File No. 100121

Committee Item No. _____
Board Item No. 37

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____ Date _____

Board of Supervisors Meeting Date 02/23/10

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OTHER (Use back side if additional space is needed)

☐ ☐ _____
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Completed by: Joy Lamug Date 02/18/10
Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

[Redevelopment Agency Sale of Agency-Owned Land at 1345 Turk Street through a Disposition and Development Agreement with MSPDI TURK, L.L.C.]

Resolution approving the Redevelopment Agency of the City and County of San Francisco's Disposition and Development Agreement for Assessor's Block 0756, Lot 017, commonly known as 1345 Turk Street (the "Site"), to sell the Site to MSPDI Turk, LLC, a California limited liability company, for the development of 32 affordable for-sale housing units for low- and moderate-income households.

WHEREAS, The Redevelopment Agency of the City and County of San Francisco ("Agency") and the City of the San Francisco (the "City") desire to increase the City's supply of affordable housing and encourage affordable housing development through financial and other forms of assistance; and,

WHEREAS, In May 2003, the Agency acquired from the City that certain property with improvements located at 1190 Fillmore Street (the "Property") for $900,000 for the primary use and development of affordable housing, to provide art and community uses, and other publicly beneficial uses, as set forth in the City's Board of Supervisors (the "Board") Resolution No. 254-03; and,

WHEREAS, The Property consists of the Muni-Substation and an adjacent vacant land parcel and the Property has since been subdivided by the Agency into two lots; the first of which consists of the Muni-Substation situated on 6,335 square-feet of land located at 1190 Fillmore Street and assigned lot number 015 of Assessor's Block 0756 (the "Muni-Substation"); and the second lot consists of a vacant 26,708 square-foot land parcel located at

1345 Turk Street and assigned lot number 017 of Assessor's Block 0756 (the "Affordable Housing Parcel" or "Site"); and,

WHEREAS, Between 2003 and 2009, the Agency took a number steps to redevelop the Property and the Site, including the development of plans for seismically retrofitting the Muni-Substation building and for reuses. The Agency issued a number of Request for Proposals ("RFPs") for the development and reuse of the Property and the Site; and,

WHEREAS, In September 2006, the Agency issued an RFP for the Site for the development of affordable first-time homebuyer units for low- and moderate-income households. The RFP sought high-quality proposals from experienced developers capable of building approximately 32 affordable units on the Site (the "Project" or the "Development"). Three proposals were received by the October 2006 submission deadline. In November 2006, the Western Addition Citizens Advisory Committee ("WACAC") approved the RFP selection process. Subsequently, Michael Simmons Property Development, Inc. was selected by an interdisciplinary panel, comprised of staff and WACAC members, to develop the Site; and,

WHEREAS, the Agency negotiated and executed an Exclusive Negotiations Agreement ("ENA") with Michael Simmons Property Development, Inc., which ENA includes a series of performance milestones leading to the execution of a predevelopment loan agreement; and,

WHEREAS, In or about May 2007, Michael Simmons Property Development, Inc. created a wholly owned subsidiary named MSPDI Turk, LLC, a California limited liability company (the "Developer"), to negotiate and fulfill its obligations under the ENA to enter into a

Disposition and Development Agreement ("DDA") with the Agency and to construct the 32 affordable housing units on the Site; and

WHEREAS, To date the Agency has authorized funding to make the Project financially feasible by advancing approximately $1.62 million in predevelopment funds to the Developer and in November 2009 approving an addition $14.45 million for construction bringing the total of Agency's funding for this Project to $16.07 million to provide needed gap financing for the Project's estimated total development cost of $23.8 million; and

WHEREAS, The Agency and Developer are planning to enter into a DDA for the sale and development of the Site pursuant to a performance schedule requiring the Developer to start construction by no later than July 2010. Included in the DDA is the proposed sale and purchase price of $648,000 for the Site based on the conditions, covenants, restrictions, and estimated cost of the Project; and

WHEREAS, Section 33433 of the California Health and Safety Code requires the Board of Supervisors' approval of the sale or lease of the Site after public hearing because it was purchased with tax increment funds; and,

WHEREAS, Notice of the public hearing has been published as required by Health and Safety Code Section 33433; and

WHEREAS, The Agency prepared and submitted a report in accordance with the requirements of Section 33433 of the Health and Safety Code, including a copy of the proposed DDA, and a summary of the transaction describing the cost of the DDA to the

Agency, the value of the Site interest to be conveyed and developed, the price and other information made available for public inspection; now, therefore, be it

RESOLVED, That the Board of Supervisors of the City and County of San Francisco does hereby finds and determines that the sale of the Site from the Agency to MSPDI Turk, LLC, a California limited liability company: (1) will provide housing for low- and moderate-income households; (2) is consistent with the Agency's implementation plan adopted pursuant to California Health and Safety Code Section 33490; (3) the estimated value of the land to be conveyed, determined at the noted restricted use, with the conditions, covenants, and estimated development costs as required by the sale, is $648,000. The Site is being sold to the Developer to develop 32 units of affordable homeownership housing opportunities for low – and moderate-income households. When the Project is complete, the units will be sold to qualified homebuyers with household incomes averaging 80% of Area Median Income ("AMI"), as defined by the U.S. Department of Housing and Urban Development. The homeownership units will be affordable to households at the stated AMIs for an initial period of 45 years.

The reason the disposition price is less than the appraised fair market value of the Site, determined at the highest and best use, is to make the units affordable. In addition, the Agency is providing subsidies to make the Project financially feasible. In return for these subsidies, the Developer must sell the units to eligible first time homebuyers at substantially below their fair market values. The eligible buyers purchasing the units at affordable prices must agree to comply with the Agency's Limited Equity Program requirements.

Finally, for the Project to continue to be affordable, the resale prices are permanently restricted and will not reflect market appreciation. The sale prices of the ownership units at 1345 Turk Street have been calculated using several factors, including: the number of persons in the household (per targeted AMI levels); gross annual income of the household; the allowable housing cost (or 33% of the gross household income); subtracting homeownership related costs (i.e., homeownership association dues, property taxes, personal property insurance, and the housing payment); the supportable mortgage given a down payment of 5%; and, if applicable, other loans available to the first time homebuyers; and (4) the consideration to be received by the Agency is not less than the fair reuse value at the use and with the covenants and conditions and developments costs authorized by the DDA; and, be it

FURTHER RESOLVED, That the Board of Supervisors hereby approves and authorizes the Agency to execute the Disposition and Development Agreement with MSPDI Turk, L.L.C., substantially in the form of the Disposition and Development Agreement lodged with the Agency General Counsel, and to take such further actions and execute such documents as are necessary to carry out the Disposition and Development Agreement on behalf of the Agency.

33433 Report

This report is submitted pursuant to Section 33433 of the California Health and Safety Code. Specifically, the Section states that before any property that was acquired, in whole or in part, with tax increment moneys is sold or leased for development, the sale or lease shall first be approved by the legislative body by a resolution after a public hearing. The Board of Supervisors is the legislative body for purposes of Section 33433.

The Redevelopment Agency of the City and County of San Francisco ("Agency") administers a Citywide Affordable Housing Program for the purposes of funding the development of affordable housing, pursuant to the Community Redevelopment Law of the State of California, the California Constitution, and all applicable local codes and ordinances. The Program, in place since 1989, has facilitated the acquisition, construction, and/or rehabilitation of affordable housing throughout the City and County of San Francisco through the use of the Agency's tax increment funds and its authority as a tax-exempt mortgage revenue bond issuer.

It is anticipated that 32 affordable, first-time ownership housing units (the "Development") will be developed on Lot 017 of Block 0756 located at 1345 Turk Street (the "Site"), in the former Western Addition Redevelopment Project Area A-2, San Francisco. The Site is the 26,708 square-foot portion of the land component of the Muni Substation property the Agency purchased from the City of San Francisco in May 2003. Michael Simmons Property Development, Inc., a California Corporation, ("MSPDI") through its subsidiary, MSPDI Turk, LLC, a California limited liability company, (the "Developer"), plans to enter into a Disposition and Development Agreement ("DDA") with the Agency to purchase the Site and complete the Development.

The principal of MPSDI Turk, LLC is Michael Simmons. Mr. Simmons has considerable experience having developed over 700 ownership and rental units in 14 projects. Approximately 400 of these units were developed in San Francisco. The Developer is proposing to acquire the Site for $648,000 for the development of 32 low- and moderate-income ownership units that will be affordable for a minimum of 45 years (the "Project").

Developer solicitations were made through a competitive Request for Proposals process in September 2006. MSPDI was the successful bidder as determined by an interdisciplinary panel in January 2007. MSPDI obtained site control upon entering in to an Exclusive Negotiations Agreement with the Agency in March 2007. The Agency approved a $1.62 million predevelopment loan to facilitate essential preliminary studies and site assessments for development of the Site in December 2007. In November 2009, the Agency approved the Developer's request for an additional $14.45 million in construction funding. The total Agency funding for this Development is currently $16.07 million.

The Developer has successfully applied for and received commitments for $1,585,000 in non-City funds to meet the level of affordability required for the targeted income levels. In November 2008, the Developer received a commitment from the State's Building Equity and Growth in Neighborhoods ("BEGIN") Program. BEGIN mortgage assistance loans of up to $30,000 (a total of $960,000) will be available to all the targeted first-time homebuyers; the loans will each carry a 30-year term, 1-3% deferred simple interest, and will be repayable on the

BEGIN Program maturity date. The Developer also successfully secured a $625,000 Cal ReUSE grant for hazardous soils clean up at the Site. Overall, this Development will be targeted for sale to buyers whose households' earnings are an average of 80% of area median income ("AMI"), with a range of incomes up to a maximum of 100% of AMI and as low as 70% of AMI.

The following summarizes the Project in accordance with Section 33433 requirements:

A. A copy of the proposed Disposition and Development Agreement is included as Attachment 1.

B. "A summary which describes and specifies all of the following":

i. "The cost of the agreement to the agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the Agency, plus the expected interest on any loans or bonds to finance the agreements."

The total cost of acquiring the Site and developing the proposed improvements described as 32-units of first-time homeownership housing units is estimated at $23.8 million.

ii. "The estimated value of the interest to be conveyed or leased, determined at the highest and best uses permitted under the plan."

The value of the Site which is the interest to be conveyed to the Developer, determined at the highest and best use permitted under the Program, is $2,150,000.

iii. "The estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants, and development costs required by the sale or lease. The purchase price or present value of the lease payments that the lessor will be required to make during the term of the lease. If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use consistent with the redevelopment plan, then the agency shall provide as part of the summary an explanation of the reasons for the difference."

The Site is being sold to the Developer to develop 32 affordable homeownership units for low- and moderate-income households. Upon completion, the units will be sold to qualified first-time homebuyers with an average household income of 80% of AMI, as defined by the U.S. Department of Housing and Urban Development. The homeownership units will be affordable at the stated AMIs for an initial period of 45 years. The reason the disposition price is less than the appraised value of the Site, determined at the highest and best use, is that the units are to be made affordable; they must be sold at a price that is substantially below their fair

market value to make them affordable to low- and moderate-income households. The proceeds from selling the units substantially below their fair market prices are insufficient and do not support the total cost of the Development, rendering the fair market value as the Site's disposition price to the Developer, infeasible. Among the subsidies being provided to enhance the project's financial feasibility, is the sale of the Site to the Developer for a price that is below the fair market value. The difference between the Site's fair market value and the proposed disposition price is being used to buy down the fair market value of the units to make them affordable to low- and moderate-income households. The Developer is required to sell the units to eligible first-time homebuyers with household incomes averaging 80% AMI. The eligible buyers must agree to purchase the units at affordable prices and agree to comply with the Agency's Limited Equity Program requirements.

Finally, for the units to continue to be affordable, their resale prices are permanently restricted and do not reflect market appreciation. The proposed sales prices of the ownership units at 1345 Turk Street have been calculated using several factors, including: the number of persons in the household (per targeted AMI levels); gross annual income of the household; the allowable housing costs (or 33% of the gross household income); subtracting homeownership related costs (i.e., homeownership association dues, property taxes, personal property insurance, and the housing principal and interest payment); the supportable mortgage given a down payment of 5%; and, if applicable, other loans available to first-time homebuyers.

iv. "An explanation of why the sales or lease of the property will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation."

The disposition and development of the Site will assist in the elimination of blight for several reasons: (1) it eliminates a vacant and underutilized site and puts it into productive use; (2) it creates construction jobs and improves commerce through the purchase of construction supplies and materials; (3) the end-product provides 32 units of affordable housing for low- and moderate-income households for an initial period of 45 years; and (4) the addition of 32 new households to the area will boost the demand for products and services in the surrounding area.

This report has been made available to the public at the office of the Agency at One South Van Ness Avenue, 5th Floor, San Francisco, California, no later than the time of publication of the first notice of hearing as mandated by California Health and Safety Code Section 33433.

SUMMARY OF 1345 TURK STREET AFFORDABLE OWNERSHIP HOUSING PROJECT

Action Requested:
Approving the Redevelopment Agency of the City and County of San Francisco's (the "Agency") sale of land at Assessor's Block 0756, Lot 017, to MSPDI Turk, LLC, a California limited liability company (the "Developer"), to develop 32 units of housing affordable low- and moderate-income first-time homebuyers (the "Project").

Project Summary:
It is anticipated that the Developer will build thirty-two (32) units of affordable for-sale housing (the Development) in the former Western Addition Redevelopment Project Area for low- and moderate-income households. The Development will include common areas, parking and open space. The units include seven (7) one-bedrooms (22%), 17 two-bedrooms (53%), and 8 three-bedrooms (25%), townhomes and flats priced to be affordable to households with incomes averaging 80% of area median income from 70% to 100% AMI. The Development will be built on the vacant lot at 1345 Turk Street (the "Site") in the former Western Addition Redevelopment Project Area A-2.

The units will be marketed and sold pursuant to the Agency's Limited Equity Program ("LEP") for homeownership in order to ensure the units will be permanently affordable. The LEP establishes purchase prices (at the initial sale and future sale) according to a formula based on area median income rather than market values. At resale, the price will be set at the same affordability level that established the original purchase price, regardless of the current market value. For example, if a home is sold today at a price affordable to a household earning 80% area median income, its resale price in the future will be calculated to be affordable to a household at 80% area median income. Homeowner equity, when the unit is sold, is based on the change in area median income over time, plus a reimbursement of acceptable capital improvement costs made by the homeowner during his or her ownership of the unit. In accordance with the requirements of California Redevelopment Law, these units will be affordable for a minimum of 45 years.

The Agency issued a Request for Proposals on September 1, 2006 for the vacant lot located at 1345 Turk Street (the "Site" or "1345 Turk Street"). At the conclusion of a competitive design and selection process the Agency Commission authorized the Agency Executive Director to negotiate and execute an Exclusive Negotiations Agreement ("ENA") with the Michael Simmons Property Development, Inc. ("MSPDI") to develop 32 units of low and moderate income first-time ownership units. These units will be developed and sold to qualified first time buyers, with priority consideration for Certificate of Preference holders ("Certificate Holders"). Further action was taken on April 21, 2009 to extend the ENA until July, 2010 to provide additional time needed to redesign the project eliminating the commercial garage for the adjacent Muni Substation building.

Predevelopment funds in the amount of $1.62 million were authorized by the Agency Commission on December 18, 2007 to cover costs associated with the development of the units including various site preparation costs for architectural, geotechnical, engineering and surveying consultant services along with building permit fees and insurance coverage expenses.

The Site is being sold to the Developer to develop 32 affordable homeownership units for low- and moderate-income households. Upon completion, the units will be sold to qualified first-time homebuyers with an average household income of 80% of AMI, as defined by the U.S. Department of Housing and Urban Development. The homeownership units will be affordable at the stated AMIs for an initial period of 45 years.

The reason the disposition price is less than the appraised value of the Site, determined at the highest and best use, is that the units are to be made affordable; they must be sold at a price that is substantially below their fair market value to make them affordable to low- and moderate-income households. The proceeds from selling the units substantially below their fair market prices are insufficient and do not support the total cost of the Development, rendering the fair market value as the Site's disposition price to the Developer, infeasible. Among the subsidies being provided to enhance the project's financial feasibility, is the sale of the Site to the Developer for a price that is below the fair market value. The difference between the Site's fair market value and the proposed disposition price is being used to buy down the fair market value of the units to make them affordable to low- and moderate-income households. The Developer is required to sell the units to eligible first-time homebuyers with household incomes averaging 80% AMI. The eligible buyers must agree to purchase the units at affordable prices and agree to comply with the Agency's Limited Equity Program requirements.

Finally, for the units to continue to be affordable, their resale prices are permanently restricted and do not reflect market appreciation. The proposed sales prices of the ownership units at 1345 Turk Street have been calculated using several factors, including: the number of persons in the household (per targeted AMI levels); gross annual income of the household; the allowable housing costs (or 33% of the gross household income); subtracting homeownership related costs (i.e., homeownership association dues, property taxes, personal property insurance, and the housing principal and interest payment); the supportable mortgage given a down payment of 5%; and, if applicable, other loans available to first-time homebuyers.

The disposition and development of the Site will assist in the elimination of blight for several reasons: (1) it eliminates a vacant and underutilized site and puts it into productive use; (2) it creates construction jobs and improves commerce through the purchase of construction supplies and materials; (3) the end-product provides 32 units of affordable housing for low- and moderate-income households for an initial period of 45 years; and (4) the addition of 32 new households to the area will boost the demand for products and services in the surrounding area.

This report has been made available to the public at the office of the Agency at One South Van Ness Avenue, 5th Floor, San Francisco, California, no later than the time of publication of the first notice of hearing as mandated by California Health and Safety Code Section 33433.

Because the Agency has purchased the land using tax increment funds, the Board of Supervisors must approve the proposed Disposition and Development Agreement.

The Agency needs authorization of the legislative body on or before February 23, 2010, in order to access State subsidy funds needed to meet obligations incurred in cleaning hazardous materials from the Site.

Property:	Assessors Block 0756, lot 017, commonly known as 1345 Turk Street
Land Owner:	Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic of the State of California
Developer:	MSPDI, Turk, LLC, a California limited liability company
Length of Affordability:	A minimum of 45 years
Sales Price:	$648,000
Use of Project:	Develop affordable ownership housing for low- and moderate-income households.

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

WHEN RECORDED RETURN TO:
Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Attention: Housing Division, Anna H. Wong

Space above for Recorder

(Assessor's Block 0756, Lot 17)

DISPOSITION AND DEVELOPMENT AGREEMENT

between the

REDEVELOPMENT AGENCY
OF THE CITY AND COUNTY OF SAN FRANCISCO

and

MSPDI Turk, LLC,
a California limited liability company

Dated and executed as of February 2, 2010

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DISPOSITION AND DEVELOPMENT AGREEMENT

This DISPOSITION AND DEVELOPMENT AGREEMENT ("**DDA**" or "**Agreement**") is entered into as of February 2, 2010, (the "**Effective Date**"), between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the "**Agency**"), and MSPDI Turk, LLC, a California limited liability company ("**Developer**").

RECITALS

A. 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 redevelopment of slums and blighted areas in the City and County of San Francisco (the "**City**").

B. On February 11, 2003, the Agency Commission authorized an agreement with the City and County of San Francisco, a municipal corporation, in an amount not to exceed $900,000 for the acquisition and disposition of the MUNI Substation site located at 1140 Fillmore Street / 1345 Turk Street in the Western Addition Redevelopment Project Area A-2.

C. On April 22, 2003, the City's Board of Supervisors approved the sale of the real property located at 1345 Turk and 1140 Fillmore Streets to the Agency for $900,000 and authorized the Director of Property to enter into an agreement for the sale of such real property for the development of affordable housing, arts and community uses, and other public beneficial uses.

D. On May 2, 2003, an Agreement for Sale of Real Estate was executed by and between the City as Seller, and the Agency as Buyer for the sale and purchase of 1140 Fillmore / 1345 Turk Streets San Francisco, California. Escrow closed on the Project on June 9, 2003.

E. On September 1, 2006, the Agency issued a Request for Proposals ("**RFP**") for the development of approximately 32 units for low and moderate income first-time homebuyers. The RFP sought high-quality proposals from experienced developers.

F. By the October 31, 2006 submission deadline, three proposals were received and reviewed by an interdisciplinary evaluation panel, comprised of Agency staff and members of the Western Addition Citizens Advisory Committee (collectively the "Evaluation Panel") to determine the degree to which each proposal met the criteria set forth in the RFP.

G. On January 12, 2007, the Evaluation Panel awarded the team of Michael Simmons Property Development, Inc. the highest cumulative score for his design concept comprised of 32 affordable townhomes and flats.

H. At its meeting on April 17, 2007, the Agency Commission authorized the Agency Executive Director to negotiate and execute an Exclusive Negotiations Agreement ("**ENA**") with Michael Simmons Property Development, Inc. which defined a series of milestones leading to the execution of a predevelopment loan agreement.

I. On December 18, 2007 by Resolution No. 137-2007, the Agency Commission authorized a predevelopment loan agreement with Michael Simmons Property Development, Inc. in the amount of $1,621,351 for certain site preparation, consultant costs, building permit fees and

insurance costs critical to the construction and development of 32 units of affordable townhomes and flats for low- and moderate-income households, including common areas, parking and open space ("**Project**" or "**Improvements**"). The Unit distribution shall be approximately 7 one-bedroom (22%), 17 two-bedroom (53%), 8 three-bedroom (25%) condominiums, priced to be affordable on average to households earning 80% of area median income ("AMI"), ranging from 70% to 100% AMI. Affordability levels for all units must be approved by the Agency and will be set pursuant to limits required by selected financing sources. The Project shall be developed and used in accordance with this Agreement.

J. On or about May 11, 2007, Michael Simmons Property Development, Inc. created a wholly owned subsidiary named MSPDI Turk, LLC to fulfill its obligations to enter into a DDA with the Agency and to construct the Improvements on the Site. The Agency is willing to enter into the DDA with MSPDI Turk, LLC. The ENA and subsequent extensions are superseded by this DDA.

K. The Agency believes that the redevelopment of the Site, pursuant to this Agreement, and the fulfillment generally of this Agreement and the intentions set forth herein, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and Federal laws in the elimination of blight.

L. The Agency, on the basis of the foregoing, and the undertakings of Developer pursuant to this Agreement, is willing to sell the Site to Developer for the purpose of accomplishing its redevelopment in accordance with the provisions of this Agreement.

M. This DDA has been approved by the Agency Commission and the San Francisco Board of Supervisors after a public hearing, as required by law.

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

AGREEMENT

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 exhibit or article is referenced, it means an Exhibit or Article to this DDA unless otherwise specifically identified.

1.01 Agency means the Redevelopment Agency of the City and County of San Francisco.

1.02 Agency Equal Opportunity Program Documents are listed in Article 9.01(i).

1.03 Agreement means this Disposition and Development Agreement.

1.04 **Approved Title Exceptions** means the title exceptions that will be accepted by Agency and Developer, which are set forth in Attachment No. 8.

1.05 **Area Median Income ("AMI")** means the median household income for San Francisco County, adjusted for household size, but not for high cost as defined by HUD.

1.06 **Basic Concept Design** is described in Article 5.09(a) and in Section V of the Scope of Development (Attachment No. 3).

1.07 **Bona Fide Institutional Lender** means a bank, a mortgage bank, a real estate investment trust, a savings and loan association, an insurance company, a pension fund, a governmental agency or a charitable organization legally engaged in making loans.

1.08 **Budget** has the meaning specified in Article 3.11(a).

1.09 **Business Day** means a calendar day other than a Saturday, Sunday or Agency holiday.

1.10 **CC&Rs** means a declaration of covenants, conditions and restrictions that governs how the Project's homeowners association will operate.

1.11 **City** means the City and County of San Francisco.

1.12 **Close of Escrow** means the close of Escrow for the conveyance of the Site from the Agency to the Developer.

1.13 **Construction Cost** has the meaning specified in Article 5.02(a).

1.14 **Construction Documents** are described in Article 5.04 and in Section V of the Scope of Development (Attachment No. 3).

1.15 **Core Benefits** has the meaning specified in Article 11.05.

1.16 **Declaration of Restriction and Reservation of Easement** or **Light and Air Easement** means a nonexclusive easement for ingress, egress, light and air in favor of Assessor's Block 0756, Lot 15 known as Parcel A of Parcel Map 5012 recorded September 16, 2009 in Book 48 of Parcel Maps at Pages 6 and 7.

1.17 **Delayed Party** has the meaning specified in Article 10.01(a).

1.18 **Developer** means MSPDI Turk, LLC, a California limited liability company whose only member is Michael Simmons Property Development, Inc., a California corporation.

1.19 **Development Certificate of Completion** is a document in the form of Attachment No. 10A, issued under the circumstances described in Article 5.21.

1.20 **Effective Date** is the date first specified in the preamble to this Agreement.

1.21 **Environmental Law** has the meaning specified in Article 4.02(c).

1.22 **Escrow** is described in Article 3.02.

1.23 **Event of Default** has the meaning specified in Article 9, and more specifically, on Developer's part as described in Article 9.01 and on the Agency's part as described in Article 9.05.

1.24 **Force Majeure** is defined in Article 10.01(b).

1.25 **Grant Deed** is a document in the form of Attachment No. 11.

1.26 **Hard Construction Cost** or **Hard Cost** has the meaning specified in Article 5.02(b).

1.27 **Hazardous Substance** is defined in Article 4.02(b).

1.28 **Holder** is defined as any mortgagee or beneficiary of a Mortgage, any insurer or guarantor of any obligation or condition secured by a Mortgage, including the Federal Housing Administration, the Department of Veterans Affairs or any successor entity, any affiliate or participant of the Mortgagee or beneficiary under a Mortgage, any purchaser of any portion of the Site by means of a foreclosure sale or transfer in lieu of foreclosure, any third party procured by any Holder and reasonably acceptable to the Agency, and their successors and assigns.

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

1.30 **Improvements** is defined in Recital I.

1.31 **Indemnified Party** or **Indemnified Parties** has the meaning specified in Article 4.02(a).

1.32 **Limited Equity Program ("LEP")** is the Agency's affordable homeownership program further described in Attachment No. 20.

1.33 **Material Change,** when used with respect to Construction Documents, has the meaning specified in Article 5.10(b).

1.34 **Mortgage** means any mortgage, deed of trust, sale/leaseback documentation, or similar security instrument.

1.35 **Party** or **Parties** means the parties to this Agreement, including their respective successors and assigns.

1.36 **Performance Deposit** has the meaning specified in Article 2.06.

