATES, AND 2) TO DETERMINE THE TIMING AND APPROPRIATENESS OF A FUTURE EXPANSION OF ELIGIBILITY TO INCLUDE CERTAIN RELATIVES OF THE ORIGINAL DISPLACEES; ALL REDEVELOPMENT PROJECT AREAS AND CITYWIDE HOUSING

BASIS FOR RESOLUTION

1. On October 22, 1963, the Redevelopment Agency of the City and County of San Francisco ("Agency") initially authorized, by Resolution No. 136-63, a business preference program for the Western Addition Redevelopment Project Area A-2. Its primary purpose was to enable business owners "to re-enter [the displaced] business in the redeveloped area." Rules Governing Business Preferences for the Western Addition Redevelopment Project Area A-2 (Oct. 22, 1963) ("1963 Rules") at page 1. This program implemented the then newly-adopted California Community Redevelopment Law requirement that redevelopment agencies extend reasonable preferences to businesses "to reenter in business within the redeveloped area." Cal. Health & Safety Code § 33339.5. In conformity with this statute, the Agency has approved, on numerous occasions since 1963, business reentry programs for particular project areas prior to the approval of new redevelopment plans.

2. On July 25, 1967, the Agency extended, by Resolution No. 103-67, the preference program to residential owners and occupants who were "obliged to move as a direct result of the operation of the [redevelopment] program" in the Western Addition Redevelopment Project Area A-2. The program established that "every A-2 owner or occupant will be afforded preferential consideration in the purchase of project land for the purpose of private development, or the rental of improved space within the new and rehabilitated structures on such land." The program authorized the issuance of certificates, which were "non-assignable and non-transferable" to "a property owner or occupant of Area A-2 prior to the date of the adoption of Agency Resolution No. 103-67." Certificates were valid for one year from date of issuance and could only be used once for "reestablishment." The minutes of the Agency Commission meeting on July 25, 1967 describe the program as "the first of its kind on the West Coast."

3. In 1969, the California Legislature amended the Community Redevelopment Law to require redevelopment agencies to provide low- and moderate-income households displaced by a redevelopment project with a priority in the renting and buying of affordable housing units that the agency develops. The Legislature amended this section in 1974, 1975, and 2002.

4. The statutory authorization for the certificate of preference program in housing is codified at Section 33411.3 of the Health and Safety Code. It requires the Agency to give "priority in renting or buying" to displaced, low- and moderate-income households "whenever all or any portion of a redevelopment project is developed with low- or moderate-income housing units and whenever any low- or moderate-income housing units are developed with any agency assistance." To qualify, the lower income household must be "displaced by the redevelopment project."

5. On April 18, 1978, the Agency Commission rescinded, by Resolution No. 76-78, prior versions of the Certificate Program and adopted a new policy that clarified the Agency's rules and administration of the Certificate of Preference Program ("Certificate Program"). Memorandum, W. Hamilton to Agency Commissioners, No. 109-14078-002 (April 11, 1978). The 1978 policy established the framework for the current administration of the Certificate Program.

6. The 1978 policy made several changes including expanding the Certificate Program to include other project areas besides the A-2 Area; establishing that "only one certificate may be issued to a person or entity whether or not preference can be established on more than one basis;" and providing that a Certificate Holder could only use the certificate once to rent or to purchase units in assisted development unless a Certificate Holder who had used the certificate to rent subsequently used it to "upgrade" by purchasing an assisted unit.

7. The 1978 policy provided that a single certificate was available to the family unless the applicant determined "independent eligibility" by demonstrating that they were part of a separate family unit who lived in the same household at the time of displacement or that they intended to live separately apart from the family upon displacement. An individual or family received either: 1) a Residential Certificate A if they occupied a "Project Area building at the time it was acquired by the Agency," or 2) a Residential Certificate B if they occupied a Project Area building after a certain date but before the Agency acquired the building.

8. The 1978 policy stated that "When a Certificate is requested and proof of eligibility cannot be established by Agency records, the burden shall be upon the applicant to supply the Agency with necessary documentation." Section VII of Property Owner and Occupant Preference Program attached to Memorandum, W. Hamilton to Agency Commissioners (April 11, 1978).

9. In 1991, the Agency confirmed the applicability of the Certificate Program to all new housing developed within any redevelopment project areas and thereafter all developments assisted by tax increment funds were required to provide preferential consideration to the Certificate Holders.

10. On December 8, 1998, the Agency Commission authorized, by Resolution No. 253-98, the expansion of eligibility standards for the Certificate Program to include persons "who were minor children or adults in the household at the time of displacement and who appear in the Agency's Site Occupancy Records." Eligibility was limited to those persons whose names appeared on Agency records to ensure that a "preference" continued to provide meaningful opportunities only to persons whom the Agency could verify had been displaced. Agency staff estimated that the expanded eligibility could "translate to approximately 23,200 potential certificates." Memorandum, J. Morales to Agency Commissioners at page 2 (Dec. 1, 1998).

11. In new rules issued on June 1, 1999, the Agency established the Residential C Certificate Holder to describe the new class of eligible persons, but provided that this new certificate of preference was derivative of the original Residential A Certificate. In other words, the eligibility of the Residential C Certificate Holder was limited by the actions of the Residential A Certificate Holder in exercising the original certificate. If the Residential A Certificate Holder had used the certificate to rent, the Residential C Certificate Holder from that same displaced household could only use a certificate to obtain a preference in the purchase of an assisted unit. As with other Certificate Holders, the Residential C class had to meet income eligibility requirements for the low- and moderate-income housing that the Agency had assisted.

12. Since the beginning of 2007, the Agency Commission has received numerous memoranda from Agency staff and held several public hearings on the administration of the Certificate Program to consider how the Agency may improve it. See e.g., Memorandum, M. Rosen to Agency Commissioners, No. 118-41005-003 (Meeting of March 20, 2007); Memorandum, M. Rosen to Agency Commissioners, No. 118-35007-002 (May 31, 2007); and Memorandum, F. Blackwell to Agency Commissioners, No. 118-09908-002 (Jan. 29, 2008).

13. Agency wishes to modify immediately the Certificate Program by amending the rules to include the following:

    a. Extending the time limit for the Residential Certificates (which under current rules will expire two years after the expiration of a particular project area) by an additional 15 years subject to Agency Commission review and approval of the Certificate Program at or before the fifth year and the tenth year of the extended term, and also requiring that Agency staff report annually to the Agency Commission on the effectiveness of the Certificate Program;

    b. Providing an education and outreach program that fully informs the public about the eligibility and benefits under the Certificate Program;

c. Reaffirming eligibility for Residential C Certificates to include persons who were not on the Site Occupant Record but who were members of the displaced households so long as they are able to prove that they resided in the household at the time of displacement;

d. Expanding housing opportunities for the existing group of Residential C Certificate Holders by allowing them to use the certificate for either assisted rental or assisted ownership units, regardless of whether the Residential A Certificate, upon which the Residential C Certificate was based, was exercised;

e. Clarifying and enhancing the appeals process to resolve disputes regarding certificate eligibility and extending the time for Agency written responses to informal settlement meetings; and

f. Reaffirming existing Agency policy that eligibility for certificates requires that Agency action or action on behalf of the Agency is the cause of the original displacement.

14. The Agency wishes to take additional steps to establish the basis for expanding eligibility for certificates of preference to those persons who did not live in the household at the time of displacement, but who are the children of the displaced household members that are eligible for the Residential C Certificate Holders. In most instances, the Residential C Certificate Holders are the children of the head of the displaced household, who had originally qualified for Residential A Certificates. This proposed expansion thus may provide housing opportunities for many of the grandchildren of the original displaced head of households and also retains a nexus to the original displacement and the harm associated with that displacement. The additional steps that the Agency will take prior to expanding eligibility to the children of the Residential C Certificate Holders include:

a. Establishing the factual basis for the Agency to make findings that the expansion to the class of persons who did not reside in the displaced household, but whose parents were displaced nonetheless suffered economic, social and other harm because of the parents' displacement;

b. Conducting an extensive investigation and outreach effort to identify: 1) the remaining numbers of the Residential C Certificate Holders and their current addresses, and 2) their children, if any, who would be eligible under the expanded Certificate Program; and

c. Assessing whether the supply of newly-created affordable housing, and of existing affordable housing that becomes vacant upon turnover, is sufficient to meet the potential demands of existing Residential C Certificate Holders and those of an expanded class that includes the children of the Residential C Certificate Holders.