1.37 **Permit to Enter** is described in Article 3.06(b).

1.38 **Permitted Uses** are described in Article 6.04.

1.39 **Predevelopment Loan Agreement** means the predevelopment loan agreement between the Agency and the Michael Simmons Property Development, Inc., dated December 18,

2007, as amended by the First Amendment to the Predevelopment Loan Agreement entered into as of October 21, 2008 and as superseded by the Tax Increment Loan Agreement entered into as of November 3, 2009.

1.40 **Project** is defined in Recital I.

1.41 **Proposed Transfer** has the meaning specified in Article 7.07(a).

1.42 **Redevelopment Requirements** is defined in Article 5.05.

1.43 **Release** has the meaning specified in Article 4.02(d).

1.44 **Reversion Grant Deed** means the document substantially in the form of Attachment No. 12.

1.45 **Schedule of Performance** means the time periods during which Developer must complete certain development tasks, as set forth in Attachment No. 4.

1.46 **Schematic Design** is described in Article 5.09(b) and in Section V of the Scope of Development.

1.47 **Scope of Development** is attached hereto as Attachment No. 3.

1.48 **Site** is the real property located at 1345 Turk Street, defined as Assessor's Parcel Number 0756, Lot 17 and more particularly described in Exhibit A.

1.49 **Soft Construction Cost** or **Soft Cost** has the meaning specified in the Article 5.02(c).

1.50 **Title Company** is defined in Article 3.02(a).

1.51 **Transfer** is defined in Article 7.03(a).

1.52 **Unit** means an individual townhome or flat constructed on the Site in accordance with this Agreement.

1.53 **Unit Certificate of Completion** is a document in the form of Attachment No. 10B, issued under the circumstances described in Article 5.21(d).

ARTICLE 2: AGREEMENT TERMS

2.01 Agency

The Agency's principal office is located at One South Van Ness Avenue, 5th Floor, San Francisco, California 94103.

2.02 Developer

The Developer is MSPDI Turk, LLC, a California limited liability company. Developer's principal office is located at 2730 Market Street, Suite 458, San Francisco, California 94114.

2.03 Site

The Site is the real property located at 1345 Turk Street, San Francisco, also known as Assessor's Block 0756, Lot 017 plus a nonexclusive easement for ingress, egress, light and air in favor of Assessor's Block 0756, Lot 15 known as Parcel A of Parcel Map 5012 recorded September 16, 2009 in Book 48 of Parcel Maps at Pages 6 and 7. The parcel measures approximately 26,718 square feet in total land area and is currently a vacant lot.

2.04 Purchase Price

The Purchase Price for the Site is Six Hundred Forty Eight Thousand Dollars ($648,000) in lawful money of the United States.

2.05 Permitted Uses

The approved Permitted Uses for the Site are as described in this Agreement. Developer must also comply with the affordability requirements set forth in Article 6.04 and the Limited Equity Program.

2.06 Performance Deposit

The total performance deposit ("**Performance Deposit**") required under this Agreement is Six Thousand Dollars ($6,000), which sum has already been received by the Agency from Michael Simmons Property Development, Inc. pursuant to the ENA, and which, under the ENA will now serve as the Performance Deposit under this DDA. The Performance Deposit will be retained by the Agency as security for the successful completion of the Improvements in accordance with the provisions of this Agreement, and it will be refunded to Developer upon issuance of a Development Certificate of Completion in accordance with the terms of this Agreement. The Performance Deposit may be cash, a certificate of deposit in the Agency's name, or in such other form as the Agency may permit. If made in cash, the Performance Deposit will be held in an interest-bearing account at a financial institution acceptable to the Agency. During any period in which Developer is in default under the terms of this Agreement, the interest earned on the Performance Deposit will be retained by the Agency and not be payable to Developer. However, following the cure of such default, subsequent interest earned will become payable to the Developer.

2.07 Term of Agreement

The term of this Agreement will be from the Effective Date until the earlier of: (1) termination in accordance with its terms; or (2) recordation of a Development Certificate of Completion by the Agency (the "**Term**").

2.08 Schedule of Performance

Developer must perform in accordance with the Schedule of Performance, Attachment No. 4, subject to Article 10. Failure to perform substantially in accordance with the Schedule of Performance, based on the Agency's reasonable determination exercised in good faith, will constitute, after any applicable notice and cure period, a default under the terms of this Agreement entitling the Agency to retain the Performance Deposit and accrued interest.

ARTICLE 3: CONVEYANCE TERMS

3.01 Purchase and Development

Subject to all of the terms, covenants and conditions of this Agreement, Agency agrees to sell and convey the Site to Developer for the Purchase Price and for the purpose of developing, constructing the Improvements, creating a homeowners' association (and related CC&Rs), marketing for sale and conveying the Improvements thereon. Developer agrees to purchase the Site from Agency, pay the Purchase Price to Agency and in accordance with this Agreement shall develop and construct the Improvements, create a homeowners' association (and related CC&Rs), market for sale and convey the Improvements thereon.

3.02 Escrow

(a) Opening of Escrow. On or before the date specified in the Schedule of Performance, Attachment No. 4, Developer must establish an escrow with a title company doing business in the City selected by Developer and approved by the Agency ("**Title Company**") and provide written notice of the escrow to the Agency.

(b) Escrow Instructions. At least fifteen (15) days prior to the date specified for Close of Escrow in the Schedule of Performance, each Party agrees to furnish the Title Company with appropriate escrow instructions consistent with, and sufficient to implement the terms of, this Agreement, and shall contemporaneously furnish a copy of said instructions to the other Party. (Alternatively, the Parties may elect, by mutual consent, to file joint instructions.) At least two (2) days prior to such date specified for Close of Escrow, the Parties shall each deposit into Escrow all documents and instruments that such Party is obligated to deposit into Escrow in accordance with this Agreement and the Escrow Instructions. At least one (1) day prior to such date specified for Close of Escrow, the Parties shall each deposit into Escrow all funds that such Party is obligated to deposit into Escrow in accordance with this Agreement and the Escrow Instructions.

(c) Closing Costs. Developer must pay to the Title Company or the appropriate payee any and all costs related to the closing including, but not limited to: all preliminary title report costs; title insurance premiums and endorsement charges; all transfer taxes; recording fees; and any escrow fees in connection with the conveyance of the Site by the Agency to the Developer. The Agency will not incur any expense, other than staff time, in closing this Escrow, pursuant to this Agreement.

(d) Close of Escrow. At the Close of Escrow, provided that Developer is not then in default under the terms of this Agreement, the conditions to Agency's obligations and the

conditions to Developer's obligations with respect to the Site have been satisfied or expressly waived, and Developer has paid to Agency all sums due hereunder at the times when due, then the Agency shall convey to Developer good and marketable fee simple title to the Site, subject to the lien of general and special taxes and assessments, not delinquent, but free and clear of all other liens, encumbrances and other exceptions to title, other than the Approved Title Exceptions set forth on Attachment No. 8 hereto. The Parties hereby expressly agree that the Light and Air Easement is an Approved Title Exception.

(e) Agency Unable to Deliver Clean Title. If on the date specified for Close of Escrow in the Performance Schedule, title to the Site is subject to a lien, encumbrance or other exception to title in addition to the Approved Title Exceptions, or fee title to the Site is not vested in the Agency, the Agency shall, at its cost, use diligent, good faith efforts to cause such title exception to be removed or to obtain fee title within thirty (30) days thereafter. If the Agency shall be unable to cause such title exception to be removed within such period of time, Developer shall have the right to cause such title exception to be removed, whether through the issuance of a bond or otherwise. If despite its exercise of diligent, good faith efforts, the Agency shall not be able to cause such title exception to be removed, and Developer elects not to cause such title exception to be removed through issuance of a bond or otherwise, or if the Agency does not hold fee title to the Site, Developer shall have the right to: (1) terminate this Agreement by written notice to the Agency and receive reimbursement of the Performance Deposit and Developer's predevelopment costs associated with the Improvements, excluding costs already funded and disbursed by the Agency; or (2) accept title to the Site subject to such title exception. Notwithstanding anything to the contrary contained in this Article 3.02(e), if at Close of Escrow, title to the Site is subject to a lien, encumbrance or other exception to title in addition to the Approved Title Exceptions or the Agency does not hold fee title to the Site, the Agency shall be deemed to be in default under this Agreement, and Developer shall be entitled to exercise the remedies provided in Article 9.06.

3.03 Title Insurance

(a) The escrow instructions will provide that, upon the close of escrow, the Title Company must provide and deliver to Developer, an owner's title insurance policies (which at Developer's option may be ALTA owner's policies) issued by the Title Company, with any reinsurance and direct access agreements that Developer reasonably requests, in amounts designated by Developer that are satisfactory to the Title Company, insuring that fee title interests to the Site and all easements appurtenant to it are vested in Developer, together with endorsements to title insurance policies that Developer requires, all at Developer's sole cost and expense. If required by the Title Company, the Agency shall execute an owner's affidavit in the form reasonably requested by the Title Company.

(b) If Developer elects to secure ALTA owner's policies, and if requested to do so by Developer, the Agency will cooperate with Developer by providing surveys and engineering studies in its possession or control that relate to or affect the condition of title or a geological condition, at no cost to the Agency and without warranty of any kind. The responsibility of Agency assumed by this paragraph is limited to providing such surveys and engineering studies. Developer will be responsible for securing any and all other surveys and engineering studies at its sole cost and expense.

3.04 Payment of Purchase Price

The entire Purchase Price shall be paid to the Agency no later than the Close of Escrow and shall be deposited by the Developer into escrow no later than twenty-four (24) hours prior to the scheduled date for Close of Escrow. The Agency shall deposit the Grant Deed into Escrow no later than twenty-four (24) hours before the scheduled date for Close of Escrow.

3.05 Taxes and Assessments

Ad valorem taxes and assessments, if any, levied, assessed or imposed on the Site or the Improvements or any rights under this Agreement: (1) for any period prior to the Close of Escrow shall be the responsibility of the Agency; and (2) commencing from and after the Close of Escrow shall be the responsibility of the Developer.

3.06 Access and Entry by Developer to the Site

(a) Inspection Period. Between the Effective Date and the Close of Escrow, the Developer and its representatives will have the right of access to and entry upon the Site, from time to time and at all reasonable times, for the purpose of obtaining data and making surveys and tests, including site tests and soil borings, necessary to carry out the purposes of this Agreement, *provided, however*, that Developer must repair any damage to the Site caused by its access to and entry upon the Site to the extent reasonably possible, and must have obtained from the Agency a Permit to Enter.

(b) Permit(s) to Enter. Developer must obtain a separate Permit to Enter for each separate period of activity undertaken by Developer pursuant to this Agreement. Each permit will grant Developer reasonable access and entry to complete the activities for which access and entry is authorized. Developer will be responsible for complying with indemnity and insurance requirements set forth in the Permit to Enter and in this Agreement. Developer's compliance with these requirements is a condition precedent to Agency's issuance of any Permit to Enter. Developer shall obtain a separate Permit to Enter for each separate period of activity undertaken by Developer pursuant to this Agreement, which permit shall be for a period of time which reasonably will permit Developer to complete the activities for which access and entry is authorized. Agency agrees to issue a Permit to Enter upon a request by Developer after the passage of such time as is reasonably necessary for Agency to ensure removal of people and property from the area of Developer's entry upon the Site. Developer shall be responsible for all *ad valorem* taxes, if any, assessed by reason of its entry upon the Site. Developer must comply with all indemnity and insurance requirements in any Permit to Enter.

(c) Developer's Right to Terminate Based Upon Inspection. If Developer determines that the results of any inspection, test or examination are unacceptable or unsatisfactory for development of the Site in the manner contemplated by this Agreement, Developer may terminate this Agreement upon written notice to the Agency, given at least thirty (30) days prior to the Close of Escrow. During such period the parties shall meet and confer in an attempt to resolve the unsatisfactory conditions. If Developer terminates this Agreement within the required time, the Performance Deposit will be reimbursed to the Developer.

3.07 Agency Representations and Warranties

The Agency hereby covenants, warrants and represents to Developer as follows:

(a) The Agency has full right, power and capacity to execute, deliver and perform this Agreement, and this Agreement constitutes a legal, valid and binding obligation of the Agency enforceable in accordance with its terms.

(b) From the Effective Date through the Close of Escrow, the Agency will promptly give to Developer copies of all notices received by the Agency relating to the Site, including those asserting a violation of, or otherwise given with respect to, any federal, state, city or municipal law, ordinance, regulation or order.

3.08 Developer Representations and Warranties

Developer hereby covenants, warrants and represents to the Agency as follows:

(a) Developer has full right, power and capacity to execute, deliver and perform this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Developer enforceable in accordance with its terms.

(b) From the Effective Date through the Close of Escrow, Developer will promptly give to the Agency copies of all notices received by Developer relating to the Site, including those asserting a violation of, or otherwise given with respect to, any federal, state, city or municipal law, ordinance, regulation or order.

3.09 Conditions Precedent to Developer's Obligations

The following are conditions precedent to Developer's obligations with respect to the conveyance of the Site and the construction of the Improvements thereon, to the extent not expressly waived by Developer:

(a) Agency shall have performed all obligations hereunder required to be performed by Agency prior to the date specified for conveyance of the Site to Developer in the Schedule of Performance.

(b) The Title Company is prepared to issue to Developer all title insurance required by Article 3.03 to be delivered to Developer.

(c) This Agreement shall not have been previously terminated pursuant to any other provision hereof; Agency shall have delivered to Developer and the Title Company all instructions and documents to be delivered by Agency at Close of Escrow pursuant to the terms and provisions hereof.

(d) On or before the Close of Escrow, Developer shall have executed, acknowledged and deposited with the Title Company the Reversion Grant Deed for the Site in the form of Attachment No. 12.

(e) Developer has obtained a commitment from one or more Bona Fide Institutional Lenders for construction financing for the Improvements, in form and amount reasonably satisfactory to the Agency.

(f) Agency shall have instructed the Title Company to consummate the Escrow as provided in the Escrow instructions.

3.10 Conditions Precedent to Agency's Obligations

The following are conditions precedent to the Agency's obligations with respect to the conveyance of the Site to the extent not expressly waived by Agency:

(a) Developer shall have performed all obligations hereunder required to be performed by Developer prior to the date of such conveyance.

(b) Agency shall have received and approved all items referred to in Article 3.11 to the extent required prior to the Close of Escrow.

(c) Developer shall have furnished to Agency all items referred to in Article 7.04(b) to the extent requested by the Agency.

(d) Agency shall have approved the Construction Documents for the Improvements on the Site which are required to be approved by the Agency by the Close of Escrow as provided in the Schedule of Performance.

(e) A Site Permit for the Improvements on the Site has been issued.

(f) Agency shall have approved, as provided in Article 3.11, the evidence of all financing of the Improvements, no later than the time specified in the Schedule of Performance.

(g) Developer shall have certified in writing to Agency that Developer is ready, willing and able in accordance with the terms and conditions of this Agreement to commence construction of the Improvements required for the Site by the time set forth in the Schedule of Performance and that all conditions precedent under this Agreement to such commencement have been fulfilled.

(h) Developer shall have instructed the Title Company to consummate the Escrow as provided in the Escrow instructions.

(i) Developer shall have furnished to the Agency certificates of insurance or duplicate originals of insurance policies required by this Agreement.

3.11 Submission of Evidence of Financing and Project Commitments

No later than the time specified in the Schedule of Performance for submission of evidence of all financing (unless the Parties agree in writing as to a different time), Developer shall submit the following to Agency for review and approval:

(a) A statement setting forth a budget of the total estimated Construction Costs of the Improvements, with the Hard Costs of Construction portion prepared by, or with the assistance of, a licensed, bondable general contractor (the "**Budget**").

(b) A copy of a bona fide commitment or commitments without any provisions requiring acts of Developer prohibited herein or prohibiting acts of Developer required herein for the financing of the Construction Costs of the Improvements on the Site, as described in the Scope of Development, Attachment No. 3, certified by Developer to be a true and correct copy or copies thereof. If the lender under any such commitment or commitments is to receive a Mortgage on the Site, said lender shall be a Bona Fide Institutional Lender.

(c) Evidence satisfactory to the Agency of additional commitments of funding to cover the difference, if any, between the Mortgage amount and the Budget. Evidence of mortgage financing to be utilized by individual purchasers of the Units shall not be required.

(d) A statement in form satisfactory to Agency sufficient to demonstrate that Developer has adequate funds or will have adequate funds upon the funding of the commitments referred to above and is committing such funds to the Construction Costs of the Improvements as set forth in the Budget.

(e) A construction contract, with a bondable general contractor reasonably satisfactory to the Agency, for the construction of the Improvements in accordance with the estimated costs set forth in the Budget. Pursuant to this requirement, Cahill Construction has been selected as the general contractor by the Developer and the Agency has approved such selection.

(f) A completion bond from an issuer satisfactory to the Agency or a completion guaranty of a person satisfactory to the Agency for the construction of the Improvements.

(g) The Agency will notify the Developer in writing of its approval or disapproval of any of the foregoing documents within fifteen (15) days of submission of such documents to the Agency, unless some other time period is specified in the Schedule of Performance or by mutual written agreement. Failure of Agency to notify Developer of its approval or disapproval of a document or submission within said periods of time shall entitle the Developer to a time extension for the approval of such document or submission until the later of: (1) the date of approval by the Agency; or (2) fifteen (15) days after the Agency provides written reasons for a disapproval. In no event will the Agency's failure to respond be deemed to be an approval.

ARTICLE 4: SITE CONDITION - HAZARDOUS MATERIALS INDEMNIFICATION

4.01 Prior to Conveyance/Site "As Is"

(a) The Agency shall convey the Site in its present, "AS IS" condition and the Agency shall not prepare the Site for any purpose whatsoever prior to conveyance to Developer. Developer agrees to accept the Site in its condition on the date of conveyance, subject to the provisions of this Agreement.

(b) Developer has been and will continue to be given the opportunity to investigate the Site fully, using experts of its own choosing. In connection therewith, the Agency, at no cost to Agency, shall reasonably cooperate with Developer and shall afford Developer access, upon not less than five (5) days' prior notice to Agency, and otherwise at all reasonable times to such books and records as Agency shall have in its possession or control or otherwise available to Agency and relating to the prior use and/or ownership of the Site. Except as otherwise set forth herein, Developer acknowledges that neither the Agency nor any employee, representative or agent of Agency has made any representation or warranty, express or implied, with respect to the Site, and it is agreed that the Agency makes no representations, warranties or covenants, express or implied, as to its physical condition; as to the condition of any improvements; as to the suitability or fitness of the land; as to any Environmental Law, or otherwise affecting the use, value, occupancy or enjoyment of the Site; or as to any other matter whatsoever; it being expressly understood that the Site is being sold in an "**AS IS**" condition. The provisions of this Article, as with the other provisions of this Agreement, shall survive the Close of Escrow and shall not merge into the Grant Deed delivered to Developer at Close of Escrow.

(c) Developer, at its sole cost and expense, shall comply with all provisions of Environmental Law applicable to the Site and all uses, improvements and appurtenances of and to the Site, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action or other remediation that may be required pursuant to any Environmental Law. The Agency and the City and their respective members, officers, agents and employees, shall have no responsibility or liability with respect thereto, except if due to gross negligence or intentional misconduct of the Agency.

4.02 Hazardous Substance Indemnification

(a) Developer shall indemnify, defend and hold Agency and the City, and their respective members, 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: (1) Developer's violation of any Environmental Law; or (2) any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site, occurring after the date of the conveyance of the Site to the Developer, except where such violation, Release or threatened Release, or condition was at any time caused by the gross negligence or intentional misconduct of the Indemnified Party seeking indemnification. Developer's indemnity obligations under this Article 4.02 shall not apply to any Release or threatened Release of a Hazardous Substance, under or from the Site, occurring **prior** to the date of the conveyance of the Site to the Developer, except where such violation, Release or threatened Release, or condition was at any time caused by the gross negligence or intentional misconduct of the Developer. In the event that the Agency exercises its right under Article 9.02(a) to terminate this Agreement due to a Release, the Developer's obligation to indemnify the Indemnified Parties pursuant to this Article 4.02 shall arise only as to Developer's violations of Environmental Law, and to Releases or threatened Releases of a Hazardous Substance caused by Developer.

(b) The term "**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 §§25316 and 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.

(c) The term "**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.

(d) The term "**Release**" shall mean any spilling, 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).

(e) It is expressly agreed that the provisions of this Article 4.02 shall survive the termination of this Agreement.

ARTICLE 5: CONSTRUCTION OF THE IMPROVEMENTS

5.01 Developer's Construction Obligations

Developer must construct, or cause to be constructed, the Improvements upon the Site, within the times and in the manner set forth in this Agreement.

5.02 Construction Cost

(a) "**Construction Costs**" means Developer's customary and reasonable costs that are directly related to construction of the Improvements on the Site **and** shall include all Hard Construction Costs, and Soft Construction, as defined below.

(b) Hard Construction Costs. The term "**Hard Construction Costs**" or "**Hard Costs**" shall include, but not be limited to:

(1) All payments for direct costs incurred for construction, whether on-site or off-site.

(2) All payments for contractor's general conditions; all premiums for builders' risk insurance, subguard insurance, and general liability insurance carried by any contractor; gross receipts taxes; sales and use taxes; all premiums paid for bonds payable under

any contractor's construction contract, and all amounts for contractor's fees, including profit and overhead.

(3) All costs of on-site and off-site improvements including, without limitation, roads, sewers, utilities, sidewalks and landscaping. Such costs shall include, without limitation, all excavation, demolition, grading and other site work.

(c) Soft Construction Costs. The term "**Soft Construction Costs**" or "**Soft Costs**" shall include all costs of architectural, engineering and consulting services related to the design and construction of the Project or other soft costs as approved by the Agency and shall include, but not be limited to:

(1) Interest and other charges (including, without limitation, penalties and contingent payments) incurred by Developer in connection with the construction of the Improvements, including, without limitation, interest and other charges on secured or unsecured pre-construction or construction financing and lines of credit, "bridge" financing and other types of credit, contingency fees, administration fees, other loan fees and "points" and other fees and payments however denominated and commissions in connection with all such financing, all other costs in connection with such financing, including brokers' fees, legal fees, appraisal fees and trustee's fees and expenses in connection with any of the foregoing and imputed interest at a rate equal to the interest rate on the financing obtained for construction on all Construction Costs funded from actual equity advances by Developer.

5.03 Compliance with Construction Documents and Law

All of the Improvements to be constructed by Developer must be constructed in compliance with those elements of the Construction Documents for which Agency approval is required and in compliance with all applicable local, state and federal laws and regulations, including all laws relating to accessibility for the disabled.

5.04 Construction Documents

The Construction Documents to be submitted by Developer to the Agency consist of:

(a) the Basic Concept Design, which has been approved by the Agency as of the date of this Agreement;

(b) the Schematic Design has been submitted and approved by the City with concurrence provided by the Agency's Deputy Executive Director for Housing;

(c) the Design Development Documents have been submitted and approved by the City with concurrence provided by the Agency's Deputy Executive Director for Housing; and

(d) the Final Construction Documents (which will mean all design and development documents including final plans and specifications).

The Construction Documents are more particularly described in the Scope of Development and do not include any contracts between Developer and any contractor, subcontractor, architect, engineer or consultant.

5.05 Construction Document Compliance

The Construction Documents must comply with this Agreement and the Scope of Development (sometimes collectively referred to collectively as "**Redevelopment Requirements**").

5.06 Preparation of Construction Documents / Approval of Architect

(a) An architect (or architects) licensed to practice architecture in and by the State of California must: (1) prepare or sign the Construction Documents; (2) coordinate the work of any associated design professions, including engineers and landscape architects; and (3) inspect all construction of the Improvements and provide an Architect's Certification that Construction Complies with Approved Construction Documents substantially in the form of Attachment No. 7 that the Improvements have been constructed in compliance with the Construction Documents approved by the Agency and/or the City. A California-licensed civil engineer must review and certify all final foundation and grading plans. All architectural firms or architects engaged by Developer or by or through architectural firms or architects (except those exclusively engaged in interior design) must be approved by the Agency. Pursuant to this requirement, the Developer has selected David Baker and Partners as its architectural firm and the Agency has approved this architectural firm.

(b) Developer must include in all design professional contracts and authorizations entered into by Developer for services pertaining to the planning and design of the Improvements an express agreement by the person performing the services that the Agency may use the person's Construction Documents for the Project without compensation or payment by the Agency in excess of that otherwise due under the person's contract with Developer in the event the Construction Documents are assigned to the Agency pursuant to Article 9.03(f) of this Agreement, *provided that* the Agency agrees not to remove the name of the preparer of the Construction Documents without the preparer's written permission, or to remove it at the preparer's written request.

5.07 Submission of Construction Documents

Developer must prepare and submit the Construction Documents to the Agency for review and approval in accordance with the Scope of Development and at the times established in the Schedule of Performance. Upon Developer's submission of the Construction Documents to the Agency, the architect must provide an Architect's Certificate (Accessibility for the Disabled) and Architects Certification for Code Compliance substantially in the form of Attachment No. 5 and Attachment No. 6, respectively, certifying that the Improvements have been designed in accordance with all local, state and federal laws and regulations relating to accessibility for the disabled and all applicable local building codes.

5.08 Scope of Agency Review and Approval of Developer's Construction Documents

(a) The Agency staff's review and approval of Developer's Construction Documents are limited to a determination of their compliance with the Redevelopment Requirements.

(b) No Agency staff review is made or approval given as to the compliance of the Construction Documents with any building standards, including building engineering and structural matters, or compliance with building codes or regulations, or any other applicable state or federal law or regulation relating to construction standards or requirements.

(c) Agency staff will approve or disapprove (or may approve conditionally) the Construction Documents in writing within fifteen (15) days of submittal. Failure by Agency staff to either approve or disapprove the Construction Documents within the times provided herein will entitle Developer to a day for day extension of time for the period of delay caused by the Agency. In no event will failure of the Agency staff to respond within the times provided herein be deemed to be an approval.

(d) The Agency staff's review and approval or disapproval of Construction Documents as provided in this Article 5.08 will be final and conclusive. The Agency staff will act in good faith in its review and approval process. The Agency staff will not disapprove or require changes subsequently (except by mutual agreement) in a manner inconsistent with matters it has approved previously. If the Agency staff and Developer disagree as to whether or not a matter contained in a particular submittal has been approved previously or whether the Agency staff is acting in a manner inconsistent with matters that it approved previously, the Agency staff's reasonable judgment will apply in resolving the disagreement.

(e) If the Agency staff rejects the Construction Documents in whole or in part, the Developer must submit new or corrected versions of the disapproved Construction Documents within thirty (30) days after the Agency's written notification to Developer of rejection, and the provisions of this Article 5.08 relating to approval, rejection and resubmission of corrected Construction Documents will continue to apply until Construction Documents have been approved by Agency staff; *provided, however*, that in any event, Developer must have submitted satisfactory Construction Documents (*i.e.*, approved by the Agency staff as in compliance with Redevelopment Requirements) no later than the dates specified in the Schedule of Performance.

5.09 Scope of Developer Submission of Construction Documents

The following provisions will apply to all stages of Developer submissions of Construction Documents in accordance with the times established in the Schedule of Performance and the Scope of Development. Each of the Construction Document stages is intended to constitute a further development and refinement from the previous stage.

(a) Basic Concept Design. The Basic Concept Design is intended to set forth basic design concepts of the development and such drawings have been approved by the Agency.

(b) Schematic Design. Schematic Design should present a further development of the Basic Concept Design and must incorporate any Agency conditions for approval of the Basic Concept Design and such drawings have been approved by the Agency.

(c) Design Development Documents. The elements of the Design Development Documents requiring the Agency approval must incorporate conditions, modifications and changes specified by the Agency for the approval of the Schematic Design. Design Development Documents must be in sufficient detail and completeness to show that the Improvements and the construction thereof will be in compliance with the Redevelopment Requirements and matters previously approved, and such documents have been approved by the Agency.

(d) Construction Documents. The Construction Documents must be based upon and conform to the approved Design Development Documents with respect to the elements thereof requiring the Agency approval and must incorporate Agency conditions, modifications and changes required by the Agency for the approval of the Design Development Documents, including any revisions requested by the Agency staff pursuant to issues related to conformance with the Redevelopment Requirements. The Construction Documents must include all drawings, specifications and documents necessary for the Improvements to be constructed and completed in accordance with this Agreement.

5.10 Changes in Construction Documents

(a) Developer may not, without Agency approval, make Material Changes in any Agency approved Construction Documents as to elements requiring Agency approval.

(b) A "**Material Change**" means any changes to those elements approved by the Agency as part of the Agency's approval of the Construction Documents as related to any Redevelopment Requirements or any requirements related to the allowable uses of the Improvements pursuant to this Agreement.

5.11 Site Permit Process

(a) Developer has secured the site permit and will submit to the Agency in writing its schedule for securing the excavation and foundation addenda, and each succeeding permit addendum necessary for the construction and completion of the Improvements, identifying each addendum and the expected time of issuance. The Agency will review the schedule promptly and advise Developer in writing within ten (10) days thereafter whether or not the schedule is acceptable. If the schedule is not acceptable to the Agency in the exercise of its reasonable discretion, Developer must consult with the Agency and transmit a revised schedule satisfactory to the Agency within fourteen (14) days of receipt of Agency's notice.

(b) Developer acknowledges that the City must approve a schedule of permit addenda. If the City-approved schedule is different from the Agency-approved schedule, Developer must immediately transmit the City-approved schedule to the Agency, and Developer and the Agency will accept the City schedule.

(c) In the event that any permit addendum is not issued in accordance with the approved schedule, then, if the Agency determines that: (1) the delay is due to a delay in processing the permit addendum by the City or any other governmental authority, the Agency will cooperate with Developer, as appropriate, to expedite the issuance of the permit addendum; or (2) the delay is due primarily to Developer's acts or omissions, the Agency will so advise Developer, and Developer must take any and all actions necessary or appropriate in order to cause the permit addendum to be issued on or before forty-five (45) days following the date for issuance of the permit addendum under the approved schedule.

5.12 Government-Required Changes

Without in any manner limiting any other provisions of this Agreement, the Agency acknowledges and agrees that the Agency may not withhold its approval of those elements of the Construction Documents and those changes in the Construction Documents that are required by any governmental authority; *provided, however*, that: (1) the Agency must have been afforded a reasonable opportunity to discuss any element of, or change in, the Construction Documents with the governmental authority requiring the element or change and with Developer's architect; and (2) Developer's architect must have reasonably cooperated with the Agency and the governmental authority in seeking reasonable modifications of the required element or change as the Agency deems necessary or desirable. Developer and the Agency each agrees to use its diligent, good faith efforts to resolve the Agency's request for reasonable modifications to the required elements or changes, as soon as reasonably possible.

5.13 Construction Document Review Procedures

(a) Role of Agency Staff. Agency review and approval of Construction Documents pursuant to the provisions of Article 5 means and requires review and approval by the Agency staff.

(b) Method of Agency Action. Agency staff will approve or disapprove (or may approve conditionally) the Construction Documents in writing. Failure by the Agency to either approve or disapprove the Construction Documents within the times provided herein will entitle Developer to an extension of time for the period of delay as to the submission and any subsequent submissions. In no event will failure of the Agency to respond be deemed to be an approval.

(c) Agency Conditional Approval / Developer Resubmission. If Agency staff conditionally approves the Construction Documents, in whole or in part, the conditions will be stated in writing and a time will be stated for meeting the conditions. A resubmission must be made as expeditiously as possible. Developer may continue making resubmissions until the submissions are approved, until the times specified in any conditional approval or until the last date for approval as specified in the Schedule of Performance.

5.14 Progress Meetings/Consultation

During the preparation of Construction Documents, Agency staff and Developer will hold periodic progress meetings as appropriate to coordinate the preparation of, and submission to, and review of Construction Documents by the Agency. Agency staff and Developer will

communicate and consult informally as frequently as is necessary to ensure that the formal submission of any Construction Documents to the Agency so such submittals can receive prompt and speedy consideration.

5.15 Construction Schedule/Reports

(a) Developer must commence, prosecute and complete all construction and development within the times specified in the Schedule of Performance; provided, however, the Schedule of Performance may be amended by the mutual consent of the Parties.

(b) During periods of construction, the Developer must submit a written progress report to the Agency every three (3) months in such detail as may reasonably be required by the Agency, as to the actual progress of the Developer with respect to such construction. During such period, the work of the Developer shall be subject to inspection by representatives of the Agency as set forth in Article 5.20. The reports must be in form and detail as reasonably required by the Agency.

(c) Upon completion of construction, Developer shall deliver to the Agency: (1) a set of "as-built" paper plans for the Project; (2) PDF (or other acceptable electronic format) of "as-built" plans; (3) an Request For Information ("RFI") binder and (4) a copy of the approved and recorded condominium map for the Project.

5.16 Cost of Developer Construction

The cost of developing the Site and construction of all Improvements thereon must be borne solely by Developer, except as otherwise provided in this Agreement and the Tax Increment Loan Agreement. The Agency and Developer will each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

5.17 Issuance of Building Permits

(a) Developer has the sole responsibility for obtaining all necessary Site and building addenda permits and will make application for permits directly to the Central Permit Bureau of the City. The Agency will cooperate reasonably with Developer in its efforts to obtain permits, at no cost or expense to the Agency. Prior to commencing construction of all or any portion of the Improvements, Developer must have obtained permits required for such activity(ies). Developer must submit its application for a building permit (or in the case of Fast Track, a site permit and subsequent addenda) to the City within a period of time sufficient to allow issuance of the applicable permit or addenda before or concurrently with the date specified for commencement of construction in the Schedule of Performance. From and after the date of Developer's submission of any application, Developer must diligently prosecute the application. In addition, from and after submission of any application, and until issuance of the building permit, Developer must report permit status in writing every thirty (30) days to the Agency, if this information is not conveyed at the Project Site meetings.

(b) Developer is advised that the Central Permit Bureau may forward the site and building permits to the Agency for Agency approval of compliance with Redevelopment Requirements. The Agency's review of the Construction Documents does not include any

review of compliance with the requirements and standards referred to in Article 5.08, and the Agency will have no obligations or responsibilities for such compliance. The Agency evidences its approval by signing the permit and returning the permit to the Central Permit Bureau for issuance directly to Developer. Approval of a site permit or any intermediate permit is not approval of compliance with all Redevelopment Requirements necessary for a building permit.

5.18 Times for Construction

Developer agrees promptly to begin and diligently prosecute to completion the redevelopment of the Site through the construction of the Improvements thereon in accordance with the provisions of this Agreement. Developer also agrees that construction in any event must commence, be pursued diligently and be completed no later than the dates specified in the Schedule of Performance, subject to any extensions permitted hereunder.

5.19 Construction Signs and Barriers

Developer must provide appropriate construction barriers and construction signs and post the signs on the Site during the period of construction. The size, design and location but not the content of signs and the composition and appearance of any non-moveable construction barriers must be submitted to the Agency for approval before installation, which approval will not be unreasonably withheld.

5.20 Access to Site – Agency

From and after delivery of possession of the Site to Developer under this Agreement, upon reasonable prior notice to Developer, the Agency, the City and their respective representatives will have the right to enter upon the Site at reasonable times, with 24 hour prior notice, at no cost or expense to the Agency or the City, during the period of construction of the Improvements to the extent necessary to carry out the purposes of this Agreement, including inspecting the work of construction of the Improvements. Developer will have the right to have an employee, agent or other representative of Developer accompany the Agency and its representatives at all times while they are present on the Site. The Agency and its representatives will exercise due care in entering upon and/or inspecting the Site, and will perform all entry and inspection in a professional manner and so as to preclude any damage to the Site or Improvements, or any disruption to the work of construction of the Improvements. The Agency and its representatives will abide by any reasonable safety and security measures Developer imposes.

5.21 Development Certificate of Completion – Issuance

(a) From and after the date on which Developer has completed construction of the Improvements in accordance with the provisions of this Agreement, upon Developer's request, the Agency will issue to Developer a Development Certificate of Completion in the form of Attachment No. 10A, provided that Developer has satisfied all conditions to the Agency's obligations to issue the Development Certificate of Completion as set forth in this Agreement, including completion of constructions of the Improvements, establishing the homeowners association and selling all of the Units. The Development Certificate of Completion will be a conclusive determination of completion of construction of the Improvements in accordance with this Agreement and the full performance of the agreements and covenants contained in this

Agreement and in the Grant Deed with respect to the obligation of Developer, and its successors and assigns, to construct the Improvements in accordance with Agency-approved Construction Documents and the dates for the beginning and completion thereof; provided, however, that neither the Development Certificate of Completion nor the determination will constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a Mortgage, or any insurer of a Mortgage. Following the issuance of the Development Certificate of Completion for all of the Improvements, this Agreement shall terminate and shall be of no further force or effect, except those provisions that are specified to survive such termination shall remain in full force and effect, including but not limited to: *Hazardous Material Indemnification* (Article 4.02), *Professional Liability Insurance* requirements (Article 5.23), *Nondiscrimination* (Article 6.05) and *Indemnification* (Article 11.01).

(b) The Agency's issuance of the Development Certificate of Completion does not relieve Developer or any other person or entity from any and all applicable City requirements or conditions to occupancy of any Improvements.

(c) Construction of the Improvements are complete for the purpose of this Article when Developer has completed all elements and components of the Improvements for which the approval of the Agency is required under this Agreement, including but not limited to close of escrow of the sale of every Unit (except as provided in Subsection (d)), and after the Developer's architect has provided an Architect's Certificate (Accessibility for the Disabled) substantially in the form of Attachment No. 5 certifying that the Improvements have been constructed in accordance with all local, state and federal laws and regulations relating to accessibility for the disabled.

(d) If Developer is prepared to sell individual Units prior to issuance of a Development Certificate of Completion, the Agency will issue a Unit certificate of completion ("**Unit Certificate of Completion**") in the form shown in Attachment No. 10B promptly following Developer's request with respect to individual Units upon satisfaction of the following conditions: (1) proper completion of the Improvements relating to the Unit as evidenced by the City's issuance of a temporary Certificate of Occupancy for such Unit; and (2) the Agency has reasonably determined that the Unit will be sold in compliance with the affordability restrictions of Article 6.04 and the Limited Equity Program, as evidenced by the Agency's execution of a Limited Equity Program Declaration of Restriction and deposit of such Declaration of Restriction into the Unit sales escrow; provided however, that the Unit Completion Certificate will only be applicable to a specific Unit and the Project will still be required to receive a Development Certificate of Completion for the Improvements as a whole. With respect to each Unit, the Unit Completion Certificate will mean:

(1) that the title to the Unit (including the purchaser's respective interest in the Project common area associated with the ownership of that Unit) shall be released from the encumbrance of this DDA;

(2) that any party purchasing the Unit will not (because of the purchase) incur any obligation with respect to the construction of the Improvements relating to the Unit or to any other part, parcel or Unit of the Site;

(3) that neither the Agency nor any other party thereafter will have or be entitled to exercise with respect to the Unit, any rights or remedies or controls that it may otherwise have or be entitled to exercise with respect to the Site as a result of a default in or breach of any provisions of this Agreement or the Grant Deed unless: (i) the default or breach is by the purchaser or any successor in interest to or assign of the Unit with respect to the covenants contained the Limited Equity Homeownership Program (Attachment No. 20) in which event the Agency shall have remedy against the purchaser or successor in interest pursuant to the Limited Equity Program documents or (ii) relate to the negligence of the Developer in selling the Unit in violation of the affordability restrictions referred to in Article 6.04; and

(4) that the purchaser of the Unit and his or her successors and assigns shall not be bound by this Agreement, except for the nondiscrimination covenants contained in Article 6.05 of this Agreement; and

(5) that any Holder of a Mortgage encumbering the Unit will not be bound by this Agreement, except with respect to the nondiscrimination covenants contained in Article 6.05 of this Agreement.

5.22 Reasons for Non-Issuance of Certificate of Completion

(a) If the Agency refuses or fails to issue a Development Certificate of Completion or a Unit Certificate of Completion within fifteen (15) days after Developer's written request, the Agency must provide Developer with a written statement setting forth in adequate detail the bases for the Agency's refusal or failure to issue the Development Certificate of Completion or Unit Certificate of Completion and the measures or acts that, in the opinion of the Agency, Developer must undertake or perform in order to obtain such certificate of completion. Failure by the Agency to either issue a certificate of completion or a written statement within the times provided herein will entitle Developer to a day for day extension of time for the period of delay caused by the Agency. In no event will failure of the Agency to respond be deemed to be an approval.

(b) The Agency may elect to issue to Developer a Development Certificate of Completion if no Events of Default by Developer are then existing under this Agreement and Developer has completed the Improvements in accordance with this Agreement, except for: (1) "punch list" items; (2) landscaping and other outside areas of the Improvements; and (3) other items that do not adversely affect or impair Developer's use and occupancy of the Improvements for the purposes contemplated by this Agreement and that do not preclude the City's issuance of a certificate of occupancy or other certificate or authorization of Developer's use and occupancy of the Improvements. However, the Agency will not be obligated to issue a Development Certificate of Completion in these circumstances unless and until Developer has provided to the Agency, at the Agency's request, a bond, letter of credit, certificate of deposit or other security reasonably acceptable to the Agency in an amount equal to one hundred ten percent (110%) of the estimated cost of completing the items described in clauses 5.21(b)(1), (2) and (3) above, as reasonably determined by the Agency.

5.23 **Developer's Insurance.**

Without in any way limiting Developer's indemnification obligations under this Agreement, and subject to approval by the Agency's Risk Manager of the insurers and policy forms, the Developer shall obtain and maintain, at the Developer's expense, the following insurance and bonds throughout the Term of this Agreement, unless otherwise provided in this Agreement:

(a) **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).

(2) Insurance Services Office form number CA 00 01) covering Automobile Liability, code 1 (any auto).

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

(4) Professional Liability insurance covering all negligent acts, errors and omissions in Developer's Architectural and Engineering Professional Design Services. As an alternative to Developer's providing said Professional Liability insurance, Developer shall require that all architectural and engineering professional consultants for the Project have liability insurance covering negligent acts, errors and omissions. Developer shall provide the Agency with copies of consultants' insurance certificates showing such coverage.

(5) Property Liability Insurance against all risks of direct physical loss to the Project, excluding earthquake or flood, during the course of construction and following completion of construction.

(b) **Minimum Limits of Insurance.**

Developer shall maintain limits no less than:

(1) General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit.

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

(3) Workers' Compensation and Employer's Liability: Workers compensation limits as required by the State of California and Employers Liability limits of $1,000,000 for 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 each claim/$2,000,000 policy and $2,000,00 in the annual aggregate covering all negligent acts, errors and omissions of Developer's design team members, including all architects, engineers and surveyors. As a preferred alternative, Developer may provide project specific Professional Liability coverage

with limits of 5 million per claim and in the policy aggregate. Insurance under this clause must be maintained and evidence of insurance must be provided. Developer will use good faith efforts to maintain insurance required under this subsection for at least ten (10) years after completion of construction. Developer shall provide evidence of such required insurance for ten (10) years after completion of construction.

(5) Property Insurance: During the course of construction (builder's risk), Full Completed Value of the Project. Following completion of construction, and for such time as Developer owns the improvements, Full Replacement Value of the Project with no coinsurance penalty provision.

(c) **Deductibles and Self-Insured Retentions.**

Any deductibles or self insured retentions over $25,000 must be declared to and approved by the Agency's Risk Manager. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, the City and their respective officers, agents, employees and Commissioners; or Developer shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

(d) **Use of OCIP**.

Developer may utilize an Owner Controlled Insurance Policy (OCIP) to meet part or all of the insurance requirements under this Agreement.

(e) **Other Insurance Provisions.**

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

(1) General Liability and Automobile Coverages.

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

(ii) For any claims related to this Project, Developer's insurance coverage shall be primary insurance as respects the Agency, the City and their respective officers, agents, employees and Commissioners.. Any insurance or self-insurance maintained by the Agency, the City and their respective officers, agents, employees and Commissioners shall be excess of Developer's insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Agency, the City and their respective officers, agents, employees or Commissioners.

(iv) Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought in relation to this project, except with respect to the limits of the insurers liability.

(2) Workers Compensation and Employers Coverage. The insurer shall agree to waive all rights of subrogation against the "San Francisco Redevelopment Agency, the City and County of San Francisco and their respective Commissioners, Commissioners, officers, agents and employees" for losses arising from or in connection with the Project.

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

(f) **Acceptability of Insurers.**

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII, unless otherwise approved by the Agency.

(g) **Verification of Coverage.**

Developer must furnish the Agency with certificates of insurance and with original endorsements effecting coverage required by this Article. 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. The certificates and endorsements may be on forms provided by the Agency. All certificates and endorsements are to be received and approved by the Agency before work commences. The Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

(h) **Subcontractors and Consultants Insurance.**

Developer shall include all subcontractors and consultants as insureds under its policies or shall cause each subcontractor and consultant to furnish separate certificates and endorsements. All coverages for subcontractors and consultants shall be subject to all of the requirements stated herein, unless otherwise approved by the Agency's Risk Manager.

(i) **Fidelity Bond.**

Developer shall obtain a blanket fidelity bond or other form of commercial crime insurance acceptable to the Agency covering all officers and employees of Developer for the loss of Loan funds caused by dishonesty in an amount not less than $1,000,000. Should such a loss of Loan funds occur, Developer agrees to diligently pursue recovery under the bond and to assign or remit to the Agency all funds recovered.

5.24 Off-Site Infrastructure and Improvements Damage

In addition to the indemnification provisions contained in Article 11.01, Developer further agrees to repair fully and/or replace to the satisfaction of the Agency, any and all damage to the off-site infrastructure and improvements, including streets, sidewalks, curbs, gutters, drainage ditches, fences and utility lines lying within or adjacent to the Site resulting from work performed by or for Developer in the development of the Site as set forth herein. Developer or its general contractor, before commencement of such off-site work, must secure this obligation with a $500,000 bond or insurance in form acceptable to the Agency. Developer expressly acknowledges and agrees that its liability under this provision is not limited to the amount of the bond or insurance.

ARTICLE 6: COVENANTS AND RESTRICTIONS

6.01 Covenants

Developer expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to the Site and any Improvements constructed or to be constructed thereon, or any part thereof, or alterations or changes thereto, and in addition to any other term, covenant and condition of this Agreement, Developer and all such successors and assigns and all persons claiming under or through it, shall use, devote, operate and maintain the Site and the Improvements thereon, and every part thereof, only and in strict accordance with the provisions of this Article 6. The provisions hereof are also contained in the *Form of Grant Deed*, Attachment No. 11.

6.02 General Restrictions

The Site and the Improvements thereon must be devoted only to the uses permitted by the applicable zoning and this Agreement.

6.03 Affordability Restrictions Before Completion

Prior to the Agency's issuance of the Development Certificate of Completion, the Site may be used only for the construction of the Improvements thereon in accordance with this Agreement, including the Scope of Development.

6.04 Restrictions After Completion - Permitted Uses

Following the Agency's issuance of the Development Certificate of Completion, the Site may be used only for thirty-two (32) units of affordable for-sale townhomes and flats for low- and moderate-income households, including common areas, parking and open space. The Unit distribution shall be approximately 7 one-bedroom (22%), 17 two-bedroom (53%), and 8 three-bedroom (25%) condominiums, priced to be affordable on average to households earning 80% of area median income, ranging from 70% to 100% AMI. The Units must be marketed and sold subject to the following affordability restrictions:

(a) Forty four percent (44%) of the Units or approximately three 1-BR, seven 2-BR, and four 3-BR units are to be affordable to households earning no more than 85% AMI. These Units will be priced according to the formula (described in Attachment No. 19: Affordable Pricing Chart, as amended and approved by the Agency to adjust for variables impacting the pricing) based on households earning 80% AMI.

(b) Thirty seven percent (37%) of the Units or approximately three 1-BR, seven 2-BR, and two 3-BR units are to be affordable to households earning no more than 90% AMI. These units will be priced according to the formula (described in Attachment No. 19: Affordable Pricing Chart, as amended and approved by the Agency to adjust for variables impacting the pricing) based on households earning 85% AMI.

(c) Nineteen percent (19%) of the Units or approximately one 1-BR, three 2-BR, and two 3-BR are to be affordable to households earning no more than 100% AMI. These units will be priced according to the formula (described in Attachment No. 19: Affordable Pricing Chart, as amended and approved by the Agency to adjust for variables impacting the pricing) based on households earning 95% AMI.

6.05 Nondiscrimination

(a) There shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Site in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, and Developer itself (or any person or entity claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Site or any part thereof, nor shall Developer or any occupant or user of the Site or any transferee, successor, assign or holder of any interest in the Site or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation, including, without limitation, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or others of the Site, *provided, however*, that Developer shall not be in default of its obligations under this Article 6.05 where there is a judicial action or arbitration involving a bona fide dispute over whether Developer is engaged in discriminatory practices and Developer promptly acts to satisfy any judgment or award against Developer.

(b) Any transferee, successor, assign, or holder of any interest in the Site, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, mortgage or otherwise, and whether or not any written instrument or oral agreement contains the foregoing prohibitions against discrimination, shall be bound hereby and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above.

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

(d) Developer agrees to take and to permit the Agency to take all steps legally necessary or appropriate to remove restrictions against the Site, if any, that would violate any of the nondiscrimination provisions of this Agreement, whether the restrictions are enforceable or not.

(e) It is expressly agreed that the provisions of Article 6.05 shall survive the termination of this Agreement.

6.06 No Transfers or Mortgages

There may be no sale, assignment, transfer, conveyance, encumbrance mortgage or liens in violation of this Agreement.

6.07 Effect, Duration and Enforcement of Covenants

(a) It is intended and agreed, and the Grant Deed shall expressly provide, that the covenants provided in this Article 6 shall be covenants running with the land and that they shall be, in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement itself, to the fullest extent permitted by law and equity: (1) binding for the benefit and in favor of Agency, as beneficiary, as to all covenants set forth in this Article 6 (*Covenants and Restrictions*); the United States, as beneficiary, as to the covenants provided in Article 6.05; and their respective successors and assigns; and (2) binding against Developer, its successors and assigns to or of the Site and any Improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of the Site or the Improvements thereon or any part thereof.

(b) It is further intended and agreed that the covenants provided in this Article 6 (*Covenants and Restrictions*) shall be binding on Developer itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Site or part thereof.

(c) In amplification, and not in restriction, of the provisions of the preceding Articles, it is intended and agreed that the Agency and the United States and their respective successors and assigns, as to the covenants provided in this Article 6 of which they are stated to be beneficiaries, shall be beneficiaries both for and in their own right and also for the purposes of protecting the interest of the community and other parties, public or private, and without regard to whether Agency or the United States has at any time been, remains, or is an owner of any land or interest therein to which, or in favor of which, such covenants relate. Agency and the United States and their respective successors and assigns shall have the right, in the event of any and all of such covenants of which they are stated to be beneficiaries, 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 such covenants to which it or any other beneficiaries of such covenants may be entitled including, without limitation, restraining orders, injunctions and/or specific enforcement, judicial or administrative. These rights and remedies are in addition to, and not in derogation of, the rights and remedies of Agency set forth in Article 6.07(e).

(d) The covenants contained in this Article 6 shall remain in effect without limitation as to time; *provided, however,* that if Agency becomes the fee owner of the Site or any portion

thereof, whether voluntarily or involuntarily, through the reversion of title by operation of law or by reason of the conditions subsequent contained in the Grant Deed to the Site (which conditions terminate upon issuance of the Development Certificate of Completion), then the covenants contained in this Article 6 (except those contained in Article 6.05) shall terminate and be of no further force or effect as to the Site or the portion thereof of which Agency has become the fee owner.

(e) The conveyance of the Site by Agency to Developer is made and accepted upon the express covenants contained in Article 6 which, except for those contained in Article 6.05, also shall be conditions subsequent and which shall be provided for in the Grant Deed. In addition to any other remedies that Agency may have and at the option of Agency, the violation of such conditions subsequent shall, following expiration of all applicable notice and cure periods, cause title to the Site and any Improvements thereon to revert to Agency, which shall have the right of immediate re-entry onto the Site, in the event of any such breach.

(f) Developer shall be entitled to notice and shall have the right to cure any breach or violation of all or any of the foregoing in accordance with Article 9.

6.08 Lead-Based Paint Prohibition

During such time that the Developer owns the Site, Developer must comply with the regulations issued by the Secretary of HUD set forth in 37 F.R. 22732-3 and all applicable rules and orders issued there under that prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and requiring the elimination of lead-based paint hazards.

6.09 Cal ReUSE Grant Covenants

(a) Prior to the transfer of Site to the Developer, the Developer received a $625,000 grant from the State Cal ReUSE program to remove hazardous soils from the Site. This clean-up work was completed prior to the transfer pursuant to the CalReUSE grant.