15. Authorization of the amendments to the Certificate Program does not constitute a project, pursuant to the California Environmental Quality Act Guidelines Section 15378(b)(5).

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is authorized: 1) to amend immediately the Certificate of Preference Program by extending the program's termination date, expanding benefits to existing certificate holders, amending appeal procedures governing denial of certificates, and making other changes described above, and 2) to determine the timing and appropriateness of a future expansion of eligibility to include certain relatives of the original displacees.

APPROVED AS TO FORM:

James B. Morales
Agency General Counsel

Attachment 12
CHECKLIST OF ANNUAL PROGRAM MONITORING REPORT FORMS
HOUSING DEVELOPMENT PROGRAMS
(please complete and submit this checklist as cover page for Monitoring Report Forms)

Rental Property Name: _____
Rental Property Address: _____
Borrower/Grantee Name: _____

I/We hereby submit the following monitoring reports covering the 12 month period

beginning _____ **and ending** _____

Check documents submitted:

[ ] Certification of Program Compliance Form
[ ] Occupancy & Rent Schedule (*do not submit individual Tenant Income Statements*)
[ ] Report of Actual Income and Expenses (*most recent 12 month period*)
[ ] Report of Segregated Project Account Balances (*with copies of Bank Account Statements*)
[ ] Management and Maintenance Report
[ ] Proof of paid Property Tax
[ ] Property and Liability Insurance Certificates
[ ] Most Recently Completed Audit Report *(if available)*
[ ] Receipt and Use of Federal Program Income Report
[ ] Restricted Developer Fee Report submitted for this project (Yes/ No)
[ ] Unrestricted Developer Fee Report submitted for this project (Yes/ No)
[ ] Other Information (specify):

_____ _____

Borrower/Grantee Name | Name of Preparer

_____ _____

Authorized Signature | Phone Number of Preparer

_____

Date

Owner's Certification of Program Compliance
City and County of San Francisco
Housing Development Program

This form must be completed by Project Owner, **notarized** and delivered to the San Francisco Mayor's Office of Housing, Attn: Larry Fergison, 25 Van Ness Ave., Suite 600, San Francisco, CA 94102 by **APRIL 20, 2001** at 5:00 pm. Failure to complete and submit the form shall be considered an act of noncompliance under the funding agreement entered into with the City and County of San Francisco.

Project Name: _____ Reporting Period: _____
Project Address: _____ Project Owner: _____

The undersigned, having received housing development funds pursuant to a housing development program funding agreement entered into with the City and County of San Francisco for the purpose of purchasing, constructing and/or improving low-income housing and pursuant to the monitoring requirements of the funding agreement, does hereby certify as follows:

[Initial all true statements for the reporting period specified above. Attach written explanation for any statements not initialed]

___ The undersigned has marketed the units in the manner set forth in the marketing provisions of the funding agreement entered into with the City and County of San Francisco;

___ The project has met affordability and other leasing provisions set forth in the funding agreement entered into with the City and County of San Francisco during the entire reporting period. At the end of the report period, _____ percent of the units (less one (1) unit provided for the staff of the manager of the Project) were occupied or held vacant and available for rental by low-income tenants meeting the income qualifications pursuant to the funding agreement entered into with the City and County of San Francisco;

___ The undersigned has obtained a tenant income certification and/or third party documentation to support that certification from each low-income tenant household occupying a restricted unit. All income certifications are maintained on file with respect to each low-income tenant who resides in a unit or resided therein during the immediately preceding calendar year;