(b) Pursuant to the grant agreement between Cal ReUSE and the Developer, the Developer shall send an executed copy of LEP documents upon sale of each Unit to the State Cal ReUSE program coordinator.

ARTICLE 7: ANTI-SPECULATION AND ASSIGNMENT PROVISIONS

7.01 Anti-Speculation Provision

Developer represents and agrees that its purchase of the Site and its other undertakings pursuant to this Agreement must be used for the purpose of redevelopment of the Site and Improvements and not for speculation in land holding.

7.02 Qualifications and Identity of Developer Consideration for Agreement

Developer acknowledges:

(a) the importance of the redevelopment of the Site to the general welfare of the community;

(b) the substantial subsidy and other public assistance that have been made available by law and by federal and local governments for the purpose of making redevelopment possible; and

(c) the fact that a transfer of an ownership interest in Developer or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of ownership interests or with respect to the identity of the parties in control of Developer or the degree thereof, is for practical purposes a transfer or disposition of the property then owned by Developer. Therefore, the qualifications and identity of Developer and its members are of particular concern to the community and the Agency. Developer further recognizes that the Agency is entering into this Agreement with Developer because of its qualifications and identity.

7.03 Prohibition Against Transfer and Assignment

Developer represents and agrees for itself, its members, and any successor in interest of itself and its members:

(a) Until the Agency issues the Development Certificate of Completion of the Improvements, no voluntary or involuntary: (1) transfer affecting ten percent (10%) or more of the membership interests in Developer or its successors in interest; or (2) sale, assignment, conveyance, lease, trust or power, or transfer in any other form with respect to this Agreement or any portion of or interest in the Site, or any contract or agreement to do any of the same (except for the contracts and agreements referred to in this Agreement) (any of the above, a "**Transfer**") may be made without the Agency's prior written approval. Notwithstanding the above, a "Transfer" shall not include the assignment or other transfers of interest in the Site to a Bona Fide Institutional Lender or Holder as approved pursuant to Article 8 of this Agreement, or any assignments or other transfers of interest in the Developer's limited liability company to Michael Simmons Property Development, Inc., or the transfer of a Unit in accordance with this Agreement where the Agency has issued a Unit Certificate of Completion for such Unit.

(b) With respect to this provision, Developer and the parties signing this Agreement on behalf of Developer represent that they have the authority of all of its existing members to agree to this provision on their behalf and to bind them to it. The Agency will be entitled to require as conditions to any approval that:

(1) Any proposed transferee must have the qualifications and financial responsibility, as determined by the Agency, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer;

(2) Any proposed transferee must assume expressly in a writing for the Agency's benefit and binding on the transferee, its successors and assigns, all of Developer's obligations under this Agreement and agree to be subject to all of the conditions and restrictions to which Developer is subject; *provided, however*, that Article 11.10 will apply even if the transferee has not delivered the required assumption agreement;

(3) The Agency must review and approve all instruments and other legal documents effecting the Transfer as further described in Article 7.07 of this Agreement;

(4) To preclude any Transfer for profit before the completion of the Improvements, the consideration payable to Developer or its designee for the Transfer may not exceed an amount representing the actual costs incurred (not merely imputed), including carrying charges, to Developer for the Site and the Improvements thereon, if any, and the Agency will be entitled to any consideration in excess of the amount authorized in this clause; and

(5) Developer and its transferee must comply with any other conditions the Agency reasonably requires in order to achieve and safeguard the purposes of the Redevelopment Requirements.

7.04 Reports and Notices - Changes in Ownership

In order to assist in the effectuation of the purposes of this Article 7 and the statutory objectives generally, Developer agrees that during the period between execution of this Agreement and completion of the Improvements as certified by the Agency:

(a) Developer will notify the Agency at least fifteen (15) days before any proposed changes in the legal or beneficial ownership, or any other act or transaction resulting in any change in the ownership or in the relative distribution thereof, or with respect to the identity of the parties in control of Developer or the degree thereof, which it or any of its officers or members have been notified or otherwise have knowledge or information; and

(b) At the Agency's request, Developer must furnish the Agency with: (1) a complete statement, subscribed and sworn to by Developer's manager, setting forth all of the members of Developer and the extent of their respective holdings, and in the event any other parties have a beneficial interest in membership interests, their names and the extent of their interests, all as determined or indicated by the records of Developer, by specific inquiry made by the manager of all parties who on the basis of the records own ten percent (10%) or more of the interests in Developer and by other knowledge or information in the manager's possession; and (2) the most recent audited financial statement of Developer and each member or, if audited financial statements are not available, complete copies of tax returns as filed. All lists, data, and information must be furnished to the Agency immediately before and as a condition precedent to the delivery of the Grant Deed to Developer.

7.05 Application to All Forms of Entities

The provisions of this Article 7 (*Anti-Speculation and Assignment Provisions*) relating to membership apply without exception to governmental entities and all forms of business organizations.

7.06 Effect of Violation

In the absence of specific written approval by the Agency, a Transfer in violation of this Agreement will not relieve Developer or any other party from any obligations under this

Agreement or deprive the Agency of any of its rights and remedies under this Agreement or the Grant Deed.

7.07 Agency Review of Proposed Transfers and Nature of Agency Consent

(a) At any time before the issuance of the Development Certificate of Completion for the Improvements on the Site, Developer may submit a written request to the Agency for the approval of a proposed Transfer (a "**Proposed Transfer**") with all relevant written documents and data pertaining thereto and any additional documents and data the Agency reasonably requests. Within sixty (60) days after its receipt of a request (or later receipt of all additional requested documents), the Agency will notify Developer in writing of the Agency's decision with respect to the Proposed Transfer. If the Agency approves, the Agency will accept the Proposed Transfer, provided it is effected within ninety (90) days following the date of the Agency's written approval. If the Proposed Transfer will not occur within the ninety (90) day period, Developer will not be entitled to make the Proposed Transfer without first obtaining again the Agency's approval of the terms of the Proposed Transfer. If the Agency disapproves the Proposed Transfer, it will specify with particularity the grounds for disapproval.

(b) Except as set forth above regarding permitted transfers by the Developer before the issuance of the Development Certificate of Completion for the Improvements on the Site, the Agency may withhold approval in its sole discretion.

ARTICLE 8: MORTGAGE FINANCING: RIGHTS OF HOLDERS

8.01 No Mortgage Except as Set Forth Herein

(a) Except as permitted in this Article 8 (*Mortgage Financing: Rights of Holders*), Developer shall not:

(1) engage in any financing or any other transaction creating any mortgage or deed of trust upon the Site or upon Developer's interest therein; or

(2) suffer any encumbrance or lien to be made on or attached to the Site or Developer's interest therein, except for a Mortgage and/or a Permitted Encumbrance.

(b) Any such mortgage, encumbrance or lien not permitted by this Article 8 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

(c) In the event that Developer complies with the provisions of this Article 8 (*Mortgage Financing:* Rights of *Holders*), Developer shall be authorized and entitled to create a Mortgage on the Site and Improvements.

(d) Developer shall be permitted to contest the validity or amount of any tax, assessment, encumbrance or lien and to pursue any remedies associated with such contest; *provided, however,* that such contest and pursuit of remedies does not subject the Site or any portion of it to forfeiture or sale.

8.02 Notice of Mortgage

Developer shall promptly notify Agency of any lien or encumbrance which has been created on or attached to the Site, whether a Mortgage, Permitted Encumbrance or otherwise and whether by act of Developer or otherwise.

8.03 Purpose of Mortgage

A Mortgage shall be made only for one or more of the following purposes:

(a) to finance Construction Costs;

(b) to finance the costs of repair, rebuilding or restoration of the Improvements; or

(c) to refinance or "take-out" the loans or financing referred to in the foregoing subparagraphs (a) and/or (b).

8.04 Amount of Mortgage

(a) Notwithstanding anything herein to the contrary, the aggregate principal amounts of all loans and financing secured by Mortgages on the Site shall not exceed the greater of: (1) one hundred percent (100%) of the Construction Costs of the Improvements, or (2) the replacement cost of the Improvements.

(b) Notwithstanding the foregoing provisions of this Article 8.04, in the event of a default hereunder by Developer, the Holder of any Mortgage permitted under this Agreement shall have the right at its option to advance such funds as are necessary in the Holder's reasonable judgment to protect its security or to cure or remedy or commence to cure or remedy such default, and any Mortgage authorized by this Agreement may secure such advance.

8.05 Interest Covered by Mortgage

The Mortgage shall cover no interest in any real property other than Developer's interest in the Site and the Improvements and any rights of Developer appurtenant to the Site and the Improvements, including but not limited to, Developer's personal property or other intangibles provided by Developer to secure the Mortgage.

8.06 Insurance and Condemnation Proceeds

Developer shall cause any Mortgage to contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards in the manner provided in this Agreement as follows:

(a) Total Taking by Condemnation: Prior to the Agency's issuance of a Development Certificate of Completion, if all of the Site is taken by condemnation, then the DDA shall terminate on the date the condemnor has the right to possession of the Site, except for those provisions that expressly survive the termination of the DDA.

(b) Distribution of Total Condemnation Award: Subject to the rights of any Bona Fide Institutional Lender, any compensation awarded, paid or received on a total condemnation of the Site or threat of total condemnation of the Site shall belong to and be distributed in the following order:

(i) First, to pay the outstanding principal balance and accrued interest due on any outstanding Mortgages and other outstanding or unpaid obligations and/or liabilities, including but not limited to, trade accounts, taxes, payroll accruals;

(ii) Second, to pay the outstanding principal balance and accrued interest on the loans made by the Agency to the Developer; and

(iii) The remainder to the Developer.

(c) Partial Taking by Condemnation: Prior to the Agency's issuance of a Development Certificate of Completion, if part of the Site is taken by condemnation, then the DDA shall remain in full force and effect as to that portion of the Site not condemned, except that the number of affordable housing Units shall be reduced proportionately or otherwise as based on the remaining developable area of the Site.

(d) Distribution of Partial Condemnation Award: Subject to the rights of any Bona Fide Institutional Lender, any compensation awarded, paid or received on a partial condemnation of the Site or threat of partial condemnation shall be used by Developer to accomplish all necessary restoration and construction of the Improvements on the remainder of the Site

(e) Insured Casualty: Prior to the Agency's issuance of a Development Certificate of Completion, 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 Developer hereunder, then, subject to the consent of the Agency and all Bona Fide Institutional Lenders and their release of the insurance proceeds to Developer, Developer 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.

(f) Distribution of Insurance Proceeds: If the insurance proceeds are not utilized to rebuild the Improvements, the distribution of the proceeds of any insurance policy required to be maintained by Developer hereunder shall be as follows:

(i) First, to pay the outstanding principal balance and accrued interest due on any outstanding Mortgages and other outstanding or unpaid obligations and/or liabilities of the Developer, including but not limited to, trade accounts, taxes, payroll accrual;

(ii) 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;

(iii) Third, to pay the outstanding principal balance and accrued interest on the loans made by the Agency to the Developer and to compensate Agency 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

(iv) The remainder to Developer.

(g) Uninsured or Underinsured Casualty: The Developer may, with the written consent of each Bona Fide Institutional Lender, terminate the DDA, (except for those provisions that expressly survive the termination of the DDA), upon ninety (90) days written notice to the Agency, if all of the following exist:

(i) More than 50% of the Improvements are damaged or destroyed;

(ii) Ten percent (10%) or more of the cost of restoration is not covered by the insurance proceeds;

(iii) The Improvements cannot be rebuilt or completed on an economically feasible basis; and

(iv) There is not available to Developer any feasible source of third party financing for restoration reasonably acceptable to Developer.

8.07 Institutional Lender; Other Permitted Holders

Any Holder under a Mortgage permitted under this Article 8 shall be either (1) a Bona Fide Institutional Lender, or (2) any other lender which shall have been approved by Agency. In any case in which Agency's approval of a lender is required, Agency shall be deemed to have approved such other lender if Agency shall fail to disapprove such lender by written notice given to Developer within thirty (30) days following Agency's receipt of the written notice from Developer of the identity of such other lender. Developer's notice must specify that no notification of disapproval within thirty (30) days after the receipt of such written notice constitutes Agency approval of the lender. In the event that Agency disapproves such other lender, Agency's notice shall specify with particularity the reasons for such disapproval.

8.08 Rights Subject to Agreement

All rights acquired by any Holder under a Mortgage, either before or after foreclosure or transfer in lieu thereof, or by a purchaser of the Site by means of a foreclosure sale of the Site subject to the Mortgage, shall be subject to each and all of the terms, covenants, conditions and restrictions set forth in this Agreement, none of which terms, covenants, conditions and restrictions are or shall be waived by Agency by reason of the permitting of such Mortgage, except as specifically waived by Agency in writing. All of the terms, covenants, conditions and restrictions shall include, without limitation, the obligation to: (1) construct or complete the Improvements, subject to the limitations set forth in Article 8.11(b); (2) devote the Site or any part thereof to those uses provided or authorized in this Agreement; and (3) manage and operate the Site in

accordance with the provisions of this Agreement, subject to the limitations set forth in Article 8.11(b) which must be satisfied within ninety (90) days following the date on which a Holder acquires fee title to the Site. For purposes of this Article 8, all references to the term "**Holder**" also shall mean any affiliate or participant of the mortgagee or beneficiary under a Mortgage or any other Holder, and any purchaser of the Site by means of a foreclosure sale of the Site or transfer in lieu thereof, and any successors and assigns of such parties.

8.09 Required Provisions of Any Mortgage

Developer agrees to have any Mortgage provide that the Holder shall give notice to Agency in writing by registered or certified mail of the occurrence of any default by Developer under the Mortgage, and that Agency shall be given notice at the time any Holder initiates any Mortgage foreclosure action. In the event of any such default, Agency shall have the right to cure such default, provided that Developer is given ten (10) days' prior notice of Agency's intention to cure such default. If Agency shall elect to cure such default, Developer shall pay the cost thereof to Agency upon demand, together with the interest thereon at the maximum interest rate permitted by law, unless: (1) Developer cures such default within such 10-day period, or (2) if curing the default requires more than ten (10) days and Developer shall have commenced cure within such ten (10) days after such notice, Developer shall have: (i) cured such default within thirty (30) days or such greater time period as may be allowed by Holder after commencing compliance, or (ii) obtained from the Holder a written extension of time in which to cure such default, together with a separate written extension of time granting Agency reasonable additional time to cure such default if such default is not cured within such extension of time, and delivered executed copies thereof to Agency. Following the notice set forth above, Developer hereby authorizes Agency in Agency's name, without any obligation to do so, to perform any act required of Developer in order to prevent a default or acceleration under any Mortgage, or the taking of any foreclosure or other action to enforce the collection of the indebtedness secured by the Mortgage, and Developer agrees to indemnify, defend and hold Agency harmless from any losses, costs, claims, damages, liabilities and causes of action (including reasonable attorneys' fees) resulting from Agency exercising its rights under this Article. Developer also agrees to have any Mortgage provide that such Mortgage is subject to all of the terms and provisions of this Agreement.

8.10 Address of Holder

No Holder shall be entitled to exercise the rights set forth in this Article 8 unless and until written notice of the name and address of the Holder shall have been given to Agency, notwithstanding any other form of notice, actual or constructive.

8.11 Holder's Right to Cure

If Developer shall create a Mortgage on the Site in compliance with the provisions of this Article 8, then so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Agency, upon serving Developer any notice of default or any other notice under the provisions of or with respect to this Agreement, shall also serve a copy of such notice upon

any Holder at the address provided to the Agency pursuant to Article 8.10, and no notice by Agency to Developer hereunder shall affect any rights of a Holder unless and until a copy thereof has been so served on such Holder; *provided, however,* that failure to so deliver any such notice shall in no way affect the validity of the notice sent to Developer as between Developer and Agency, unless cured by the Holder as hereinafter provided.

(b) Any Holder shall have the right to remedy, or cause to be remedied, the default within ninety (90) days after the expiration of the period provided herein for Developer to remedy or cure such default, and Agency shall accept such performance by or at the insistence of the Holder as if the same had been timely made by Developer.

(1) Notwithstanding the foregoing, if the default occurs prior to completion of construction of the Improvements or if the Holder becomes the fee owner of the Site prior to completion of construction of the Improvements, nothing contained in this Article 8.11 or any other article or provisions of this Agreement shall be deemed to permit or authorize such Holder, either before or after foreclosure or transfer in lieu thereof, to undertake or continue the construction or completion of the Improvements beyond the extent necessary to conserve or protect the Improvements or construction already made without: (i) the express assumption by Holder (or a third party procured by Holder and reasonably acceptable to Agency) by written agreement satisfactory to Agency of Developer's obligations to complete, in the manner provided in this Agreement, the Improvements on the Site, or the part thereof to which the lien of such Mortgage relates, and otherwise to perform all of Developer's obligations under this Agreement; (ii) the submittal of evidence satisfactory to Agency that such Holder (or a third party procured by the Holder and reasonably acceptable to Agency) has the financial capacity necessary to perform such obligations; and (iii) the submittal of evidence satisfactory to Agency that such Holder (or a third party procured by the Holder and reasonably acceptable to Agency) has the construction expertise to complete Developer's construction obligations as set forth in this Agreement. If the Holder fails to satisfy all of the requirements in the foregoing clauses (i), (ii) and (iii) within Holder's ninety (90) day cure period, then such failure shall constitute a default under this Agreement giving rise to Agency's right to terminate this Agreement and re-enter the Site as set forth in Article 8; *provided, however,* that any such reentry shall be subject to the Mortgage and Holder's rights thereunder.

(2) Upon assuming Developer's obligations, the Holder shall be required only to exercise due diligence in completion of the construction of the Improvements and shall not be required to complete construction of the Improvements within the dates set forth therefor in the Schedule of Performance. Assuming the Holder properly completes the Improvements, Holder shall be entitled, upon written request made to the Agency, to a Development Certificate of Completion from the Agency with respect to such Improvements to the same extent and in the same manner as Developer would have been entitled if Developer had not defaulted. Upon transfer by assuming Holder to any transferee, such Holder shall be relieved of any liability hereunder.

(3) Notwithstanding anything to the contrary contained herein, upon the occurrence of a default by Developer hereunder, Agency shall take no action to effect a termination of this Agreement without first giving to any Holder written notice thereof and ninety (90) days thereafter within which either (i) to obtain possession of the Site (including

possession by a receiver) or (ii) to institute, prosecute and complete foreclosure proceedings with diligence or otherwise acquire the Site with diligence; provided that if such default is reasonably susceptible of being cured at any time, Holder shall commence and diligently prosecute such cure as a condition to the Agency's taking no action as set forth above. A Holder upon acquiring the Site shall be required promptly to cure all defaults by Developer then reasonably susceptible of being cured by Holder including defaults by Developer with respect to constructing the Improvements, subject to subparagraph (2) above; *provided, however,* that: (i) such Holder shall not be obligated to continue possession or to continue such foreclosure proceedings after the defaults have been cured; (ii) nothing herein contained shall preclude Agency, subject to the provisions of this Article, from exercising any rights or remedies under this Agreement with respect to any other default by Developer during the pendency of foreclosure proceedings; and (iii) Holder shall agree with Agency in writing to comply during the period of forbearance with such terms, conditions and covenants of this Agreement as are reasonably susceptible of being complied with by Holder.

(4) Any notice or other communication which the Agency shall give or serve upon the Holder shall be in writing and shall be deemed to have been duly given or served if sent by registered or certified mail addressed to Holder at Holder's address as set forth in Article 11.03 or at such other address as shall be designated by Holder by notice in writing given to the Agency by registered or certified mail.

(5) Any notice or other communication which Holder shall give to or serve upon the Agency shall be in writing and shall be deemed to have been duly given or served if sent by registered or certified mail addressed to Agency at Agency's address as set forth in Article 11.03 or at such other address as shall be designated by Agency by notice in writing given to the Holder by registered or certified mail.

(6) Notwithstanding anything to the contrary contained herein, the provisions of this Article 8 shall inure only to the benefit of the Holders under Mortgages which are permitted hereunder.

8.12 Agency's Purchase

Developer shall use its reasonable, good faith efforts to have any Holder agree that:

(a) If such Holder shall acquire title to the Site by foreclosure or by transfer in lieu of foreclosure, Agency may, at any time within ninety (90) days after such acquisition, purchase the Site from such Holder for the amount equal to the sum of: (1) the amount secured by such Mortgage and owing to such Holder at the time of the foreclosure, less all appropriate credits; (2) the costs and expenses incurred by such Holder in connection with such acquisition; (3) the cost of any improvements made by Holder; and (4) interest on the amounts in the foregoing clauses (1), (2) and (3) from the date of foreclosure to the date of closing such purchase at the rate set forth in the Mortgage between Developer and Holder.

(b) Prior to any sale of Holder's interest in the Site following a foreclosure, such Holder shall offer in writing to sell its interest to Agency stating the terms of the sale, and Agency shall have thirty (30) days within which to accept or decline the offer, and the Mortgage

between Developer and Holder shall so provide. If the offer is declined in writing, Holder may sell its interest to the extent permitted hereby within ninety (90) days thereafter, but only on terms not more favorable to its assignee/buyer than those offered to the Agency. If the sale is not consummated within ninety (90) day period, Holder may not sell its interest without first offering its interest to the Agency as provided in this subparagraph, and the Mortgage between Developer and Holder shall so provide.

(c) If upon foreclosure of a Mortgage on the Site or a transfer in lieu thereof, a party other than the Holder or an affiliate or participant of Holder, shall acquire title to the Site, the Agency may, at any time within ninety (90) days after the foreclosure or transfer, purchase the Site for an amount equal to the sum of: (1) the amount paid by the party to acquire the interest; and (2) the other costs and charges described in clauses (2) through (4) of subparagraph (a) above paid or incurred by such party, and the Mortgage between Developer and the Holder shall so provide.

(d) The Developer's inability to cause any Holder (using good faith efforts) to agree to the provisions set forth above shall not constitute a default or breach by the Developer.

8.13 Mortgagee Protection Amendments

Provided Developer is not in default under the terms of this Agreement, Agency agrees to cooperate with Developer to include in this Agreement and/or in the Grant Deed by suitable amendment from time to time any provision acceptable to Agency which may be required by a proposed Holder in order to implement the mortgagee protection provisions of this Agreement and/or the Grant Deed.

ARTICLE 9: DEFAULTS AND REMEDIES

9.01 Developer Default

The occurrence of any one of the following events or circumstances, if not cured within the specified cure or grace period, will constitute an event of default ("**Event of Default**") by Developer under this Agreement, giving the Agency the right to declare Developer in default and to exercise any or all of its remedies, at its sole election and in its sole discretion:

(a) Developer suffers or permits a Transfer to occur without the Agency's prior written approval and such violation shall not be cured within thirty (30) days after written demand by the Agency.

(b) Developer allows any other person or entity to occupy or use all or any part of the Site in violation of the provisions of this Agreement, and such event or condition shall not have been cured within thirty (30) days following the date of written demand to cure by Agency to Developer.

(c) Developer fails to pay real estate taxes or assessments on the Site when due or places any mortgages, encumbrances or liens upon the Site or the Improvements or any part thereof (other than Mortgages or Permitted Encumbrances) in violation of this Agreement, and such event or condition shall not have been cured within thirty (30) days following the date of

written demand to cure by Agency to Developer, subject to the contest rights specified in Article 8.01(d).

(d) Developer fails to commence promptly, or after commencement fails to prosecute diligently to completion (as evidenced by a Development Certificate of Completion issued pursuant to this Agreement), the construction of the Improvements within the times set forth in the Schedule of Performance, Attachment No. 4, or abandons or substantially suspends construction of the Improvements for more than ten (10) consecutive days, and such failure, abandonment or suspension continues for a period of thirty (30) days following the date of written notice thereof from Agency.

(e) Developer causes or permits a default as defined in and occurring under any other agreement between Agency and Developer and fails to cure the same in accordance with such other agreement, provided that Agency's remedies for a default under the other agreement between Agency and Developer shall be limited to the remedies respectively set forth therein. The foregoing notwithstanding, the Developer shall have a thirty (30) day notice and cure period for breaches of the Agency's Equal Opportunity Program Documents as set forth in Article 9.01(i) below.

(f) Developer fails to pay the Purchase Price for the Site upon tender of conveyance by Agency pursuant to this Agreement, and such failure continues for a period of five (5) Business Days following the date of written notice thereof from Agency.

(g) Developer fails to pay any other amount required to be paid hereunder, other than the Purchase Price for the Site, and such failure continues for a period of five (5) Business Days following the date of written notice thereof from Agency.

(h) Developer does not accept conveyance of the Site in accordance with this Agreement upon tender by Agency pursuant to this Agreement, and such failure continues for a period of three (3) Business Days following the date of written notice from Agency.

(i) Subject to written notice and thirty day (30) cure period, Developer is in default under the Agency Nondiscrimination in Contracts and Equal Benefits Policy (Attachment No. 13), Minimum Compensation Policy (Attachment No. 14), Health Care Accountability Policy (Attachment No. 15), Small Business Enterprise Agreement (Attachment No. 16) the Prevailing Wage Provisions (Labor Standards) (Attachment No. 17) or Agency's Construction Workforce Policy (Attachment No. 18) (collectively, the "**Agency's Equal Opportunity Program Documents**").

(j) Developer fails to obtain a Building Permit or Site Permit with foundation and excavation addenda, as the case may be, and all other necessary permits for the Improvements to be constructed on the Site within the periods of time specified in this Agreement or the *Schedule of Performance* and such failure continues for a period of thirty (30) days following the date of written notice thereof from Agency, unless such failures are caused by the City's or Agency's failure to timely review adequate submissions by the Developer.

(k) Developer does not submit to the Agency all Construction Documents as required by this Agreement within the periods of time respectively provided therefor in this Agreement

and the *Schedule of Performance* or by any permitted Fast Track, and Developer does not cure such default within thirty (30) days following the date of written demand from Agency.

(l) Developer fails to provide the insurance certificate for the insurance required in Article 5.23 within the time prescribed in Article 5.23, and such failure shall continue for a period of five (5) Business Days following the date of written notice thereof from Agency.

(m) Developer fails to submit the documents required by this Agreement within the time prescribed and such failure continues for a period of five (5) Business Days following the date of written notice thereof from the Agency but excluding any delay excused by Force Majeure.

(n) Developer defaults in the performance of or violates any covenant or restriction set forth in Article 6 or in the Grant Deed to the Site, and such default or violation continues for a period of thirty (30) days after the date of written demand to cure from Agency to Developer.

(o) Developer fails to perform any other agreements or obligations on Developer's part to be performed under this Agreement, and such failure continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within thirty (30) days after the date of written demand by Agency to Developer to perform such agreement or obligation, or in the case of a default not susceptible of cure within thirty (30) days, Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time.

(p) Developer fails to perform any other obligations of Borrower under the Tax Increment Loan Agreement within the time periods prescribed in the Permanent Loan Agreement, shall be deemed a default of Developer under this Agreement.

9.02 Remedies of the Agency

The Agency's remedies for an Event of Default by Developer are set forth below.

(a) Termination. In the event of a default by Developer prior to conveyance of the Site to Developer, Agency shall have the right to terminate this Agreement upon written notice to Developer. Upon the giving of such notice, this Agreement shall terminate at 5:00 p.m. on the 21st calendar day after Agency's delivery of such notice of termination, unless the Agency Commission at a public meeting held before the end of such 21-day period, (or within a revised time period as such time period may be extended at the discretion of the Agency Executive Director or the Agency Commission), either on its own motion or on application by Developer, (which application must be submitted within five (5) days following the receipt of the Agency's written notice), affirmatively determines by majority vote not to terminate this Agreement, or determines to extend the termination date of this Agreement, or some combination of either of such alternatives. The Agency Commission shall have no obligation to act at all, but if it chooses to act, its action may be upon such terms and conditions as it may select, including, without limitation, an updated Purchase Price.

(b) Damages Offset. Whether before or after conveyance of the Site, the Agency, in addition to all other rights and remedies it may have, including, but not limited to, the right to

terminate this Agreement, may apply the Performance Deposit as an offset against any damages the Agency may suffer or may have suffered arising out of this Agreement or the Developer's performance pursuant to the Agreement or lack thereof. The Agency agrees to provide the Developer with ten (10) days' written notice prior to applying the Deposit in accordance with this Article; *provided, however*, that failure to provide such notice will not defeat the Agency's right to such offset under any circumstances, and the only remedy for such failure will be the obligation of the Agency to provide such notice.

Developer _____ **Agency** _____

(c) Specific Performance. Following Close of Escrow, the Agency shall have the right to institute an action for specific performance of the terms of this Agreement or of the Grant Deed including, but not limited to, the right to institute any action for specific performance of Developer's obligations under this Agreement or the Grant Deed to construct the Improvements.

(d) All Remedies at Law or in Equity. The Agency may take any action permitted at law, in equity or under this Agreement at its option to cure or remedy the default or breach, including: (1) following Close of Escrow, instituting proceedings to compel specific performance by Developer; (2) applying the Performance Deposit to and in payment of any damages suffered by the Agency; and (3) terminating this Agreement and, with it, Developer's right to conveyance of the Units as provided this Agreement.

(e) Limitation on Personal Liability of Developer. No owner, manager, partner, officer, director, member, official or employee of Developer shall be personally liable to the Agency, or any successor in interest, for any default by Developer or for any obligations under the terms of this Agreement.

9.03 Reversion of Title

(a) After conveyance of the Site to Developer and following an Event of Default and the expiration of any applicable cure periods, Agency shall have the right, at its option, to re-enter and take possession of the Site conveyed to the Developer, with all Improvements thereon (other than those Units and accompanying interests which have been conveyed in accordance with this Agreement), and to cause title to the Site to revert to Agency.

(b) Such rights to re-enter, repossess and revest title shall be subject to and be limited by and shall not defeat, render invalid or limit any permitted transfer of a Unit or any Mortgage permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the Holder under any such Mortgage.

(c) The Grant Deed to the Site shall contain appropriate references and provisions, including conditions subsequent, to give effect to the Agency's rights as set forth in this Article 9.03 to re-enter and take possession of the Site or any part thereof, with all Improvements thereon, and to cause title to the Site to revert to Agency.

(d) Resale Proceeds and Partial Limitation of Developer Liability.

(1) Upon the revesting in Agency of title to the Site, Agency shall use its best efforts to market and sell the Site as soon as feasible, consistent with the objectives of, and its responsibilities under, state law. The Agency shall sell and convey the Site to a qualified, responsible party, as determined by Agency in its sole discretion, who will assume the obligation of completing the Improvements or other improvements satisfactory to Agency, all in accordance with the uses specified for the Site.

(2) Developer shall be liable to Agency for any and all reasonable costs and expenses of Agency actually incurred to obtain title to the Site (less any Units which have been transferred in accordance with this Agreement) free and clear of all liens (including, without limitation, contractor's, labor and materials liens), encumbrances, taxes, assessments or other charges to which the Site became subject during the period of ownership by Developer, other than Mortgages permitted hereunder and Permitted Encumbrances. Agency shall have an independent right to recover any such costs and expenses from the Developer.

(3) Upon the resale of the Site by the Agency, the resale proceeds shall be applied: (A) first, to the costs of the sale, including the cost of maintaining the Site prior to sale; (B) second, to any Holder of a Mortgage on the Site, all sums necessary to cause a reconveyance of such Mortgage; (C) third, to reimburse the Agency for all costs and expenses incurred by Agency and not recovered previously from Developer in connection with the re-entry, management and resale of the Site; all taxes, assessments and water and sewer charges arising during the period of Agency ownership; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens (including, but not limited to, mechanic's liens) due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred by Agency with respect to the making or completion of the Improvements or any part thereof on the Site (or any portion thereof); less any net revenue received by Agency from the operation of the Site after deduction of all other expenses for the operation thereof; (D) fourth, to reimburse Developer, its successors or transferees, up to the amount equal to the Construction Costs, as defined in Article 5.02, incurred in connection with the Site, less all amounts paid by Agency under clause (B) above; and (E) fifth, any balance remaining after such payments shall be retained by Agency.

(4) Agency shall give Developer thirty (30) days' prior written notice of any resale, *provided, however*, that the failure to give such notice shall not affect the resale in any way. As a condition to reimbursement under clause (D) above, Developer shall give Agency a statement of all Construction Costs referred to therein within sixty (60) days after receipt of Agency's notice; and, within sixty (60) days after the date of such resale by Agency, Agency shall give Developer a statement of the costs referred to in clauses (A) and (C) above.

(e) Reversion Grant Deed. As additional security and to facilitate and implement the Agency's rights under this Article in case of a default or failure of Developer to perform after conveyance of the Site, and as a condition precedent to the obligation of the Agency to convey the Site to the Developer, the Developer shall have executed with signatures duly acknowledged and delivered to the Agency a recordable grant deed in the form attached hereto as Attachment No. 12 (the "**Reversion Grant Deed**") conveying title to the Site from the Developer to the

Agency. The Agency shall hold the Reversion Grant Deed in trust for the Developer until: (1) the Agency issues a Development Certificate of Completion; or (2) the Agency records the Reversion Grant Deed in accordance with the terms of this Agreement. In the event that Agency believes that Agency is entitled to declare a breach of the conditions subsequent and to exercise Agency's option to cause title to the Site to revert to Agency pursuant to this Article, the Agency, without limiting its remedies under this Agreement, may record the Reversion Grant Deed; *provided, however*, that Agency agrees to provide twenty (20) days' written notice to Developer prior to recordation. Any recordation of the Reversion Grant Deed by Agency shall not affect in any manner the right of Developer (whether before or after such recordation) to exercise any and all rights and remedies available to Developer to contest the rights of Agency to cause the recordation of such deed or from otherwise to assert some right, title or interest in or to the Site.

(f) Plans and Data. If the Agency exercises its right of termination and re-entry as to any portion of the Site before the Improvements have been completed and the Development Certificate of Completion issued and recorded, Developer shall promptly assign, subject to the rights of approved lenders and deliver to the Agency any and all Construction Documents in possession of or prepared for Developer or the Agency for the development of the Site. The Agency may use the Construction Documents for any purpose whatsoever relating to the Site, without cost or liability therefor to Developer or any other person.

(g) Developer's Right to Challenge Reversion. Provided that Developer has received notice from Agency as provided herein, **Developer must bring any action contesting Agency's right to record the Reversion Grant Deed within Sixty (60) days following the recordation of such deed, or Developer shall be deemed to have waived its rights and be precluded from challenging the action of the Agency**. In the event the Agency exercises its rights to revert title and to re-enter and take possession of the Site, the Agency may record the Reversion Grant Deed.

Developer _____ **Agency** _____

(h) Return of Reversion Grant Deed. The Agency will return the Reversion Grant Deed to the Developer within two (2) Business Days after recordation of the Development Certificate of Completion and, in any event, will not be entitled to record the Reversion Grant Deed after such recordation.

9.04 Additional Specific Remedies of Agency

The Agency's remedies described above are in addition to and not in limitation of other remedies, permitted hereunder, at law or in equity, including: (1) remedies in the Deed and elsewhere for violation of the covenants in Article 6 (*Covenants and Restrictions*); and (2) remedies set forth in the Agency's Equal Opportunity Program Documents.

9.05 Agency Default

The occurrence of any one of the following events or circumstances, if not cured within the specified cure or grace period, will constitute an event of default ("**Event of Default**") by the

Agency under this Agreement, giving the Developer the right to declare the Agency in default and to exercise any or all of its remedies, at its sole election and in its sole discretion:

(a) Agency shall fail to convey the Site to Developer in violation of this Agreement, and such failure shall continue for a period of five (5) days following the date of written notice thereof from Developer.

(b) Agency fails to perform any other agreements or obligations on Agency's part to be performed under this Agreement, and such failure shall continue for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within thirty (30) days after the date of written demand by Developer to Agency to perform such agreement or obligation, or, in the case of a default not susceptible of cure within thirty (30) days, the Agency fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time.

9.06 Remedies of the Developer

Developer's remedies for an Event of Default by the Agency are set forth below.

(a) Termination. Developer shall have the right to terminate this Agreement upon written notice to Agency, provided that substantial construction has not commenced on the Site.

(b) Return of Performance Deposit. The Agency shall return the Performance Deposit to the Developer.

(c) Specific Performance. Developer shall have the right to institute legal action for specific performance of the terms of this Agreement to the extent that such action is available at law or in equity with respect to such default.

(d) Other Remedies. Subject to Articles 9.06 (e) and (f), Developer shall be entitled to exercise all other remedies permitted by law or equity.

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

(f) Agency Liability. Agency shall be liable for the costs specified to be borne by Agency in Article 3 (*Conveyance Terms*), and for reasonable attorneys' fees and costs incurred by Developer in enforcing its rights hereunder and other reasonable out-of-pocket collection costs, but Agency shall have no liability for money damages, except as provided in this Article 9.06(f) and Article 9.06(b).

9.07 General Enforcement of Remedies

(a) Subject to the limitations contained in this Agreement, either Party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the terms of this Agreement. Legal actions must be

instituted in the Superior Court of the City and County of San Francisco, State of California, or any other appropriate court in the City and County of San Francisco or, if appropriate, in the Federal District Court in San Francisco, California.

(b) In the event that any legal action is commenced by Developer against the Agency, service of process on Agency must be made by personal service upon the Executive Director of the Agency, through the Agency General Counsel, or in any other manner as may be provided by law. In the event that any legal action is commenced by the Agency against Developer, service of process on Developer must be made by personal service upon Developer at the address provided in Article 11.03 or at any other address Developer has designated pursuant to Article 11.03 of this Agreement, or in any other manner as may be provided by law, and will be valid whether made within or without the State of California.

(c) In the event that any Party brings a legal action to enforce rights under this Agreement, the prevailing Party in the proceeding will be entitled to recover its reasonable attorneys' fees and costs of the proceeding, which will include expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses and any other amount the court adjudges to be reasonable attorneys' fees for the services rendered to the prevailing Party in such action or proceeding. Attorneys' fees include reasonable attorneys' fees and costs incurred on any appeal. For purposes of this Agreement, reasonable attorneys' fees for a Party's in-house counsel will be based on the fees regularly charged by private attorneys (in San Francisco law firms) with an equivalent number of years of professional experience in the subject matter area of the law for which the Party's in-house counsel's services were rendered.

9.08 Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law, in equity or by this Agreement, are cumulative, and the exercise by either Party of any one or more of its rights or remedies will not preclude the exercise by the 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 Agreement will 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 10: FORCE MAJEURE AND EXTENSIONS OF TIME

10.01 Force Majeure

(a) For the purposes of any of the provisions of this Agreement, and notwithstanding any provision herein to the contrary, neither the Agency nor Developer, as the case may be (the "**Delayed Party**" as applicable), will be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of another Party, during an event of Force Majeure (defined below). In the event of the occurrence of any event of Force Majeure, the time or times

for performance of the obligations of the Agency or Developer will be extended for the period of the Force Majeure event; *provided, however*, that the Party seeking the benefit of the provisions of this Article must notify the other Party in writing within thirty (30) days after the beginning of any Force Majeure event, and state the cause or causes of delay and provide notification of an extension for the period of the Force Majeure event.

(b) "**Force Majeure**" means events that cause enforced delays in the Delayed Party's performance of its obligations under this Agreement due to causes beyond the Delayed Party's control, including acts of God or of a public enemy, acts of terrorism, acts of the government (other than acts of the government relating to the delay or failure to issue building permits for cause), fires, floods, epidemics, quarantine restrictions, freight embargoes, inability to obtain supplies or materials or reasonably acceptable substitute supplies or materials (provided that Developer has ordered the materials on a timely basis), unusually severe weather, archeological finds on the Site, substantial interruption of work because of labor disputes, administrative appeals, litigation and arbitration (provided that Developer proceeds with due diligence to resolve any dispute that is the subject of action), and delays of subcontractors due to any of these causes.

10.02 Extensions of Time

(a) Extension by Agency. In addition to the automatic extensions provided in this Agreement, the Agency may extend the time for Developer's performance of any term, covenant or conditions of this Agreement, or any other document referenced herein pursuant to which the Developer is required to perform, or permit the curing of any default upon terms and conditions the Agency determines appropriate.

(b) Extension(s) by Agency Executive Director. The Executive Director of the Agency may extend the date for Developer's performance of any item except the date set for the Close of Escrow set forth in the Schedule of Performance without Agency Commission approval, so long as the extensions do not in the aggregate exceed a total of twelve (12) months from the dates in the Schedule of Performance.

ARTICLE 11: GENERAL PROVISIONS

11.01 Indemnification

From and after the Agency's conveyance of the Site, or any portion thereof, to Developer and until the date of Agency's issuance of a Development Certificate of Completion and recordation thereof, Developer shall defend, hold harmless and indemnify the Agency, the City and their respective commissioners, members, officers, agents and employees (collectively, the "Indemified Parties") of and from all claims, loss, damage, injury, actions, causes of action (including reasonable attorney's fees and court costs) and liability of every kind, nature and description directly or indirectly arising out of or connected with the performance of this Agreement and any of Developer's operations or activities related thereto, excluding the willful misconduct or the gross negligence of any of the Indemnified Parties. It is expressly agreed that the provisions of this Article 11.01 shall survive the termination of this Agreement.

11.02 Conflict of Interest

Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of the Agency or any recipient of public funds who exercises any functions or responsibilities with respect to activities assisted by those funds, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest in or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

11.03 Notices

Any notice, demand or other communication required or permitted to be given under this Agreement by either Party to the other Party (or to Holder who has provided its address pursuant to Article 8.10) will be sufficiently given or delivered if transmitted by: (i) registered or certified United States mail, postage prepaid; (ii) personal delivery; or (iii) nationally recognized private courier services, addressed as follows:

If to the Agency:

San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: **Executive Director**
Reference: 1345 Turk Street
Telefacsimile: (415) 749-2590
Telephone: (415) 749-2400

With a copy to:

San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: **Agency General Counsel**
Reference: 1345 Turk Street
Telefacsimile: (415) 749-2575
Telephone: (415) 749-2400

If to Developer:

Michael Simmons, President
MSPDI Turk Street, LLC
2730 Market Street, Suite 458
San Francisco, California 94114
Telefacsimile: (415) 358-8842
Telephone: (415) 845-5527
Email: MichaelS@mspdi.com

With a copy to:

Gubb & Barshay LLP
50 California Street Suite 3155
San Francisco, California 94111

Attention: Scott R. Barshay
Telefacsimile: (415) 781-6600
Telephone: (415) 781-6967
Email: SBarshay@gubbandbarshay.com

Any notice, demand or other communication transmitted by registered or certified United States mail, postage prepaid, will be deemed to have been received forty-eight (48) hours after mailing, and any notice, demand or other communication transmitted by personal delivery or nationally recognized private courier service will be deemed to have been given when received by the recipient; *provided that* notices received after 5 p.m. on a Business Day will be deemed received the next Business Day. Any Party may change its address for notices under this Article 11.03 by written notice given to the other party in accordance with the provisions hereof.

11.04 Time of Performance

Except as provided herein, all performance and cure dates expire at 5:00 p.m. Pacific Standard/Daylight Savings Time, as applicable, on the performance or cure date. Provisions in this Agreement relating to number of days will be calendar days, unless otherwise specified, *provided that* if the last day of any period to give notice, reply to a notice or to undertake any other action is not a Business Day, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding Business Day. Time is of the essence in the performance of all the terms and conditions in this Agreement.

11.05 Non-Discrimination in Benefits

Developer does not as of the date of this Agreement and will not during the DDA term, in any of its operations in San Francisco or with respect to its operations under this Agreement elsewhere in 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 the 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 had been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in the Agency's Non-Discrimination in Contracts and Benefits Policy, as set forth in Attachment No. 13.

11.06 Compliance with Minimum Compensation Policy and Health Care Accountability Policy

Contractor agrees, as of the date of this Agreement and during the term of this Agreement, to comply with the provisions of the Agency's Minimum Compensation Policy and Health Care Accountability Policy (the "**Policies**"), adopted by Agency Resolution 168-2001, as such policies may be amended from time to time. Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the Policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City's Department of

Public Health, or to participate in a health benefits program developed by the City's Director of Health.

11.07 Prevailing Wages (Labor Standards) and Agency's Construction Workforce Policy

The Parties acknowledge that the development of the Project is a public work of improvement under California Labor Code 1720 *et seq.* Notwithstanding Labor Code Section 1720(c)(6)(E), Developer agrees to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in Attachment No. 17 for construction work done in connection with the construction of the Improvements. Developer further agrees to comply or cause its general contractors and subcontractors to comply with the Agency's Construction Workforce Policy (Attachment 18).

11.08 Small Business Enterprise Program

Developer and the Agency acknowledge that the Project will create substantial employment opportunities at all levels, including opportunities for qualified small economically disadvantaged individuals and San Francisco residents. In recognition of these opportunities, the Developer will comply with the Agency's Small Business Enterprise ("**SBE**") Program, which provides first consideration 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) all other 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. SBEs must be certified with the Agency. The Developer shall make good faith efforts to achieve the goals of the SBE Program, which are 50% SBE participation for professional, personal services, and construction contracts. Developer has executed a Small Business Enterprise Agreement which sets forth in greater detail the Developer's obligations under the SBE Program (See Attachment No. 16).

11.09 Developer's Compliance with CEQA Mitigation Measures

The Developer shall comply with and/or cause its general contractor to comply with all of the applicable CEQA Mitigation Measures contained in that certain Mitigated Negative Declaration signed April 27, 2004 by the Agency and the Environmental Review Officer for the San Francisco Planning Department, as it may be amended or supplemented by the City in the course of its review of the Project. The CEQA Mitigation Measures are attached as Attachment No. 9.

11.10 Non-Merger in Deed

None of the provisions of this Agreement are intended to, or will, be merged by reason of any deed transferring title to any portion of the Site from the Agency to Developer, and no deed may be deemed to affect or impair the provisions and covenants of this Agreement.

11.11 Successors and Assigns

This Agreement will be binding upon and, subject to the provisions of Article 7 (Anti-Speculation and Assignment Provisions), will inure to the benefit of the successors and assigns

of the Agency and Developer. This Agreement is made and entered into only for the protection and benefit of the Parties and their successors and assigns. Except as expressly provided otherwise in this Agreement, as, for instance in regard to any Holder, no non-party has or acquires any right or action of any kind based upon the provisions of this Agreement.

11.12 Subordination of this Agreement – Intentionally Omitted.

11.13 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, and all counterparts will constitute one and the same instrument.

11.14 Integration

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

11.15 Formal Amendment Required

Any modifications or waiver of any provisions of this Agreement or any amendment thereto must be in writing and signed by a person or persons having authority to do so, on behalf of both the Agency and Developer.

11.16 Governing Law

This Agreement is governed by, and must be construed and enforced in accordance with, the laws of the State of California.

11.17 Further Assurances

Each Party will execute and deliver to the other Party additional documents and instruments that the other Party reasonably requests in order to more fully effectuate the purpose and intent of this Agreement.

11.18 Effective Date

The Effective Date of and the Parties' rights and obligations under this Agreement will be the date on which this Agreement is approved for execution by the Agency. The Agency will insert the date into the appropriate locations in this Agreement upon execution.

11.19 Representation by Counsel

Developer and the Agency each acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of its choice in connection with the rights and remedies of and waivers by it contained in this Agreement and after advice and consultation has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive and relinquish those rights and remedies to the extent

specified in this Agreement, and to rely solely on the remedies provided for in this Agreement with respect to any Event of Default by the other Party, or any other right that either Developer or the Agency seeks to exercise. The language of this Agreement must be construed as a whole according to its fair meaning.

11.20 Interpretation

(a) Unless otherwise specified, whenever in this Agreement, including its Attachments, reference is made to the Table of Contents, any Article or Attachment, or any defined term, the reference will be deemed to refer to the Table of Contents, Article or Attachment, or defined term of this Agreement. Any reference to an Article includes all clauses, subsections and subparagraphs of that Article. The terms "Paragraph" and "Article" may be used interchangeably. Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and must be disregarded in construing or interpreting any of its provisions.

(b) The use in this Agreement of the words "including," "such as" or words of similar import when following any general term, statement or matter, may not be construed to limit the statement, term or matter to the specific items or matters, whether or not language of non-limitation, such as "without limitation" or "including but not limited to," or words of similar import, is used, but rather will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the statement, term or matter. No specific example limits the more general application of a provision.

(c) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. Defined terms and variants of them will have the same definition. References to days, months and years mean calendar days, months and years unless otherwise specified. Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with Generally Accepted Accounting Principles ("**GAAP**") as in effect on the date of performance.

(d) References to any law or document, specifically or generally, will mean the law as amended, supplemented or superseded from time to time.

(e) The Recitals are material to this Agreement and are expressly incorporated herein. In the event of a conflict between the Recitals and the remaining provisions of the Agreement, the remaining provisions of the Agreement will prevail.

11.21 Recordation

Agency shall cause this Agreement to be recorded in the Recorder's Office of the City and County of San Francisco at the time of conveyance of the Site to the Developer.

IN WITNESS WHEREOF, the Developer and the Agency have executed this DDA as of the day and year first above written.

AGENCY

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

By _____
Amy Lee
Deputy Executive Director
Finance and Administration

APPROVED AS TO FORM:

By _____
James B. Morales
Agency General Counsel

Authorized by Agency Resolution No. 11-2010, adopted February 2, 2010

DEVELOPER

MSPDI TURK, LLC
a California limited liability company

By: MICHAEL SIMMONS PROPERTY DEVELOPMENT, INC.,
a California corporation,
its sole member

By _____
Michael Simmons, President

IN WITNESS WHEREOF, the Developer and the Agency have executed this DDA as of the day and year first above written.

AGENCY

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

By _____
Amy Lee
Deputy Executive Director
Finance and Administration

APPROVED AS TO FORM:

By _____
James B. Morales
Agency General Counsel

DEVELOPER

MSPDI TURK, LLC
a California limited liability company

By: MICHAEL SIMMONS PROPERTY DEVELOPMENT, INC.,
a California corporation,
its sole member

By _____
Michael Simmons, President

Authorized by Agency Resolution No. 11-2010, adopted February 2, 2010

IN WITNESS WHEREOF, the Developer and the Agency have executed this DDA as of the day and year first above written.