___ The total charges for rent and a utility allowance to each low-income tenant in a restricted unit does not exceed the maximum rent specified in the funding agreement entered into with the City and County of San Francisco as adjusted by the most recent HUD income and rent figures;

___ Security deposits required of tenants of the Project are in accordance with law and the funding agreement entered into with the City and County of San Francisco;

___ The undersigned has maintained the units and common areas in a safe and sanitary manner in accordance with all local health, building, and housing codes and in accordance with the HUD Housing Quality Standards. The undersigned has made all reasonable efforts to: (a) keep the units in good repair and available for occupancy; and (b) keep the Project fully rented and occupied;

___ the undersigned has obtained and will maintain insurance policies in accordance with requirements of the funding agreement entered into with the City and County of San Francisco.

The undersigned, acting under authority of the ownership of this project, executes this Certification, subject to penalties of perjury, and certifies that the foregoing is true and correct in all respects. This form must be signed and **notarized** by Project Owner or authorized agent.

Owner: _____
Title: _____ Date: _____

MAYOR'S OFFICE OF HOUSING
PROPERTY MANAGEMENT AND MAINTENANCE REPORT

Property Address: _____
Owner Name: _____ **12 month Report Period from** _____ **to** _____
Property Manager: _____ **Date of Management Contract:** _____

- Describe any notice or citation received during the 12 month report period for violation of local housing codes:

- Describe major purchases, repairs or maintenance work undertaken in the reporting year for which the Replacement Reserve or Other Funds were used:

- Describe any major repair, replacement or maintenance work needed:

- How many evictions occurred during the reporting year? _____. Explain the reason for each eviction, date of eviction, and indicate the unit number for each:

- Describe the nature of vacancies that occurred:

- Describe how vacancies are filled, any problems which arose in filling vacancies and steps taken to address them:

- How many names are currently on the waiting list? _____

- How many units are accessible to physically disabled tenants?

- Has the project experienced any problems with nonpayment of rent, bad debts, etc? If so, describe and indicate steps taken to alleviate such problems:

- Describe any additional management problems that occurred during the past report year, and steps taken to resolve those management problems:

- Have there been any changes in property management staff responsible for the development? If so, identify new staff:

Prepared By: _____

Date: _____

REPORT OF SEGREGATED PROJECT ACCOUNT BALANCES

Project Address: _____ Date: _____

Fiscal Year: _____ Prepared By: _____

Account	Bank Name & Acct. #	Beginning Balance	Deposits Made	Interest Earned	Withdrawals	Ending Balance
Operating Reserve Account Attach bank statement to verify segregated account balance						
Replacement Reserve Account Attach bank statement to verify segregated account balance						
Tenant Security Deposit Account						
Tenant Accounts Receivable (uncollected rents)						
Other (Identify)						

OCCUPANCY AND RENT SCHEDULE

(1) PROPERTY ADDRESS: _____ (3) BORROWER/GRANTEE NAME: _____

(2) PROJECT COMPLETION DATE: _____

(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14) Household Median Income Category (Check One)					(15)	(16)	Rent Increase History				
Unit No.	Low Income Unit?	Tenant Change During Year?	Date of Occ.	Head of House Race	Head of House M/F	Household Type	Household Size	Mobility Impaired	Tenant Income	0-30%	31-50%	51-60%	61-80%	81%+	Rental Assistance	Unit Type	(17) Initial Approved Base Rent	(18) Previous Rent Amount	(19) Amount of Most Recent Increase	(20) Current Rent Amount	(21) Date of Most Recent Increase

PROPERTY TOTALS OF SELECTED CATEGORIES

(22) Total # of Units: _____ (23) Total # of Low Income Units: _____

(24) TL Units where Head of Household's Race = White: ___ Black: ___ Hispanic: ___ Native Am: ___ Chinese: ___ Vietnamese: ___ Filipino: ___ Samoan: ___ Korean: ___ Japanese: ___ Other: ___