AGENCY

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

By _____
Amy Lee
Deputy Executive Director
Finance and Administration

APPROVED AS TO FORM:

By _____
James B. Morales
Agency General Counsel

Authorized by Agency Resolution No. 11-2010, adopted February 2, 2010

DEVELOPER

MSPDI TURK, LLC
a California limited liability company

By: MICHAEL SIMMONS PROPERTY DEVELOPMENT, INC.,
a California corporation,
its sole member

By _____
Michael Simmons, President

ATTACHMENTS TO AGREEMENT

1. Site Map
2. Site Legal Description
3. Scope of Development
4. Schedule of Performance
5. Form of Architect's Certificate (Accessibility for the Disabled)
6. Form of Architect's Certificate for Code Compliance
7. Form of Architect's Certificate that Construction Complies with Approved Construction Documents
8. Approved Title Exceptions
9. CEQA Mitigation Measures
10. A. Form of Development Certificate of Completion
    B. Form of Unit Certificate of Completion
        B-1. Form of Unit Certificate of Completion Site Legal Description
        B-2. List of Completed Condominium Units
11. Form of Grant Deed for the Site
12. Form of Reversion Grant Deed for the Site
13. Agency Nondiscrimination in Contracts and Benefits Policy
14. Minimum Compensation Policy (MCP) Declaration
15. Health Care Accountability Policy (HCAP) Declaration
16. Small Business Enterprise Agreement
17. Prevailing Wage Provisions (Labor Standards)
18. Agency's Construction Workforce Policy
19. Affordable Pricing Chart
20. Form of Limited Equity Home Ownership Program

    Attachment A - Promissory Note Secured By Deed of Trust

    Attachment B - Deed of Trust

    Attachment C - Addendum to Deed of Trust

    Attachment D - Form of Income Certification

    Attachment E - Approved Title Exceptions

    Attachment F - Loan Disclosure Information

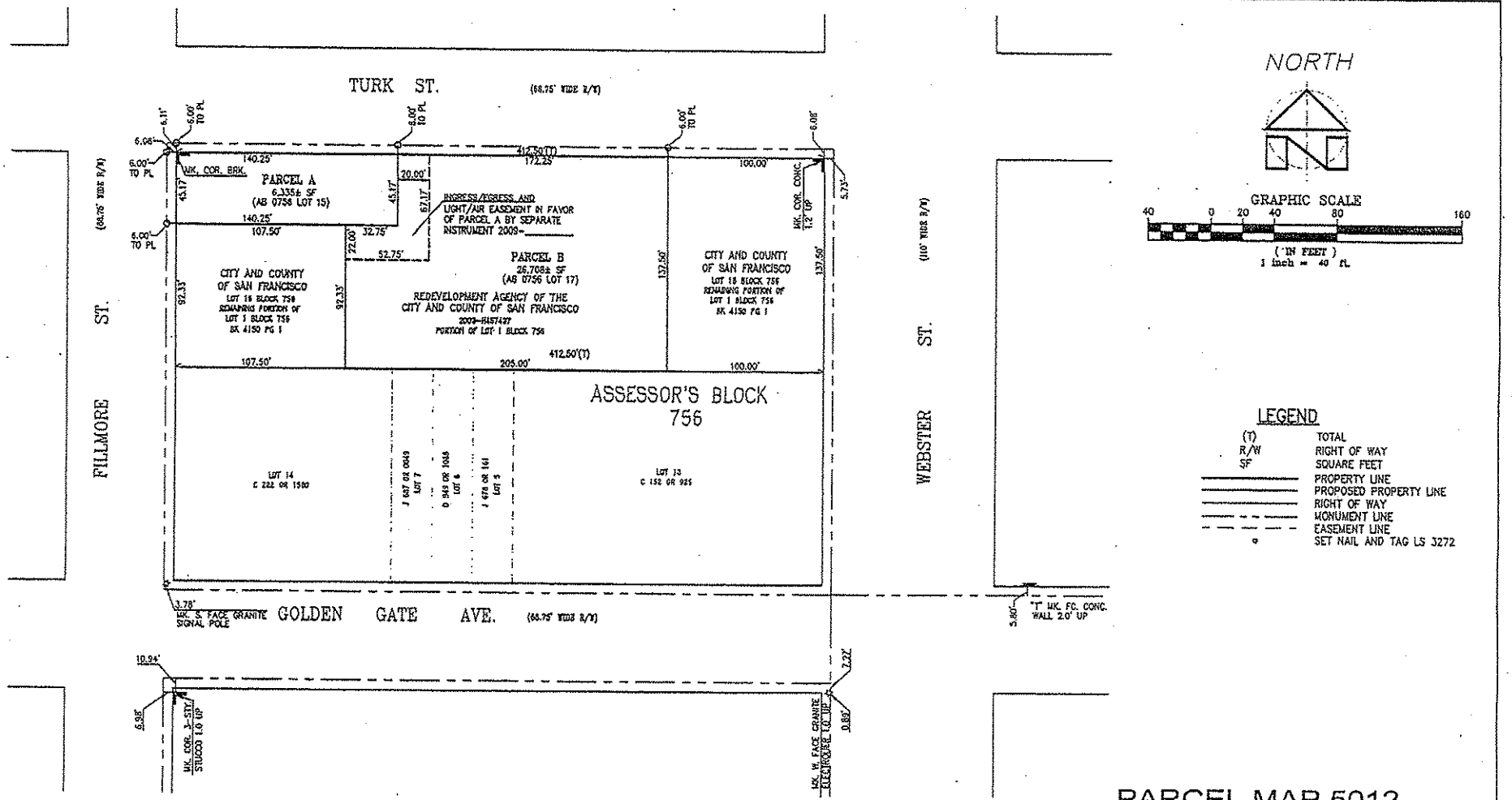
ATTACHMENT 1

Site Map

ATTACHMENT No. 1

SITE MAP

[SITE MAP IN PDF FORM]



LEGEND

(T)	TOTAL
R/W	RIGHT OF WAY
SF	SQUARE FEET
	PROPERTY LINE
	PROPOSED PROPERTY LINE
	RIGHT OF WAY
	MONUMENT LINE
	EASEMENT LINE
⊙	SET NAIL AND TAG LS 3272

BASIS OF SURVEY

BASIS OF SURVEY IS BASED ON MONUMENT MAP NO. 28.

EASEMENT NOTES:

SUBJECT TO AN EASEMENT OVER PARCEL B IN FAVOR OF PARCEL A FOR PURPOSES OF INGRESS AND EGRESS ACROSS PARCEL B TO TURK STREET AND FOR LIGHT AND AIR, AS DEFINED IN THAT CERTAIN DOCUMENT ENTITLED "DECLARATION OF RESTRICTIONS AND RESERVATION OF EASEMENTS", DATED MAY 5, 2009 AND RECORDED _____, 2009, INSTRUMENT NO. 2009-_____, REEL _____, IMAGE _____, OFFICIAL RECORDS OF CITY AND COUNTY OF SAN FRANCISCO.

NOTES

1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
2. ALL ANGLES ARE 90 DEGREES UNLESS OTHERWISE SPECIFIED.
3. THIS MAP SHOWS ALL EASEMENTS ON THE PREMISES OR OF RECORD.

PARCEL MAP 5012

A TWO LOT SUBDIVISION OF THAT REAL PROPERTY AS DESCRIBED IN THAT CERTAIN DEED, RECORDED ON JUNE 9, 2003, IN REEL 1404 IMAGE 0741

CITY AND COUNTY OF SAN FRANCISCO
CALIFORNIA

LUK AND ASSOCIATES
738 ALFRED NOBEL DRIVE
HERCULES, CALIFORNIA 94547

SEPTEMBER 2009

SHEET 2 OF 2 SHEETS

AB 0756 LOT 1 (PORTION) 1140 FILLMORE ST/1345 TURK ST

PLOT DATE: 9/10/2009

XREF: 23012-20/FINALMAP/NEWLOTLINE.DWG

FILE No.: 23012-20/FINALMAP/FM-23012.DWG

604

ATTACHMENT 2

Site Legal Description

EXHIBIT A

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

Parcel B of that certain Parcel Map entitled "Parcel Map 5012" which was filed for record on September 16, 2009 in Parcel Map Book 48, at Pages 6 through 7 in the Office of the Recorder of the City and County of San Francisco, State of California.

Assessor's Lot 017 (Formerly Portion of Lot 1), Block 0756

ATTACHMENT 3

Scope of Development

ATTACHMENT No. 3

SCOPE OF DEVELOPMENT

Capitalized terms not otherwise defined herein have the meanings given them in the Disposition and Development Agreement ("**DDA**" or "**Agreement**") between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the "**Agency**"), and MSPDI Turk, LLC, a California limited liability company ("**Developer**").

I. GENERAL DESCRIPTION OF DEVELOPMENT

The Site is the real property located at 1345 Turk Street, San Francisco, also known as Assessor's Block 0756, Lot 017 plus a nonexclusive easement for ingress, egress, light and air in favor of Assessor's Block 0756, Lot 15 known as Parcel A of Parcel Map 5012 recorded September 16, 2009 in Book 48 of Parcel Maps at Pages 6 and 7. The parcel measures approximately 26,718 square feet in total land area and is currently a vacant lot. The Site is further described in Attachment No. 2, "Site Legal Description." The development shall include the following: Construction and development of 32 units of affordable townhomes and flats for low- and moderate-income households, including common areas, 23 parking spaces and open space ("**Project**" or "**Improvements**"). The unit distribution shall be approximately 7 one-bedroom (22%), 17 two-bedroom (53%), 8 three-bedroom (25%) condominiums, priced to be affordable on average to households earning 80% of area median income, ranging from 70% to 100% AMI. Affordability levels for all units must be approved by the Agency and will be set pursuant to limits required by selected financing sources.

II. GENERAL DESIGN OBJECTIVES

The intent of this Scope of Development is to provide a general direction to the development of the Site in order to insure the following design objectives:

A. Compliance with the objectives and policies of the General Plan, the City Planning Code and to all applicable codes and ordinances of the City and County of San Francisco.

B. Design and scale of the building façade facing Turk Street should enhance the pedestrian experience and contribute to the residential character of the street by establishing a clear and consistent building edge that is visually interesting, active and comfortable.

C. Parking structures should not be exposed but be part of an integrated project. The parking shall be owned by the governing homeowner's association which shall be made available to the units with the greatest number of bedrooms first, then to smaller units pursuant to Section 167 of the Planning Code. The parking will be owned by the homeowner's association and will be leased to the homeowners for use by their respective vehicles ONLY. Subleasing shall not be permitted. The revenue from the parking shall go towards reducing the homeowners association costs to all units.

D. Design should be family-oriented in its considerations of privacy, safety, solar access, and open space; it should provide for safe and sunny recreational spaces for children as well as adults.

E. Design should be environmentally responsible and should incorporate sustainable building methods, including but not limited to maximizing opportunities for solar access, natural lighting and ventilation.

F. Creation of a relationship of all site improvements to adjacent structures and public improvements to provide a harmonious composition and transition between building masses, materials, colors and textures.

G. Inclusion of on-site parking in conformance with the General Plan, the City Planning Code and to all applicable codes and ordinances of the City and County of San Francisco.

H. Landscaping of open areas with a maximum provision of useable private open space attached to the individual units and open space for residents of the entire project.

I. Optimized views from indoor and outdoor areas of individual units as well as the retention of privacy from adjacent units.

J. Provision of an efficient and convenient system for pedestrian movement and the quality of its environment.

K. The appearance of the development from public rights-of-way shall be consistent with the General Plan, the City Planning Code and to all applicable codes and ordinances of the City and County of San Francisco.

L. Use of the most feasible cost-effective energy efficient measures, with the goal of achieving the equivalent (as determined by the Agency) to a Enterprise Green Communities Initiative and/or Leadership in Energy and Environmental Design ("**LEED**") Certified level.

III. DEVELOPMENT STANDARDS

The Development of the Site shall comply with the General Plan, the City Planning Code and to all applicable codes and ordinances of the City and County of San Francisco.

A. Signs

1. All signs on the Site shall be designed and constructed to be complementary elements in a total environment. Each sign shall identify only the user and/or use of the particular property or portion thereof on which the sign is located. Each sign shall be of size, shape, material, color, type of construction, method and intensity of lighting, and location to be in scale with and harmonious with the development of the Site and with adjacent sites in the area. No roof signs shall be permitted. No sign shall move or have any moving parts.

2. All signs to be located on the Site shall be reviewed by the Agency for design and compatibility with Site development.

3. All signs and directional maps shall identify only the development name, logo and/or addresses. All Site signs will be subject to Agency approval for design and location, and shall also conform to the limitations of the City's sign ordinance.

B. Construction

1. General. The construction of the development on the Site shall be performed in a manner which insures minimal disturbance to the adjoining property as well as to the neighborhood as a whole.

2. Dust and Disturbance. During construction of the development of the Premises the Contractor shall take all reasonable precautions to minimize dust and disturbance to adjacent properties.

3. Construction Barricade. During construction the Contractor shall erect and maintain a construction barricade at the perimeter of the Site, not less than 6 feet in height and of a design approved by the Agency.

C. Open Space

1. Usable, easily accessible open space (including outdoor living, recreation or landscaped yards, decks, balconies, porches and roofs) shall be provided for each dwelling unit as follows: 133 square feet minimum.

IV. DEVELOPER RESPONSIBILITIES

A. In addition to the other Developer responsibilities set forth elsewhere in this Agreement, the Developer shall be responsible, at its sole expense, for the development of the Site and the installation and/or coordination of all public improvements required for the development of the Site. Such public improvements, whether within the Site or in the adjacent public right-of-way, including, but shall not be limited to, the following:

1. All site preparation activities on the Site.

2. All utility services required for the development either within the Site or the adjacent public right-of-way including, but not limited to, the following:

(a) Water

(b) Power

(c) Sewer

(d) Storm Drain

(e) Natural Gas

(f) Telephone

3. Completion of all applicable mitigation measures identified in the Final Subsequent Environmental Impact Report, adopted by Agency in Resolution No. 182-98 and adopt a Mitigation Monitoring Program in accordance with the Risk Management Plan.

4. The above items shall be performed in accordance with City requirements.

V. SUBMITTALS

The Developer shall submit Construction Documents to the Agency which shall include, but not be limited to, the following:

A. Basic Design Concepts Drawings (3 sets of drawings)

The following submissions are required:

1. Written statement of program to indicate the size and use of the proposed project, number of parking and loading spaces, structural system and principal building materials.

2. Site plan showing adjacent buildings as well as the proposed development. Scale: minimum 1/8"=1'0

3. Site sections showing all proposed buildings, amenities, and adjacent streets and buildings. Scale: minimum 1/8"=1'0

4. Building plans and sections of all proposed buildings at 1/8" scale.

5. Typical unit plans at 1/4" scale.

6. Parking level plans.

7. Roof plans showing all enclosed mechanical equipments.

8. Model that illustrates the scale and massing of the proposed building(s) and its relationship to public open space, streets, and surrounding development areas.

9. Sketches or perspective renderings to illustrate the character of the proposed development.

B. Schematic Design Drawings (3 sets of drawings)

The following submissions are required:

1. Written statement of program to indicate the size and use of the proposed project, number of parking and loading spaces, structural system and principal building materials.

2. Site plan showing buildings, landscaped areas, parking areas, loading areas, roads and sidewalks. All land uses shall be designated. Streets and points of vehicular and pedestrian access shall be shown. Scale: minimum 1/8"=1'0

3. Site sections showing all buildings and streets. Scale: minimum 1/8"=1'0

4. All building plans, including parking levels. Scale: minimum 1/8"=1'0

5. All building elevations.

6. All building sections.

7. Roof plans.

8. Model of an appropriate scale indicating the exterior building design.

9. Exterior materials and colors sample board.

10. Signage indicating locations and types of the proposed exterior signs.

C. Preliminary Plans and Outline Specifications

Upon approval by the Agency of the Basic Concepts Design and the Schematic Design, the following submissions are required (scale to be agreed upon):

1. Site Plan or Plans showing: building(s), landscaped areas, parking areas, loading areas, roads and sidewalks. All land use shall be designated. All landscaping and Site development details, including walls, fences, planting, outdoor lighting, street furniture, and ground surface materials, shall be indicated. Streets and points of vehicular and pedestrian access shall be shown, indicating proposed new paving, planting and lighting by the City. All utilities, easements or service facilities, insofar as they relate to work by the City or by "others," shall be shown.

2. Those areas of the Site proposed to be developed "by others" or easements to be provided for others shall be clearly indicated.

3. In addition, Site Plans shall indicate (1) existing and finish contours; (2) yard drainage and roof drainage; (3) an acceptable transition of overhead utilities to underground system within the Site; (4) the required connections to existing utilities; (5) the utilization of public utility easements relative to electric, gas, telephone and water requirements of buildings within the Site; (6) the planned use of modification of existing public right of way improvements; and (7) all existing structures around the Site.

4. All building plans and elevations.

5. Building sections showing all typical cross sections.

6. All sign locations and sizes.

7. Perspective sketches (at eye level) and/or model showing the architectural character of the proposed design.

8. Outline specifications for materials and methods of construction.

9. Expanded statement of proposal C.4 above to include the major building dimensions and gross area of buildings.

10. Where variances, waivers, or deviations from existing Agency, City, State, or Federal regulations are proposed, they shall be listed and progress toward obtaining such variances shall be stated.

11. Preliminary structural plans and sections.

12. Preliminary Cost Estimates.

D. Final Plans and Specifications

Upon acceptance by the Agency of the Preliminary Plans and Outline Specifications, the following submissions will be required:

1. Completed Site plans for the final parcel development to working drawing level of detail.

2. Completed working drawings and specifications ready for bidding.

3. Complete presentation of all exterior materials and color schedules including samples, if appropriate.

4. Complete design drawings for all exterior signs and graphics.

5. Final cost estimates.

ATTACHMENT 4

Schedule of Performance

ATTACHMENT No. 4

SCHEDULE OF PERFORMANCE

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
A.	***Entitlements***		
1.	Phase I /II Environmental & HazMat Complete	**Completed**	
2.	Negative Declaration under CEQA	12/09	03/10
4.	Geotechnical Investigation(s) Complete	**Completed**	
5.	Tentative Map application to DPW	03/10	05/10
6.	Preliminary Public Report App. To DRE	04/10	07/10
7.	Design Review Complete	12/09	03/10
8.	CUP/PUD/Variance Obtained	12/09	03/10
9.	Revised Site Permit Obtained	02/10	04/10
10.	Grading/Excavation/Shoring Addendum Obtained	04/10	07/10
11.	Superstructure Addendum Obtained	04/10	07/10
12.	Building Permit Obtained	06/10	09/10
B.	***Financing Milestones***		
1.	Obtain Construction Lender Financing	**Completed**	
2.	State BEGIN Program Funds Obtained	**Completed**	
4.	CALReUSE Funds Obtained	**Completed**	
5.	Execute Disposition & Development Agreement	11/09	03/10
6.	Bank Construction Loan Closing	04/10	07/10
7.	Agency Permanent Loan Closing	04/10	07/10
C.	***Acquisition/Construction Milestones***		
1.	Site Acquisition	04/10	06/10
2.	Submit Outreach Plan to Agency for Approval	**Completed**	
3.	Construction Begins	04/10	07/10
4.	Construction Complete	10/11	01/12

5.	Certificate of Occupancy Obtained	10/11	01/12
6.	Sale of 100% of Units	06/12	12/12
7.	Submit Marketing Plan to Agency for Approval	10/10	12/10
8.	Preliminary Public Report issued by DRE (pink)	05/10	11/10
9.	Final Public Report Received from DRE (white)	07/11	10/11

ATTACHMENT 5

Form of Architect's Certificate
(Accessibility for the Disabled)

ATTACHMENT No. 5

FORM OF ARCHITECT'S CERTIFICATE (ACCESSIBILITY FOR THE DISABLED)

TO:
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Dated:_____

Development:_____

FROM: Architect of Record

_____
_____
_____
_____

Location:

1345 Turk Street,
San Francisco, CA 94115

Note: This Declaration is being provided pursuant to Article 5.07 of that certain Disposition and Development Agreement between the Redevelopment Agency of the City and County of San Francisco ("**Agency**") and MSPDI Turk, LLC, a California limited liability company, dated February 2, 2010 ("**Agreement**"). Capitalized terms used herein have the meanings given them in the Agreement.

As Architect of Record for the construction of the Improvements, I hereby declare to the best of my knowledge and belief it is my professional opinion that:

1. I observed the Improvements regarding Accessibility for Persons with Disabilities on _____(date), and all the statements made below are made as of the date of my observation.

2. Based on my observation, the construction of the Improvements with respect to Accessibility for Persons with Disabilities has been and is being performed in accordance and complies with a reasonable interpretation of (based upon my professional judgment) all applicable local, state, federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

3. Based on my observation the construction of the Improvements with respect to Accessibility for Persons with Disabilities has been done in a good workmanlike manner, and all of the work, materials and fixtures are acceptable, except as may be noted on Schedule A attached hereto.

4. In my opinion, construction of the Improvements has been completed satisfactorily in accordance with all applicable local, state, federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

Date: _____

_____
Architect

ATTACHMENT 6

Form of Architect's Certificate for Code Compliance

ATTACHMENT No.6

FORM OF ARCHITECT'S CERTIFICATE
For CODE COMPLIANCE

TO:
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Dated:_____

Development:_____

FROM: Architect of Record

_____
_____
_____
_____

Location:

1345 Turk Street,
San Francisco, CA 94115

Note: This Certification is being provided pursuant to Article 5.07 of that certain Disposition and Development Agreement between the Redevelopment Agency of the City and County of San Francisco ("**Agency**") and MSPDI Turk, LLC, dated as of February 2, 2010 ("**Agreement**"). Capitalized terms used herein have the meanings given in the Agreement.

As Architect of Record for the construction of the improvements, I hereby declare to the best of my knowledge and belief, it is my professional opinion that:

1. I observed the improvements on _____(date), and all the statements made below are made as of the date of my observation.

2. Preliminary Construction Documents provide for construction of the improvements are in accordance with all applicable local building codes.

3. Design of the improvements conform with all applicable local, state and federal laws.

4. Based on my observation, the construction of the improvements has been and is being performed in accordance and complies with a reasonable interpretation of (based upon my professional judgment) all applicable local and state building laws and regulations.

5. Based on my observation the construction of the improvements has been done in a good workmanlike manner, and all of the work, materials and fixtures are acceptable, except as may be noted on Schedule A attached hereto.

6. In my opinion, construction of the improvements has been completed satisfactorily in accordance with all applicable local and state building laws and regulations.

Date: _____

_____
Architect

ATTACHMENT 7

Form of Architect's Certificate that Construction Complies with Approved Construction Documents

ATTACHMENT No. 7

FORM OF ARCHITECT'S CERTIFICATE THAT CONSTRUCTION CONFORMS TO APPROVED CONSTRUCTION DOCUMENTS

TO:
San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Dated: _____

Development: _____

FROM: Architect of Record

_____
_____
_____
_____

Location:

1345 Turk Street,
San Francisco, CA 94115

Note: This Certificate is being provided pursuant to Article 5.06(a) of that certain Disposition and Development Agreement between the Redevelopment Agency of the City and County of San Francisco ("**Agency**") and MSPDI Turk, LLC, a California limited liability company, dated February 2, 2010 (the "**Agreement**"). Capitalized terms used herein have the meanings given in the Agreement.

As Architect of Record for the design and construction of the Improvements, I hereby declare to the best of my knowledge and belief and it is my professional opinion that:

1. I observed the Improvements on _____ (date), and all the statements made below are made as of the date of my observation.

2. Based on my observations, the construction of the improvements has been and is being performed in accordance with those elements of the Construction Documents for the improvements approved by the Agency and/or the City.

3. The required certificates, approvals and permits of all governmental authorities having jurisdiction covering the work to date on the improvements have been issued and are in force, and there is not an undischarged violation of applicable laws, regulations or orders of any governmental authority having jurisdiction of which we have notice as of the date hereof, except as may be noted on Schedule A attached hereto.

4. In my opinion construction of the improvements were completed in accordance with those elements of the Construction Documents for the improvements approved by the Agency and/or the City.

Date: _____

_____
Architect

ATTACHMENT 8

Approved Title Exceptions

ATTACHMENT No. 8

LIST OF APPROVED TITLE EXCEPTIONS
[TO BE UPDATED WITH EXCEPTIONS FROM PTR]

1. Current taxes and taxes not yet due or payable.

2. Supplemental taxes, if any.

3. Final Subdivision map recorded for the property and all matters disclosed thereon.

4. Declaration of Restriction and Reservation of Easement or Light and Air Easement, a nonexclusive easement for ingress, egress, light and air in favor of Assessor's Block 0756, Lot 15 known as Parcel A of Parcel Map 5012 recorded September 16, 2009 in Book 48 of Parcel Maps at Pages 6 and 7.

5. Use restrictions as set forth in the Reversionary Grant Deed or Declaration of Restrictions.

6. Notice of Special Restrictions under the Planning Code pursuant to Condition Use Application No. 2009.1064C authorized by the Planning Commission of the City and County of San Francisco on January 14, 2010 as set forth in Planning Commission Motion No. 18012 (pending recordation).

ATTACHMENT 9

CEQA Mitigation Measures

ATTACHMENT No. 9

CEQA MITIGATION MEASURES

(Section D of the Mitigated Negative Declaration signed April 27, 2004 by the Agency and the Environmental Review Officer for the San Francisco Planning Department)

D. MITIGATION MEASURES	YES	NO	N/A	DISCUSSED
1) Could the project have significant effects if mitigation measures are not included in the project?	X			X
2) Are all mitigation measures necessary to eliminate significant effects included in the project?	X			X

In the course of project planning and design, measures have been identified that would reduce or eliminate potential environmental impacts of the project. All of these mitigation measures have been adopted by the project sponsor and, therefore, would be implemented as part of the project. Implementation of some measures may be undertaken by private developers and/or the Housing Authority at the direction of the Redevelopment Agency.

Mitigation Measure 1 - Construction Noise and Vibration

The Redevelopment Agency (or the Housing Authority, if applicable) would require the construction contractor(s) to pre-drill pile holes where soil conditions permit, and to use state-ofthe-art noise shielding and muffling devices on construction equipment. The Agency (or Authority) would also require that contractor(s) schedule pile driving for times of the day that would be least intrusive and would minimize disturbance to neighbors.

Mitigation Measure 2 - Construction Air Quality

The project sponsor shall require contractor(s) to spray the site with water during demolition, excavation, and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soils, sand, or other such material; and sweep surrounding streets during demolition, excavation, and construction at least once per day to reduce particulate emissions.

Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the project sponsor shall require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose. The project sponsor shall require the project contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulates and other pollutants, by such means as a prohibition on idling motors when equipment is not in use or when trucks are waiting in queues, and implementation of specific maintenance programs to reduce emissions for equipment that would be in frequent use for much of the construction period.

Mitigation Measure 3 - Soils Testing, Freeway Parcels A and C

Prior to initiation of any ground-disturbing activities, the Redevelopment Agency shall ensure that soil samples are taken at Parcels A and C. The Agency shall require that the sampling plan be reviewed and approved by the San Francisco Department of Public Health (DPH). Should soils to be excavated on the site(s) be identified to exceed State or federal thresholds as hazardous wastes, the Agency would remove such contaminated soils under proper procedures, and with consultation by DPH, and ensure that such soils are disposed of in an approved landfill. The Agency shall further ensure that, where applicable, all required worker health and safety procedures (including preparation of a Site Health and Safety Plan, if required) are followed during site remediation, if any, and that all hazardous materials removed from the site are properly disposed of in an appropriate disposal facility. Such health and safety procedures and disposal, if required, shall be undertaken by the Agency in consultation with DPH. The Agency Project Manager shall prepare a report for submittal to the Agency Commission and DPH documenting compliance with this measure for the applicable project sites identified in this Initial Study. The Parties agree that this is CEQA Mitigation does not apply to the 1345 Street Project.

Mitigation Measure 4 - Development-Related Remediation, Parcel 732A

The Redevelopment Agency shall ensure that an appropriate remediation plan, with oversight by the California Department of Toxics Substances Control and the San Francisco Department of Public Health (DPH) as required, is developed and implemented for the Jazz Center site, and that contaminated soils to be excavated are removed under proper procedures and disposed of in an approved landfill. The Agency shall further ensure that, where applicable, all required worker health and safety procedures (including preparation of a Site Health and Safety Plan, if required) are followed during site remediation, if any, and that all hazardous materials removed from the site are properly disposed of in an appropriate disposal facility. Such health and safety procedures and disposal, if required, shall be undertaken by the Agency in consultation with DPH. The Agency Project Manager shall prepare a report for submittal to the Agency Commission and DPH documenting compliance with this measure for the applicable project sites identified in this Initial Study. The Parties agree that this is CEQA Mitigation does not apply to the 1345 Street Project.