(25) TL Units Female HH: ___ (26) TL Units Household Type = Elderly HH: ___ Single(non-Elderly) HH: ___ Single Parent HH: ___ Two Parent HH: ___ Other HH: ___

(27) Total # of Units per Household Size: HH size 1: ___ HH size 2: ___ HH size 3: ___ HH size 4: ___ HH size 5: ___ HH size 6: ___ HH size 7+: ___

(28) Total # of Units occupied by a Mobility Impaired tenant: _____

(29) Total # of Units per Income Category: 0-30%: ___ 31-50%: ___ 51-60%: ___ 61-80%: ___ 81%+: ___

(30) Total # of Units per Rental Assistance: No Rent Asst: ___ HUD Section 8: ___ HOME Program (tenant-based assistance): ___ Other: ___

(31) Total # of Units per Unit Type: Beds: ___ Single Room Occupancy: ___ Studios: ___ 1 Bedrooms: ___ 2 Bedrooms: ___ 3+ Bedrooms: ___

_____ _____ _____

Borrower/Grantee Signature **date** **phone**

CITY AND COUNTY OF SAN FRANCISCO
MAYOR'S OFFICE OF HOUSING
TENANT INCOME STATEMENT FORM

The rental property listed below has received housing development program funds from the City and County of San Francisco for the purpose of preserving affordable housing for low income tenants. Upon initial occupancy and annually thereafter, the rental property owner must certify tenant's income eligibility and the rent affordability requirements of the City and County of San Francisco funding agreement.

ADDRESS OF RENTAL PROPERTY _____ APT. # _____

NAME OF TENANT _____ PHONE _____
(Please Print)

1. How Long have you occupied this unit? Since: _____, 19_____
month year

2. What is the monthly rental charged? $_____

3. When was the last rent increase? _____, 19_____.

4. Do you pay your own utilities? _____ Yes _____ No

If yes, do you pay:
gas _____
electric _____
water _____
garbage _____

5. How many persons are living in this unit? Include yourself in the count. _____

6. # of adults (over 18) _____ # of children (under 18) _____

7. My household income is:

$_____ per month x 12 = $_____ per year

The following information is requested solely for the purpose of determining compliance with Federal Civil Rights Law:

8. I am (Check one)
_____ White (not Hispanic origin)
_____ Black (not Hispanic origin)
_____ Hispanic
_____ Asian or Pacific Islander
_____ American Indian or Alaskan Native
_____ Other = _____

9. Check if applicable
_____ Female head of household
_____ 62 years of age or older
_____ Physically Disabled

10. I certify that all statements made in this statement are true to the best of my knowledge. I fully understand that it is a Federal crime and punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts about my family's income.

_____ _____
Signature of Tenant Date

THE ABOVE INFORMATION IS FURNISHED IN STRICT CONFIDENCE. THANK YOU FOR YOUR COOPERATION

THIS SECTION MUST BE COMPLETED BY THE PROPERTY MANAGER OR OWNER

1. After reviewing the Tenant Income Statement Form, I hereby verify the household size is _____ and annual income is _____ for unit # _____.

2000 INCOME BY HOUSEHOLD SIZE
SAN FRANCISCO PSMA

Income Definition	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons
30% Income Limit	$15,750	$18,000	$20,200	$22,450	$24,250	$26,050
50% Income Limit	$26,200	$29,950	$33,700	$37,450	$40,450	$43,450
60% Income Limit	$31,450	$35,950	$40,450	$44,950	$48,550	$52,130
80% Income Limit	$41,950	$47,950	$53,950	$59,900	$64,700	$69,500

2. Based on the above table the household income for the unit is between _____ % and _____ % of Median Income for the San Francisco PSMA.

3. The tenant is _____ elderly
_____ disabled

I hereby declare that the above information was furnished by the tenant presently residing in Unit # _____ at _____ and to the best of my knowledge this
(address of property)
information is accurate.

Information obtained by: _____

Date information obtained: _____

DO NOT SUBMIT INDIVIDUAL TEANANT INCOME STATEMENT forms to the Mayor's Office of Housing. Information furnished on page 1 and 2 of this Tenant Income Statement form shall be summarized in the City of San Francisco's Occupancy and Rent Schedule Report.

_____ _____
(Prepared by) (Date)

_____
(Title)

REPORT OF ACTUAL INCOME RECEIVED & EXPENSES PAID
Mayor's Office of Housing - Planning and Monitoring Unit

12 Month Report Period: Date Prepared:
Project Address: Prepared By:
Project Owner Title:

Description of Expense Accounts	Account Number	Residential	Non-Residential	Total
Rental Income				
Housing Units	5120			
Tenant Assistance Payments (*identify sources if applicable*)	5121			
Commercial	5140			
sub-total Rental Income Received:				

Other Income				
Transfer from Reserve Accounts	5991			
Parking Spaces	5170			
Miscellaneous Rent Income	5190			
Supportive Services Income (*identify program source(s) if applicable*)	5300			
Interest Income - Project Operations	5400			
Laundry and Vending	5910			
Tenant Charges	5920			
Miscellaneous Income	5990			
sub-total Other Income Received:				

TOTAL INCOME RECEIVED *(1+2)*:				
TOTAL OPERATING EXPENSES (*from page 2*):				
NET OPERATING INCOME *(3 less 4)*:				
Debt Service (Principal and Interest)				
Lender Name =				
Lender Name =				
Lender Name =				
Lender Name =				
Total Debt Service Payments				
Deposits to Reserve Accounts				
Replacement Reserve Deposit	1320			
Operating Reserve Deposit	1365			
CASH FLOW (5 - 6 - 7 - 8)				
Owner Distributions				
Other Distributions				

(Over for Page 2 - Operating Expenses)

Description of Expense Accounts	Account Number	Residential	Non Residential	Total
Management				
Management Fee	6320			
Administrative Rent Free Unit	6331			
sub-total Management Expense:				
Salaries/Benefits				
Office Salaries	6310			
Manager's Salary	6330			
Health Insurance and Other Employee Benefits	6723			
Other Salary/Benefit Expenses				
sub-total Salary/Benefit Expense:				
Administration				
Advertising and Marketing	6210			
Office Expenses	6311			
Office Rent	6312			
Legal Expense - Property	6340			
Audit Expense	6350			
Bookkeeping/Accounting Services	6351			
Bad Debts	6370			
Miscellaneous Administrative Expenses	6390			
sub-total Administrative Expense:				
Utilities				
Electricity	6450			
Water	6451			
Gas	6452			
Sewer	6453			
sub-total Utilities Expense:				
Taxes and License				
Real Estate Taxes	6710			
Payroll taxes	6711			
Miscellaneous Taxes, Licenses, and Permits	6790			
sub-total Taxes and License Expense:				
Insurance				
Property and Liability Insurance	6720			
Fidelity Bond Insurance	6721			
Workmen's Compensation	6722			
sub-total Insurance Expense:				
Maintenance Repair				
Payroll	6510			
Supplies	6515			
Contracts	6520			
Garbage and Trash Removal	6525			
Security Payroll/Contract	6530			
HVAC Repairs and Maintenance	6546			
Vehicle and Maintenance Equipment Operation and Repairs	6570			
Miscellaneous Operating and Maintenance Expenses	6590			
sub-total Maintenance Expense:				
Supportive Services:	6900			

TOTAL OPERATING EXPENSES (*copy to page 1*):				

ATTACHMENT 13
INCOME COMPUTATION AND CERTIFICATION FORM

San Francisco Redevelopement Agency One South Van Ness Avenue, 5th Floor San Francisco CA 94103
Email Completed Report To: garrett.smith@sfgov.org

Development Name: Number of Unit Occupied:
Address: Number of Units Vacant:
Date of Occupancy: Total Number of Unit in Development:
For the Period Ending:

				RENTAL INFORMATION				HOUSEHOLD INCOME INFORMATION					
Apt. No.	Name of Tenant(s)	M/I Date	No. of Bdrms	Subsidized Portion	Source of Subsidy, or Program	Tenants Share of Rent	Total Monthly Rent	No. In Household	Gross Household Annual Income	Date Income Certified, or Recertified	Current Income Limits	Move-In Annual Income	M/I Income Limits