Mitigation Measure 5 - Phase I Environmental Site Assessment

Where no Phase I environmental site assessment has been prepared (i.e., Rosa Parks Annex 1 and 2 sites and Muni substation site), prior to approval of building permit(s) an for individual project, the Redevelopment Agency shall ensure that a Phase I environmental site assessment is prepared for each project site (either by the Agency or by the project developer). In the case of the Rosa Parks Annex sites, the responsibility to ensure compliance with this requirement shall rest with the San Francisco Housing Authority. The Agency or Housing Authority, as appropriate, shall ensure that, prior to occupancy of each project, all hazardous materials identified in the Phase I report are properly remediated to residential standards, in accordance with applicable federal, state, and local laws and regulations, and in consultation with the San Francisco Department of Public Health (DPH). The Agency or Authority shall further ensure that, where applicable, all required worker health and safety procedures (including preparation of a Site Health and Safety Plan, if required) are followed during site remediation, if any, and that all hazardous materials removed from the site are properly disposed of in an appropriate

disposal facility. Such health and safety procedures and disposal, if required, shall be undertaken by the Agency in consultation with DPH. The Agency Project Manager shall prepare a report for submittal to the Agency Commission and DPH documenting compliance with this measure for the applicable project sites identified in this Initial Study.

Mitigation Measure 6 - Archaeological Resources

With regard to all six project sites, the project sponsor shall distribute the Planning Department's Archaeological Resource Alert sheet to the project prime contractor; to any project subcontractor (including demolition, excavation, grading, foundation, pile driving, etc. firms); or utilities firm involved in soils disturbing activities within the project sites. Prior to any soils disturbing activities being undertaken each contractor is responsible for ensuring that the Alert sheet is circulated to all field personnel including, machine operators, field crew, pile drivers, supervisory personnel, etc. The Head Foreman or other responsible party shall provide the Environmental Review Officer (ERO) with a signed affidavit to the ERO confirming that all field personnel have received copies of the Alert Sheet.

Should any indication of an archaeological resource be encountered during any soils disturbing activity of the project, the project Head Foreman and/or project sponsor shall immediately notify the ERO and shall immediately suspend any soils disturbing activities in the vicinity of the discovery until the ERO has determined what additional measures, if any, should be undertaken.

If the ERO determines that an archaeological resource may be present within one of the project sites, the project sponsor shall retain the services of a qualified archaeological consultant. The archaeological consultant shall advise the ERO as to whether the discovery is an archaeological resource, retains sufficient integrity, and is of potential scientific/historical/cultural significance. If an archaeological resource is present, the archaeological consultant shall identify and evaluate the archaeological resource. The archaeological consultant shall make a recommendation as to what action, if any, is warranted. Based on this information, the ERO may require, if warranted, specific additional measures to be implemented by the project sponsor.

Measures might include: preservation in situ of the archaeological resource; an archaeological monitoring program; or an archaeological testing program. If an archaeological monitoring program or archaeological testing program is required, it shall be consistent with the Major Environmental Analysis (MEA) division guidelines for such programs. The ERO may also require that the project sponsor immediately implement a site security program if the archaeological resource is at risk from vandalism, looting, or other damaging activities.

The project archaeological consultant shall prepare a Final Archaeological Resources Report (FARR) evaluating the historical importance of the archaeological resource and describing the archaeological and historical research methods employed in the archaeological monitoring/data recovery program(s). Information that may put at risk any archaeological resource shall be provided in a separate removable insert within the final report.

Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (1 copy) and the San Francisco Redevelopment Agency (1 copy). The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value, the ERO may require a different final report content, format, and distribution than that presented above.

With regard to the Muni Substation Site and Parcel 725C of the Jazz Center site: On-site monitoring. Based on the reasonable potential that archaeological resources may be present within these project sites, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of a qualified archaeological consultant having expertise in California prehistoric and urban historical archaeology. The archaeological consultant shall undertake an archaeological monitoring program. All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archaeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archaeological resource as defined in CEQA Guidelines Sect. 15064.5 (a) and (c).

Archaeological monitoring program (AMP). The archaeological monitoring program shall minimally include the following provisions:

- The archaeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the project archaeologist shall determine what project activities shall be archaeologically monitored. In most cases, any soils disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archaeological monitoring because of the potential risk these activities pose to archaeological resources and to their depositional context;

- The archaeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archaeological resource;

- The archaeological monitor(s) shall be present on the applicable project site according to a schedule agreed upon by the archaeological consultant and the ERO until the ERO has, in consultation with the archaeological consultant, determined that project construction activities could have no effects on significant archaeological deposits;

- The archaeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;

- If an intact archaeological deposit is encountered, all soils disturbing activities in the vicinity of the deposit shall cease. The archaeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction crews and heavy equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archaeological monitor has cause to believe that the pile driving activity may affect an archaeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archaeological consultant shall immediately notify the ERO of the encountered archaeological deposit. The archaeological consultant shall, after making a reasonable effort to assess the identity, integrity, and significance of the encountered archaeological deposit, present the findings of this assessment to the ERO.

If the ERO in consultation with the archaeological consultant determines that a significant archaeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archaeological resource; or

B) An archaeological data recovery program shall be implemented, unless the ERO determines that the archaeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

If an archaeological data recovery program is required by the ERO, the archaeological data recovery program shall be conducted in accord with an *archaeological data recovery plan (ADRP)* and with the requirements of the project archaeological research design and treatment plan prepared by Archeo-Tec (see footnote 35, p. 57). The project archaeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP. The archaeological consultant shall prepare a draft ADRP that shall be submitted to the ERO for review and approval. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archaeological resource is expected to contain. That is, the ADRP will identify what scientific/ historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that

could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practical.

Human Remains, Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal Laws, including immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archaeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects.

Final Archaeological Resources Report. The archaeological consultant shall submit a Draft Final Archaeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archaeological resource and describes the archaeological and historical research methods employed in the archaeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archaeological resource shall be provided in a separate removable insert within the draft final report.

Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The San Francisco Redevelopment Agency shall receive one copy of the FARR. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

With regard to Parcel C, the Rosa Parks Annex 1 and 2 sites, and Parcel 732A of the Jazz Center site: Pre-construction testing. Based on a reasonable presumption that archaeological resources may be present within these project sites, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of a qualified archaeological consultant having expertise in California prehistoric and urban historical archaeology. The archaeological consultant shall undertake an archaeological testing program as specified herein. In addition, the consultant shall be available to conduct an archaeological monitoring and/or data recovery program if required pursuant to this measure. The archaeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO) and with the requirements of the project archaeological research design and treatment plan prepared by Archeo-Tec (see footnote 35, p. 57). All plans and reports prepared by the consultant as specified herein shall be submitted

first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archaeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archaeological resource as defined in CEQA Guidelines Sect. 15064.5 (a) and (c). In instances of any inconsistency between the requirements of the project archaeological research design and treatment plan and of this archaeological mitigation measure, the requirements of the latter shall prevail. The Parties agree that this is CEQA Mitigation does not apply to the 1345 Street Project.

Archaeological Testing Program. The archaeological consultant shall prepare and submit to the ERO for review and approval an archaeological testing plan (ATP). The archaeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archaeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archaeological testing program will be to determine to the extent possible the presence or absence of archaeological resources and to identify and to evaluate whether any archaeological resource encountered on the site constitutes an historical resource under CEQA.

At the completion of the archaeological testing program, the archaeological consultant shall submit a written report of the findings to the ERO. If based on the archaeological testing program the archaeological consultant finds that significant archaeological resources may be present, the ERO in consultation with the archaeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archaeological testing, archaeological monitoring, and/or an archaeological data recovery program. If the ERO determines that a significant archaeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archaeological resource; or

B) A data recovery program shall be implemented, unless the ERO determines that the archaeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archaeological Monitoring Program. If the ERO in consultation with the archaeological consultant determines that an archaeological monitoring program shall be implemented the archaeological monitoring program shall minimally include the provisions identified above in connection with the Muni substation site and Parcel 732A.

Whether or not significant archaeological resources are encountered, the archaeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archaeological Data Recovery Program. The archaeological data recovery program shall be conducted in accord with an archaeological data recovery plan (ADRP), which shall be implemented as described above in connection with the Muni substation site and Parcel 732A. The scope of the ADRP shall be as described above in connection with the Muni substation site and Parcel 732A.

The treatment of *Human Remains and Associated or Unassociated Funerary Objects* shall be as described above in connection with the Muni substation site and Parcel 732A.

Preparation of a Final Archaeological *Resources Report* shall be as described above in connection with the Muni substation site and Parcel 732A.

Mitigation Measure 7 - Architectural Resources

To ensure that reuse of the former Municipal Railway substation (City Landmark No. 105) "shall be considered as mitigated to a level of less than a significant impact on the historic resource," in accordance with CEQA Guidelines Section 15064.5(b)(3), the Redevelopment Agency shall require that the developer selected to rehabilitate and reuse the substation carry out a project that is determined to be consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings or, alternatively, the Redevelopment Agency shall require that the developer selected to rehabilitate and reuse the substation carry out a project that is reviewed prior to the issuance of any building or site permits by a qualified preservation architect and/or preservation consultant and determined by that qualified professional, on the basis of substantial evidence, not to "cause a substantial adverse change in the significance of an historical resource" within the meaning of CEQA Section 21084.1 and Section 15064.5(b)(1) of the state CEQA Guidelines.

ATTACHMENT 10

A. Form of Development Certificate of Completion

B. Form of Unit Certificate of Completion

B-1. Form of Unit Certificate of Completion Site Legal Description

B-2. List of Completed Condominium Units

ATTACHMENT No. 10A

FORM OF DEVELOPMENT CERTIFICATE OF COMPLETION

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

WHEN RECORDED RETURN TO:
Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Attention: Housing Division, Anna H. Wong

Space above for Recorder

(Assessor's Block 0756, Lot 17)

By Grant Deed dated _____, recorded on _____ in the Official Records of the City and County of San Francisco, at Reel _____, Image _____ as Instrument No. _____ (the "**Deed**"), the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the "**Agency**"), conveyed a fee interest in certain real property in the City and County of San Francisco, which property is described in Exhibit A attached hereto (the "**Site**") to MSPDI Turk, LLC, a California limited liability company ("**Developer**"). Pursuant to that certain Disposition and Development Agreement between the Developer and the Agency dated as of February 2, 2010 and recorded on _____, in the Official Records of the City and County of San Francisco, as Instrument No. _____ (the "**DDA**"), Developer did undertake certain obligations to develop the Site. Capitalized terms used herein and not defined shall have the meaning set forth in the DDA.

Pursuant to Article 5.21 of the DDA, the Agency agreed to issue a Certificate of Completion for the Project. The Agency has conclusively determined that the Improvements have been completed in accordance with the DDA and the Agency-approved Construction Documents.

The Agency's determination regarding the completion of construction is not directed to, and thus the Agency assumes no responsibility for, engineering or structural matters or compliance with building codes and regulations or applicable local, State or Federal law relating

to construction standards, including but not limited to any local State or Federal law relating to physical disability access.

ACCORDINGLY, as provided in the DDA, and subject to the foregoing provisions hereof, the Agency does hereby acknowledge that the obligations of Developer under the DDA have been fully performed with respect to the Project and in accordance with the requirements of the DDA as set forth above. Further, the Agency hereby confirms that the Agency's right of reverter as set forth in the DDA and in the Reversion Grant Deed shall be of no further force or effect with respect to the Site.

Except as expressly provided herein, nothing contained in this instrument shall modify in any other way any other provisions of the DDA, nor any other provision of any documents related to and/or incorporated in the DDA, including, but not limited to, any and all provisions related to the use and operation of the Project.

IN WITNESS WHEREOF, the Agency has duly executed this instrument this ___ day of _____, 20__.

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

By: _____
Amy Lee
Deputy Executive Director
Finance and Administration

APPROVED AS TO FORM:

By: _____
James B. Morales
Agency General Counsel

Authorized by Agency Resolution No. 11-2010, adopted February 2, 2010.

ATTACHMENT NO. 10B
FORM OF UNIT CERTIFICATE OF COMPLETION

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

WHEN RECORDED RETURN TO:
Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Attention: Housing Division, Anna H. Wong

Space above for Recorder

(Assessor's Block 0756, Lot 17)

By Grant Deed dated _____, recorded on _____ in the Official Records of the City and County of San Francisco ("**Official Records**"), at Reel _____, Image _____ as Instrument No. _____ (the "**Deed**"), the Redevelopment Agency of the City and County of San Francisco, a public body corporate and politic (the "**Agency**"), conveyed a _____ interest in certain real property in the City and County of San Francisco, which property is described in Attachment 10B-1 attached hereto (the "**Site**") to MSPDI Turk, LLC, a California limited liability company (the "**Developer**") pursuant to that certain Disposition and Development Agreement between the Developer and the Agency dated as of February 2, 2010 and recorded on _____, in the Official Records, as Instrument No. _____ (the "**DDA**").

As contemplated by the DDA, the Site has been subdivided into residential condominium Units pursuant to that certain subdivision map and condominium plan entitled _____ which map was attached as Exhibit A to the _____ (the "**CC&Rs**"). The CC&Rs were recorded on _____ as Document No. _____, Reel _____, Image _____ in the Official Records.

Pursuant to Article 5.21(d) of the DDA, the Agency agreed to issue a separate Unit Certificate of Completion for each completed Unit within the Site, prior to issuance of the Development Certificate of Completion under Article 5.21(a) of the DDA. With respect to those

Units listed in Attachment 10B-2 hereto ("**Completed Condominium Units**"), the Agency has conclusively determined that the portion of the Improvements relating to the Completed Condominium Units for the Site have been completed as defined in the DDA and in accordance with the requirements of the DDA. Furthermore, the Developer has provided the Agency with a Temporary Certificate of Occupancy ("**TCO**") dated _____ and expiring on _____ as issued by the Department of Building Inspection City and County of San Francisco for the Completed Condominium Units shown on Attachment 10B-2.

As stated in the DDA, the Agency's determination regarding such Completion is not directed to, and thus the Agency assumes no responsibility for, engineering or structural matters or compliance with building codes and regulations or applicable local, State or Federal law relating to construction standards.

ACCORDINGLY, as provided in the DDA, and subject to the foregoing provisions hereof, the Agency does hereby acknowledge that the obligations of Developer under the DDA have been fully performed with respect to the Completed Condominium Units and that the Completed Condominium Units have been completed as defined in the DDA and will be sold in accordance with the requirements of the DDA as set forth above. Further, the Agency hereby confirms that the Agency's right of reverter as set forth in the DDA and in the Deed shall be of no further force or effect with respect to the Completed Condominium Units.

Except as expressly provided herein, nothing contained in this instrument shall modify in any other way any other provisions of the DDA nor any other provision of any documents related to and/or incorporated in the DDA, including the Developer's continuing obligations with respect to: (a) completion of the remaining portions of the Improvements other than the Completed Condominium Units; and (b) the survival provisions contained in the DDA and in any documents related to and/or incorporated by reference in the DDA, other than with respect to the Completed Condominium Units.

Upon recordation of this Unit Certificate Completion, the provisions of the DDA, with respect to the Completed Condominium Units, shall be deemed satisfied except with respect to those provisions of the DDA that expressly survive the termination of the DDA; provided, however, the Agency agrees to look only to Developer with respect to any liability under such

indemnification and nondiscrimination obligations. No low- and moderate-income families who become a successor owner to Developer of any of the Completed Condominium Units shall have any liability to the Agency whatsoever with respect to such indemnification and nondiscrimination obligations (except to the extent stated in the Limited Equity Program documents).

IN WITNESS WHEREOF, the Agency has duly executed this instrument this _____ day of _____.

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

By: _____
Amy Lee
Deputy Executive Director
Finance and Administration

APPROVED AS TO FORM:

By: _____
James B. Morales
Agency General Counsel

Authorized by Agency Resolution No. 11-2010, adopted February 2, 2010.

ATTACHMENT 10B-1

FORM OF UNIT CERTIFICATE OF COMPLETION
SITE LEGAL DESCRIPTION

SITE ADDRESS: 1345 Turk Street

All that certain real property situated in the City and County of San Francisco, State of California, more particularly described as follows:
All of Parcel B as shown on that certain final Parcel Map 5012, filed for record September 16, 2009, in Book 48 of Parcel Maps, at Pages 6 and 7, Official Records of said County.

APN 0756, Lot 017

ATTACHMENT 10B-2

LIST OF COMPLETED CONDOMINIUM UNITS

Unit Number	Floor	Block / Lot No.	Date Complete

ATTACHMENT 11

Form of Grant Deed for the Site

ATTACHMENT No. 11

FORM OF GRANT DEED FOR THE SITE

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

WHEN RECORDED RETURN TO:

Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Attention: Housing Division, Anna H. Wong

Space above for Recorder

(Assessor's Block 0756, Lot 17)

GRANT DEED

The **REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO**, a public body, corporate and politic of the State of California ("**Grantor**"), acting to carry out a redevelopment plan under the Community Redevelopment Law of California, hereby grants to **MSPDI Turk, LLC**, a California limited liability company ("**Grantee**"), all that certain real property situated in the City and County of San Francisco, State of California, particularly described in Exhibit "A" Site Legal Description attached hereto and made a part hereof (the "**Site**").

SUBJECT, however, to easements of record, the Declaration of Restriction and Reservation of Easement or Light and Air Easement, a nonexclusive easement for ingress, egress, light and air in favor of Assessor's Block 0756, Lot 15 known as Parcel A of Parcel Map 5012 recorded September 16, 2009 in Book 48 of Parcel Maps at Pages 6 and 7 (the "**Light and Air Easement**") which are incorporated and made a part of this Deed with the same force and effect as though set forth in full herein, the Disposition and Development Agreement dated February 2, 2010 (the "**Agreement**") recorded concurrently herewith; and the following conditions, covenants and restrictions:

1. Grantee covenants and agrees for itself, and its successors and assigns to or of the Site that the Grantee, and such successors and assigns, shall promptly begin and diligently prosecute to completion the development of the Project through the construction of the improvements thereon provided to be constructed in the Agreement (the "**Improvements**"), and that such construction shall in any event begin within thirty (30) days from the date of the recordation of this Deed and be completed within twenty-six (26) months from such date, unless such date is extended by the Grantor.

2. Promptly after completion of the Improvements on the Site in accordance with the provisions of the Agreement, the Grantor will furnish the Grantee with a Development

Certificate of Completion as set forth in Article 5.21 of the Agreement. Such certification by the Grantor shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in this Deed with respect to the obligation of the Grantee and its successors and assigns, to construct the Improvements on the Site in accordance with Grantor-approved Final Construction Documents and the dates for the beginning and completion thereof.

3. Grantee covenants and agrees for itself and its successors and assigns to or of the Site or any part thereof, that Grantee, and such successors and assigns, shall:

(a) Devote the Site to, and only to and in accordance with, the uses specified in the Agreement, as hereafter amended and extended from time to time, but never without the prior written consent of the Grantor for uses other than those specified in the Agreement, which are the only uses permitted by the Agreement (the "**Permitted Uses**"); and

(b) Not discriminate against or segregate any person or group of persons on account of age, ancestry, color, creed, disability, gender, marital status, national origin, race, religion, or sexual orientation, in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any improvements erected or to be erected thereon, or any part thereof, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of home buyers or tenants, lessees, sublessees or vendees in the Site or any improvements erected or to be erected thereon, or any part thereof; and

(c) Include in all advertisements (including signs) for sale and/or rental of the whole or any part of the Site the legend, "Equal Housing Opportunity" in type or lettering of easily legible size and design. and

(d) Comply with the regulations issued by the Secretary of Housing and Urban Development set forth in 24 C.F.R. Part 25 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards; and

(e) Use the Development only for residential development including associated amenities as provided in the Agreement.

4. It is intended and agreed that Grantee's agreements and covenants provided in this Deed shall be covenants running with the land and that they shall in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Deed, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, Grantor, the City and County of San Francisco, and the United States (in the case of the covenants provided in Sections 3(b) and 3(c) above) and any successor in interest to Grantor of the Site or any part thereof, which is subject to the Agreement, against Grantee, its successors and assigns to or of the Site or any part thereof or any interest therein, and any party in possession or occupancy of the Site or any part thereof. It is further intended and agreed that the agreements and covenants provided in clauses (a) and (c) of Section 3 above shall remain in effect in perpetuity. Provided, that such agreements and

covenants shall be binding on Grantee itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Site or part thereof.

5. In amplification, and not in restriction, of the provisions of the preceding Section 3, it is intended and agreed that Grantor and the City and County of San Francisco shall be deemed beneficiaries of the agreements and covenants provided in Section 3(a) above, and the United States shall be deemed a beneficiary of the covenants provided in Sections 3(b), 3(c) and 3(d) above, both for and in their or its own right, and also for the purposes of protecting the interests of the community and the other parties, public and private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of Grantor and the City and County of San Francisco and the United States for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether Grantor or the City and County of San Francisco or the United States has at 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. Grantor and the City and County of San Francisco shall have the right, in the event of any breach of any such agreements or covenants, and the United States shall have the right in the event of any breach of the covenants provided in Sections 3(b), 3(c) and 3(d) hereof, 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 agreements or covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

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

(a) The General Plan, the City Planning Code and to all applicable codes and ordinances of the City and County of San Francisco control changes to the Improvements after they have been certified complete.

(b) Because of the location of the Site, the nature of the Improvements, the Permitted Uses and their relationship to surrounding developments, the Grantor has a particular interest in the Site and in the nature and extent of the permitted Improvements as it has for all redevelopment projects which are apart of its City-Wide Housing Program. Accordingly, the Grantor desires to, and does hereby, impose the following particular controls on the Site and on the Improvements, which particular controls are specified in Subsection 6(c) below.

(c) The Grantor shall have any and all remedies in law or equity (including without limitation restraining orders, injunction and/or specific enforcement) judicial or administrative to enforce Subsection 6(c) including without limitation any threatened breach thereof or any actual breach or violation thereof. The language of the this Subsections 6(c) shall be binding upon the Grantee and any successor or assign.

7. In the event that prior to completion of the Improvements as certified by Grantor:

(a) Grantee (or successor in interest) shall default in or violate its obligations with respect to the construction of the Improvements (including the nature and the dates for the

beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default or violation, abandonment, or suspension shall not be cured, ended, or remedied within thirty (30) days (ninety (90) days, if the default is with respect to the date for completion of the Improvements) after written demand by the Grantor so to do; or

(b) Grantee (or successor in interest) shall fail to pay real estate taxes or assessments on the Site or any part thereof when due, or shall place thereon any encumbrance or lien in violation of the Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' 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, or provision satisfactory to Grantor made for such payment, removal, or discharged, within thirty (30) days after written demand by Grantor so to do. The existence of a mechanic's lien shall not be a default under the Agreement if the Developer is contesting such lien and prosecuting such contest diligently; or

(c) There is, in violation of the Agreement, any transfer of the Site or any part thereof, or any change in the ownership or distribution of the stock of the Grantee, or with respect to the identity of the parties in control of the Grantee or the degree thereof, and such violation shall not be cured within thirty (30) days after written demand by the Grantor to Grantee; then Grantor shall have the right to re-enter and take possession of the Site and to terminate (and revest in the Grantor) the estate conveyed by this Deed to the Grantee; it being the intent that the conveyance of the Site to the Grantee is made upon a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Grantee specified in clauses (a), (b) and (c) of this Section 7, failure on the part of the Grantee to remedy, end, or abrogate such default, failure violation, or other action or inaction, within the period and in the manner stated in this subsection, Grantor at its option may declare a termination in favor of the Grantor of the title, and of all the rights and interest, in the Site conveyed by this Deed to the Grantee and that such title, and all rights and interest of the Grantee, and any assigns or successors in interest, in the Site, shall revert to the Grantor: Provided, that such condition subsequent and any revesting of title as a result thereof in Grantor shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (i) the lien of any mortgage authorized by the Agreement, and (ii) any rights or interests provided in the Agreement for the protection of the holders of such mortgages.

8. Grantor shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of Section 7 above, including also the right to execute and record or file with the Recorder of the City and County of San Francisco a written declaration of the termination of all rights and title of Grantee, and its successors in interest and assigns, in the Site, and the revesting of title thereto in the Grantor: Provided, that any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting it rights under Section 7 above shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that Grantor should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in Section 7 above because of concepts of waiver, laches, or otherwise) to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved, nor shall any waiver in fact made by Grantor with respect to any specific default by Grantee under Section 7 above be considered or treated as a waiver of the rights of Grantor with

respect to any other defaults by the Grantee under Section 7 above or with respect to the particular default except to the extent specifically waived.

9. The term "Mortgage" as used Section 7 above shall be deemed to include "Deed of Trust" mortgage, deed of trust sale/leaseback documentation or similar security instrument permitted under the Agreement. The word "Grantee" as used in this Deed shall include individuals and all corporate, partnership and other forms of organization and include the plural as well as the singular. Words used in the neuter gender include the masculine and the feminine. "Holder" shall include any holders of a Mortgage, including a beneficiary of a deed of trust and the grantee/lessor in any sale/leaseback arrangement, and the successors and assigns of any Holder.

10. If there is any conflict between the provisions of this Deed and the Agreement, this Deed shall control.

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IN WITNESS WHEREOF, the Agency has duly executed this instrument this ___ day of _____, 2010.

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

By: _____
Amy Lee
Deputy Executive Director
Finance and Administration

APPROVED AS TO FORM:

By: _____
James B. Morales
Agency General Counsel

Authorized by Agency Resolution No. 11-2010, adopted February 2, 2010.

GRANTEE ACCEPTANCE:

Grantee hereby acknowledges and accepts the terms and conditions subject to which the Site is conveyed by Grantor.

MSPDI TURK, LLC
A California limited liability company

By: MICHAEL SIMMONS PROPERTY
DEVELOPMENT, INC.,
a California Corporation
its sole member

By: _____
Michael Simmons, President

ATTACHMENT 11 - EXHIBIT A

SITE LEGAL DESCRIPTION

SITE ADDRESS: 1345 Turk Street

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

All of Parcel B as shown on that certain final Parcel Map 5012, filed for record September 16, 2009, in Book 48 of Parcel Maps, at Pages 6 and 7, Official Records of said County.

APN 0756, Lot 017

ATTACHMENT 12

Form of Reversion Grant Deed for the Site

ATTACHMENT No. 12

FORM OF REVERSION GRANT DEED FOR THE SITE

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

WHEN RECORDED RETURN TO:
Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Attention: Housing Division, Anna H. Wong

Space above for Recorder

(Assessor's Block 0756, Lot 17)

REVERSION GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, MSPDI Turk, LLC, a California limited liability company ("**Grantor**"), hereby GRANTS to the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California ("**Grantee**"), the real property in the City of San Francisco, County of San Francisco, State of California, described as LOT 17 OF ASSESSOR'S BLOCK 0756 as shown and delineated upon that certain Parcel Map 5012 entitled "Parcel B" filed for record in the Office of the Recorder in and for the City and County of San Francisco on September 16, 2009, in Book 48 of Parcel Maps, at Pages 6 and 7, inclusive.