OFFICE OF THE MAYOR
SAN FRANCISCO

LONDON N. BREED
MAYOR

TO:	Angela Calvillo, Clerk of the Board of Supervisors
FROM:	Sophia Kittler
RE:	Ground Lease - Turk & Eddy Associates, L.P – 249 Eddy Street, and 161-165 Turk Street – Amendment of Existing Ground Lease
DATE:	Tuesday, January 14, 2020

Resolution approving and authorizing the amendment and restatement of an existing long term ground lease with Turk & Eddy Associates, LP, on City-owned land at 249 Eddy Street, and 161-165 Turk Street ("Property") in order to refinance a 100% affordable, 82-unit multifamily rental housing development (plus one staff unit) for low-income persons ("Project") and authorizing the Director of Property and Director of MOHCD to execute documents, make certain modifications, and take certain actions in furtherance of this Resolution, as defined herein.

Should you have any questions, please contact Sophia Kittler at 415-554-6153.

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200
SAN FRANCISCO, CALIFORNIA 94102-4681
TELEPHONE: (415) 554-6141

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #:
200045
Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4
(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)
A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of $100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: https://sfethics.org/compliance/city-officers/contract-approval-city-officers

1. FILING INFORMATION	
TYPE OF FILING Original	DATE OF ORIGINAL FILING (*for amendment only*)
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD	
OFFICE OR BOARD Board of Supervisors	NAME OF CITY ELECTIVE OFFICER Members

3. FILER'S CONTACT	
NAME OF FILER'S CONTACT Angela Calvillo	TELEPHONE NUMBER 415-554-5184
FULL DEPARTMENT NAME Office of the Clerk of the Board	EMAIL Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT	
NAME OF DEPARTMENTAL CONTACT Omar Cortez	DEPARTMENT CONTACT TELEPHONE NUMBER 415-701-4218
FULL DEPARTMENT NAME MYR mOHCD	DEPARTMENT CONTACT EMAIL omar.cortez@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Turk & Eddy Associates, L.P.	TELEPHONE NUMBER 415-776-2151
STREET ADDRESS (including City, State and Zip Code) 215 Taylor St.	EMAIL rachel.macaraeg@tndc.org

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (*If applicable*) 200045
DESCRIPTION OF AMOUNT OF CONTRACT n/a		
NATURE OF THE CONTRACT *(Please describe)* Amendment & Restated Ground Lease Agreement for the Turk-Eddy Apartments refinancing as per Freddie Mac requirements		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
☐	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
☒	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
☐	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Blakely	Lisa	Board of Directors
2	Wang	Kristy	Board of Directors
3	Gouig	Chris	Board of Directors
4	Edwards	Tracey	Board of Directors
5	Kroot	Dave	Board of Directors
6	Wilson	Peter	Board of Directors
7	Tharpe	Amy	Board of Directors
8	Skurdenis	Birute	Board of Directors
9	Young	Cheryl	Board of Directors
10	Wong	Cynthia	Board of Directors
11	Cervantes	Jim	Board of Directors
12	Pujals	Fernando	Board of Directors
13	Martin	Freddie	Board of Directors
14	Rao	Geeta	Board of Directors
15	Vlkin	Greg	Board of Directors
16	McLean	Jme	Board of Directors
17	Rock	Kathy	Board of Directors
18	Wolfe	Kathy	Board of Directors
19	Sanborn	Loren	Board of Directors

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Barahona	Luis	Board of Directors
21	Cloutier	Mark	Board of Directors
22	Bohee	Tiffany	Board of Directors
23	Falk	Donald S.	CEO
24	Carney	Paul	CFO
25	Orlin	Liz	COO
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

9. AFFILIATES AND SUBCONTRACTORS			
List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.			
#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			
☐	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

10. VERIFICATION	
I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete. **I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**	
SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK BOS Clerk of the Board	**DATE SIGNED**