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This Reversion Grant Deed shall only be recorded in accordance with, and subject to, the Section 9.03(e) of that certain Disposition and Development Agreement dated February 2, 2010 between the Grantor and Grantee.

DEVELOPER

MSPDI TURK, LLC
A California limited liability company

By: MICHAEL SIMMONS PROPERTY
DEVELOPMENT, INC.,
a California Corporation
its sole member

By: _____
Michael Simmons, President

[ALL SIGNATURES MUST BE NOTARIZED]

ATTACHMENT 13

Agency Nondiscrimination in Contracts and Benefits Policy

SAN FRANCISCO REDEVELOPMENT AGENCY

INSTRUCTIONS FOR DECLARATION FORM

Nondiscrimination in Contracts and Benefits

A. What is the Nondiscrimination in Contracts Policy?

The San Francisco Redevelopment Agency's Nondiscrimination in Contracts Policy (Policy) requires companies or organizations providing products or services to, or leasing a real property from, the Agency to agree not to discriminate against groups who are protected from discrimination under the Policy, and to include a similar provision in subcontracts and other agreements. Those provisions are the subjects of this form. The Policy is posted on the Web at: www.ci.sf.ca.us/sfra.

If you do not comply with the Policy, the Agency cannot do business with you, except under certain very limited circumstances.

B. What Agency contracts are covered by the Policy?

- Contracts or purchase orders where the Agency purchases products, services or construction with contractors/vendors whose total amount of business with the Agency exceeds a cumulative amount of $5,000 in a 12-month period.
- Leases of property owned by the Agency for a term of 30 days or more. In these cases, the Agency is the landlord. The Policy also applies to leases for a term of 30 days or more where the Agency is the tenant.

C. What are the groups protected from discrimination under the Policy?

You may not discriminate against:

- your employees
- an applicant for employment
- any employee of the Agency or the City and County of San Francisco
- a member of the public having contact with you.

D. What are prohibited types of discrimination?

You may not discriminate against the specified groups for the following reasons (see Question 1a on the declaration form).

- race
- creed
- ancestry
- age
- sexual orientation
- marital status
- disability
- color
- religion
- national origin
- sex
- gender identity
- domestic partner status
- AIDS/HIV status

In the provision of benefits, you also may not discriminate between employees with spouses and employees with domestic partners, or between the spouses and domestic partners of employees, subject to the conditions listed in F.2 below.

E. How are subcontracts affected?

For any subcontract, sublease, or other subordinate agreement you enter into which is related to a contract you have with the Agency, you must include a nondiscrimination provision (See Question 1b on the Declaration Form). The subcontracting provision need not include nondiscrimination in benefits as part of the nondiscrimination requirements. If you're unsure whether a contract qualifies as a subcontract, contact the Agency division administering your contract with the Agency. "Subcontract" also includes any subcontract of your subcontractor for performance of 10% or more of the subcontract.

F. Nondiscrimination in benefits for spouses and domestic partners

1. Who are domestic partners?

If your employee and another person are currently registered as domestic partners with a state, county or city that authorizes such registration, then those two people are domestic partners. It doesn't matter where the domestic partners now live or whether they are a same-sex couple or an opposite sex couple. A company/organization may also institute its own domestic partnership registry (contact the Agency for more information).

2. What is nondiscrimination in benefits?

You must provide the same benefits to employees with spouses and employees with domestic partners, and to spouses and domestic partners of employees, subject to the following qualifications (See Question 2c on the Declaration Form).

- If your cost of providing a benefit for an employee with a domestic partner exceeds that of providing it for an employee with a spouse, or vice versa, you may require the employee to pay the excess cost.
- If you are unable to provide the same benefits, despite taking all reasonable measures to do so, you must provide the employee with a cash equivalent. This qualification is intended to address situations where your benefits provider will not provide equal benefits and you are unable to find an alternative source or state or federal law prohibit the provision of equal benefits. (See Question 2d on the Declaration form).
- The Policy does not require any benefits be offered to spouses or domestic partners. It does require, however, that whatever benefits are offered to spouses be offered equally to domestic partners, and vice versa.

3. Examples of benefits

The law is intended to apply to all benefits offered to employees with spouses and employees with domestic partners. A sample list appears in Question 2c on the Declaration Form.

G. Form required

Complete the Declaration Form to tell the Agency whether you comply with the Policy. All parties to a Joint Venture must submit separate Declarations.

Please submit an original of the Declaration Form and keep a copy for your records. If an Agency division should ask you to complete the form again, you may submit a copy of the form you originally submitted (if the information has not changed), unless you are advised otherwise.

H. Attachments

If you provide equal benefits, as indicated by your answers to Question 2c on the Declaration form, **YOU MUST ATTACH DOCUMENTATION TO THIS FORM,** unless such documentation does not exist. See item 3, "Documentation for Nondiscrimination in Benefits." If documentation does not exist, attach an explanation (e.g., some of your policies are unwritten).

I. If your answers change

If, after you submit the Declaration, your company/organization's nondiscrimination policy or benefits change such that the information you provided to the Agency is no longer accurate, you must advise the Agency promptly by submitting a new Declaration.

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: _____ (Please Print) Title: _____

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 14

Minimum Compensation Policy (MCP) Declaration

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 15

Health Care Accountability Policy (HCAP) Declaration

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

_____

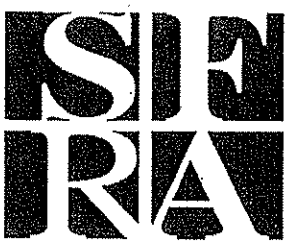
Print Name

_____ _____

Company Name Phone

ATTACHMENT 16

Small Business Enterprise Agreement



SAN FRANCISCO REDEVELOPMENT AGENCY

SMALL BUSINESS ENTERPRISE POLICY

Adopted: November 16, 2004
Amended and Restated: July 21, 2009

I. INTRODUCTION

The Agency is acutely aware of the many challenges that small businesses face when contracting with public entities. The mission of the Agency includes economic development in Project Areas and accordingly this Small Business Enterprise Policy ("**SBE Policy**") is to establish a set of Small Business Enterprise 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 San Francisco Redevelopment Agency ("**Agency**") assisted projects. A genuine effort will be made to give First Consideration to Project Area SBEs and San Francisco- based SBEs before looking outside of San Francisco.

II. APPLICATION

This SBE Policy applies to all Contractors and their subcontractors seeking work on Agency-Assisted Projects on or after November 17, 2004 and any Amendment to a Pre-existing Contract as that term is defined in Article III - Definitions.

III. DEFINITIONS

"**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--$7,000,000; and meets the other certification criteria described in Exhibit I.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's three most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations).

Once a business reaches the 3-year average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

"**Affiliates**" means an affiliation with another business concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indicators of affiliation. Power to control exists when a party or parties have 50 percent or more ownership. It may also exist with considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Affiliated business concerns need not be in the same line of business. The calculation of a concern's size includes the employees or receipts of all affiliates.

"**Agency-Assisted Contract**" means Development and Disposition Agreements, Land Disposition Agreements, Leases, Loan and Grant Agreements, personal services contracts and other similar contracts and Operations Agreements that the Agency executes with for-profit or non-profit entities.

"Amendment to a Pre-existing Contract" means a material change to the terms of any contract, the term of which has not expired on or before the date that this Small Business Enterprise Policy ("SBE Policy") takes effect, but shall not include amendments to decrease the scope of work or decrease the amount to be paid under a contract.

"Annual Receipts" means "total income" (or in the case of a sole proprietorship, "gross income") plus "cost of goods sold" as these terms are defined and reported on Internal Revenue Service tax return forms. The term does not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. Receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts. If a concern has not been in business for three (3) years, the average weekly revenue for the number of weeks the concern has been in business is multiplied by 52 to determine its average annual receipts.

"Commercially Useful Function" means that the business is directly responsible for providing the materials, equipment, supplies or services in the City and County of San Francisco ("City") as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are required and sought by the Agency.

"Office" or "Offices" means a fixed and established place(s) where work is performed of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an "office" under this SBE Policy. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an "office." The office is not required to be the headquarters for the business but it must be capable of providing all the services to operate the business for which SBE certification is sought. An arrangement for the right to use office space on an "as needed" basis where there is no office exclusively reserved for the business does not qualify as an office. The prospective SBE must submit a rental agreement for the office space, rent receipt or cancelled checks for rent payments. If the office space is owned by the prospective SBE, the business must submit property tax or a deed documenting ownership of the office.

"Person" means one or more individuals, partnerships, associations, organizations, corporations, and cooperatives.

"Project Area Small Business Enterprise" means a business that meets the above-definition of Small Business Enterprise and 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 currently include the Bayview Industrial Triangle, Bayview Hunters Point (Area B), Federal Office Building, Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, Transbay Terminal, Yerba Buena Center and Visitacion Valley.

"San Francisco-based Small Business Enterprise" means a business that meets the above-definition of Small Business Enterprise and that: (a) has fixed offices located within the geographical boundaries of the City; (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.

"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 currently include Bayview Hunters Point Redevelopment Survey Area C.

IV. SMALL BUSINESS ENTERPRISES CONTRACTING GOAL

A. In order to meet the mission of the Agency and promote economic development in Project Areas, the Agency intends to establish targets for SBE participation in Agency and Agency-Assisted Contracts. It also intends to provide Project Area Small Businesses with First Consideration to contracting opportunities with the Agency or through the Agency-Assisted prime contractors.

B. The Agency's overall SBE participation goals (for prime contracts) shall be set at 50%. This means that the Agency or Agency-Assisted Contractor shall use its best efforts to award at least 50% of all Agency-Assisted Contracts covered by this policy to SBEs. The ability of the Agency or Agency-Assisted Contractor to meet this goal will depend, in part, on 1) the availability of qualified SBEs capable of providing the goods or services required by the contract; and 2) the availability of SBEs who provide price quotes that are reasonable and do not exceed competitive levels beyond amounts that can be attributed to the increased costs faced by

small local businesses. Accordingly, the Agency may, at its discretion, change the participation goals, on a contract-by-contract basis, in its own contracts or in Agency-Assisted Contracts.

C. These Agency SBE Prime Contract Participation Goals are:

CONSTRUCTION	**50%**
PROFESSIONAL SERVICES	**50%**
SUPPLIERS	**50%**

D. **First Consideration:** will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: 1) Project Area SBEs, 2) San Francisco-based SBEs (outside an Agency Project or Survey Area), and 3) All other SBEs. Non San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non San Francisco-based SBEs.

E. **Certification:** Only firms certified as SBEs will be counted toward meeting the participation goals described above. The SBE Certification Criteria are set forth in Exhibit I.

F. **Good Faith Efforts - Agency:** The goals established in Article IV.C above of this SBE Policy are targets the Agency or Agency-Assisted Contractor will make a good faith effort to achieve for prime contracts. Accordingly, good faith efforts must be taken to assure that these firms are utilized when possible as sources of supplies, equipment, construction, and services. Good faith efforts shall include the following:

1. **Contract Size.** Where appropriate, the Agency or Agency-Assisted Contractor will divide the work in order to encourage maximum SBE participation or, alternatively, SBEs will be encouraged to joint venture. Each responsible staff person, developer or prime contractor/consultant shall identify specific items of each contract that may be performed by subcontractors and, if necessary, provide a list of prospective SBEs for the bidder(s).

2. **Advertise.** For contracts procured using the Competitive Sealed Bids – Public Contract Code Procedure or the RFP/RFQ Procedure, unless there are special circumstances, the Agency or Agency-Assisted Contractor will advertise for 30 days prior to the opening of bids or proposals in media focused on small businesses including the Bid and Contract Opportunities website through the City's Purchasing Department and the Procurement Opportunities section of local publications.

3. **Prepare List of SBEs.** Each responsible staff person, developer or prime contractor/consultant shall request the Contract Compliance Office to assemble a list of all known SBEs in the pertinent field(s). This list will be made available to the public upon request. Compliance Staff will consult with other redevelopment agencies and government agencies to identify small businesses, particularly those in Project and Survey Areas, that have expertise in areas used by the Agency; the Contract Compliance Office will continue its present practice of regularly updating a variety of lists.

4. **Public Solicitation.** The Agency or Agency-Assisted Contractor will mail Requests for Qualifications (**RFQs**) or Requests for Proposals (**RFPs**) to SBEs. It will follow up initial solicitations of interest by contacting SBEs to determine with certainty whether they are interested in performing specific items in a project. The Agency will also make contacts with SBE contractor associations or development centers, or any agencies that disseminate bid and contract information and provide technical assistance to SBEs.

5. **Convene Pre-Bid or Pre-Solicitation Meetings**. On consulting contracts that are $5,000 or more and construction contracts estimated to cost $5,000 or more, procured using the Competitive Sealed Bids –Public Contract Code Procedure or the RFP/RFQ Procedure, the Agency or Agency-Assisted Contractor will send written invitations to potential SBE candidates to attend pre-bid or pre-solicitation meetings for the purpose of answering questions about the process and the specifications and requirements. Representatives of the Contract Compliance Office will also participate.

6. **Outreach and Other Assistance.** The Agency or Agency-Assisted Contractor will a) provide SBEs with plans, specifications and requirements for all or part of the project; b) make contacts with SBE contractor associations or development centers, or any agencies that disseminate bid and contract information and provide technical assistance to SBEs; and c) follow up initial solicitations of interest by contacting SBE firms to determine with certainty whether they are interested in performing specific items in a project.

7. **Insurance and Bonding.** Recognizing that lines of credit, insurance and bonding are problems common to small businesses, staff will be available to explain the Agency's insurance and bonding requirements, answer questions about them, and be prepared to suggest avenues of assistance.

8. **Focused Meetings.** When deficiencies are noted Contract Compliance staff will work with the responsible staff person to convene a meeting for SBEs focusing on opportunities for particular industries, e.g., a joint meeting of housing sponsors and small architectural firms based in a Project Area.

9. **Monitoring.** The Agency or Agency-Assisted Contractor will keep track of the date that each response, proposal or bid was received from SBEs, including the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the responsible staff person or bidder/proposer asserts that there were reasons other than the respective amounts bid for not awarding the contract to or selecting an SBE, he or she must be prepared to provide valid reasons(s) for any rejections.

V. SUBCONTRACTING - BY PRIME CONTRACTORS

A. Subcontracting Goal The Agency intends to establish a subcontracting participation goal for SBEs at 50%, but recognizes that this goal may vary depending on the extent of subcontracting opportunities presented by the contract and the availability of SBE subcontractors capable of providing goods or services required by the contract. Accordingly, the Agency, at its discretion, may change the participation goals on a contract-by-contract basis.

B. **First Consideration** will be given in the following order: 1) Project Area SBEs, 2) San Francisco-based SBEs (outside an Agency Project or Survey Area), and 3) All other SBEs.

C. **Good Faith Efforts - Subcontracting**. The Agency will continue its efforts to maximize the involvement of SBE subcontractors by having each responsible staff person:

1. Request the Contract Compliance Office to assemble for the prime, a list of all known SBEs, particularly those in Project or Survey Areas, in the pertinent field(s). This list will be made available to the public upon request.

2. Identify specific items of each contract that may be performed by subcontractors and, if necessary, provide a list of prospective SBEs for the bidder(s).

3. Send notices to appropriate organizations of the opportunities of SBEs to obtain subcontracts with the Agency.

4. Advise SBEs of its insurance requirements and offer SBEs advice on meeting the requirements.

D. **Contract Provision Requiring Good Faith Efforts**. Agency staff shall include in prime contracts provisions that require prospective contractors that will be utilizing subcontractors to make the following good faith efforts to subcontract to SBEs:

1. Consult with the Agency and other agencies, including government agencies to identify small businesses that have expertise in areas needed by the Agency.

2. Document efforts undertaken to encourage subbidder(s) to obtain SBE participation at a lower tier including identifying specific items of the contract that may be performed by SBE subcontractors and prospective SBEs to perform such items.

3. Make contacts with SBEs, associations or development centers, or any agencies, which disseminate bid and contract information to SBEs. Follow up initial solicitations of interest by contacting small business enterprises to determine with certainty whether they are interested in performing specific items in a project. This provision includes making direct written solicitation with a complete scope of work to all Agency certified SBEs that provide any subcontract portion of the proposed work.

4. Keep track of the date that each response, proposal or bid was received from SBEs, including the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the bidder/proposer asserts that there were reasons other than the respective amounts bid for not awarding the contract to or selecting an SBE, he or she must be prepared to provide valid reasons(s) for any rejections.

5. Assist SBEs relative to obtaining and explaining plans, specifications and contract requirements.

6. Assist SBEs with respect to bonding, lines of credit, etc.

7. Extend negotiation efforts to SBEs or be prepared to explain the reasons for not negotiating with SBEs.

8. Prepare a report which shows for each private project and each public project (without an SBE Program) undertaken by the consultant in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars that were awarded to SBEs.

9. Document any other efforts undertaken to encourage participation by SBE.

E. **Technical Assistance.** As appropriate, Agency staff shall suggest various sources of assistance to SBEs such as U.S. Small Business Administration ("SBA"), U.S. Minority Business Development Agency, San Francisco Renaissance, SCORE (Service Corps of Retired Executives), Urban Solutions, as well as other local community based economic development organizations.

F. **Aid to Unsuccessful Bidders**. As an aid to unsuccessful bidders the Agency will make available upon reasonable request the following information within a reasonable time (usually within 30 days) after the selection of a contractor/consultant:

For construction contractors:

1. A summary of unit prices taken from the bid documents.

2. A list of subcontractors, nature of work, and bid dollar amount from the bid documents.

For professional consultants:

1. All submissions received in response to RFQs or RFPs and, if asked, we will again explain the Agency's insurance and bonding requirements, answer questions about them, and distribute brochures that describe the SBA-insured bonding program.

VI. CONSTRUCTION CONTRACTORS

A. Construction contracts and subcontracts awarded for $5,000 or more shall contain the Attachment to Instructions to Bidders Construction Work Force and Small Business Enterprise Program.

B. **Compliance with Prompt Payment Statute:**

1. Construction contracts and subcontracts awarded for $5,000 or more shall contain the following provision:

> "Amounts for work performed by a subcontractor shall be paid within ten (10) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq*. Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of

default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity."

2. In addition to and not in contradiction to the Prompt Payment Statute (California Business and Professions Code Section 7108.5 *et seq.*), if a dispute arises which would allow a Contractor to withhold payment to a subcontractor due to a dispute, the Contractor shall only withhold that amount which directly relates to the dispute and shall promptly pay the remaining undisputed amount, if any.

VII. SUBMISSION OF ELECTRONIC CERTIFIED PAYROLLS

For any Agency-Assisted Contract which requires the submission of certified payroll reports, the following requirements in this Section VII shall apply:

A. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a 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 and for certifying its accuracy.

B. No monthly progress payments will be processed until Contractor has submitted weekly certified payrolls to the Agency for the applicable time period. Certified payrolls shall be prepared pursuant to this SBE Policy for the period involved for all employees, including those of subcontractors of all tiers, for all labor incorporated into the work.

C. Contractor shall submit certified payrolls to the Agency electronically via the Project Reporting System ("PRS") selected by the Agency, an Internet-based system accessible on the World Wide Web through a web browser. The Contractor and each Subcontractor and Supplier must register with PRS and be assigned a log-on identification and password to access the PRS.

D. Use of the PRS may require Contractor, Subcontractors and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.

E. For each Agency-Assisted project, the Agency will provide basic training in the use of the PRS at a scheduled training session. Contractor and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.

F. Contractor shall comply with the requirements of this Article VI at no additional cost to the Agency or the Owner.

G. The Agency will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of weekly certified payrolls.

H. In addition to the above, Contractor shall comply with the requirements of California Labor Code Section 1776, or as amended from time to time, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its Subcontractors of all tiers.

I. The Contractor shall make the payroll records available to for inspection at all reasonable hours at the job site office of Contractor.

J. Contractor is solely responsible for compliance with Labor Code Section 1776 or this SBE Policy. The Agency shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

VIII. LAND DISPOSITION AGREEMENTS, LEASES, LOAN/GRANT AGREEMENTS, OPERATING AGREEMENTS

A. All Agency-Assisted Contracts, including contracts with both for profit and non-profit developers, shall contain a requirement that the developer and its general contractor and all subcontractors (regardless of tier) comply with this SBE Policy.

IX. AUTHORIZATION

A. When staff seeks contract authorization staff shall document and report to the Executive Director and/or the Commission:

1. Whether the Contract Compliance Office provided a list of potential SBEs to be invited for the scope of work being considered.

2. Where appropriate, how the potential work was divided into small contracts to ensure that the scope of work was not too large for an SBE to bid or submit a proposal or how potential SBEs were encouraged to joint venture.

3. That specific items of the contract that may be performed by SBE subcontractors were identified and prospective SBEs were identified for the bidder(s).

4. On consulting service contracts that are $5,000 or more and construction contracts estimated to cost $5,000 or more, that prospective SBEs were invited to a pre-bid and/or pre-solicitation meeting for the purpose of answering questions about the process, the bonding and insurance requirements, the specifications and other requirements.

5. All outreach efforts including advertisements or notifications to trade associations or other groups that were made as part of attempts to reach potential SBE candidates.

X. APPEALS

A. Any bidder or proposer wishing to appeal a staff recommendation for awarding a contract will be notified of the proposed action and will have an opportunity to be heard by the full Commission when the item comes up on the Agenda.

XI. WAIVER

A. 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. All waivers involving Agency contracts shall be reported to the Commission.

XII. SEVERABILITY

A. The provisions of this SBE Policy are declared to be separate and severable. The invalidity or unenforceability of one or more provisions of this SBE Policy shall in no way affect the validity of the remainder.

EXHIBIT I

SBE CERTIFICATION CRITERIA

A. The Agency will consider the certifications or denials of the Human Rights Commission (HRC) of the City and County of San Francisco and will accept those certifications or denials that are consistent with the standards and practices of the Agency.

B. The Agency shall make efforts to enter into reciprocal agreements with other agencies that have similar certification standards and policies.

C. In order to be certified as an SBE the business must meet all of the requirements contained in the SBE Policy, as applicable, and in this SBE Certification Criteria.

D. In order for a joint venture to be recognized as an SBE, the SBE component must have at least a 35% interest in the joint venture..

E. The Agency will not recognize a subcontractor as an SBE if it sub-contracts more than 50 percent of its subcontract amount to non-SBEs.

F. A contractor may substitute the amount of a purchase order to a SBE supplier for up to 15 percent of the SBE subcontractor goals. In order to be recognized, a supplier must perform a commercially useful function in the supply process. However, if the supplier is acting as a mere conduit such as a manufacturer's representative or broker then only the amount of the commission or three percent (3%), whichever is greater, will be credited towards meeting the SBE goals. If none of the work is to be subcontracted, SBE suppliers may be utilized without limitation.

G. If a firm contends that it is an SBE, the owner must submit to the Agency an Application for Certification (Small Business Enterprise Affidavit) under penalty of perjury that swearing to the truth and accuracy of all statements made and material submitted to the Agency, including additional information. If certified by the HRC, a copy of a current HRC certification shall be submitted.

H. An eligible SBE shall be an independent business. In determining whether a business is independent, the Agency shall examine the adequacy of the business's resources for the scope of work under a proposed contract, its financial independence, the extent of its equipment leasing, and its relationships with non-SBEs; whether the firm:

1. is known in the industry or trade to be operated by a non-SBE;

2. is operated in tandem with a non-SBE;

3. has multiple licenses, some of which are affiliated with non-SBEs;

4. itself owns the equipment or trucks that are to be used on the job;

5. is listed in the telephone book, preferably in the Yellow Pages under the class for which it is seeking Agency recognition;

6. subcontracts back to, leases from, or is back-contracted or joint venturer(s) in an amount unrelated to shared risks and profits. Back contracting includes any agreement or other arrangement between a prime contractor and its subcontractor where the prime contractor performs or secures the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefit of the subcontract. Said agreement or other arrangement includes, but is not limited to, situations where either a contractor or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor.

7. Maintains a permanent office separate from that of its sources of vehicles, subcontractors, the general contractor or from any joint venturer(s); and

8. In the case of a supplier, carries the material being supplied as a regular part of its inventory.

I. A SBE firm shall not have any formal or informal restrictions which limit the customary discretion of the owner. The owner should have the authority to perform all of the below functions:

1. manage either the marketing or production aspects of the business;

2. be authorized to sign on all bank accounts, to draw against letters of credit, and to secure surety bonds and insurance; and

3. control the profit sharing, pensions or stock option plans.

J. In order to be considered a Project Area SBE, the business must meet the definition of Project Area Small Business Enterprise in Article III, Definitions.

K. In order to be considered a San Francisco-based SBE, the business must meet the definition of San Francisco-based SBE in Article III, Definitions.

L. License Qualification Essential: A person that owns or is employed by a non-SBE and who is used to qualify a professional business as an SBE does not meet the Agency's SBE requirements of having management and control of the business. Likewise, a person that owns or is employed by a non-SBE and who is used to qualify a construction business who is not the Qualifying Partner, Responsible Managing Employee or Responsible Managing Officer cannot meet the Agency's SBE requirements of having management and control of the business. An owner who is certified by the Agency for one profession, e.g., electrical engineering, cannot attribute that certification to another profession, e.g., mechanical engineering, unless he or she is registered for more than one professional license. By extension a certified SBE plumbing business must also be certified to perform electrical work to be an eligible SBE electrical contractor. For businesses that do not require a license, the managing owner must have training, education and work experience in that type of business.

M. A business requesting to be certified as an SBE shall supply the Agency with all such additional information as the Agency may deem relevant in order to make a determination of such status. If such information is not supplied within 45 days of it being requested, the Agency may consider the Application for certification withdrawn.

N. A change in ownership of a firm will be carefully scrutinized. The following factors shall be considered:

1. The reason of the timing of the change in ownership of the business relative to the time that bids are opened or proposals are considered;

2. Whether the interest of a non-disadvantaged firm conflicts with the ownership and control requirements of this SBE Policy.

3. Whether an employee-owner who had previous or continuing employee-employer relationship between or among present owners has management responsibilities and capabilities.

O. Grandfather clause: Firms that were currently certified as Disadvantaged Minority-owned Business Enterprises (MBE) and Woman-owned Business Enterprises (WBE) shall be automatically deemed certified as SBEs on the effective date of this policy so long as they continue to meet the economic and other standards for SBEs described in this SBE Policy .

P. In its sole and absolute discretion, the Agency, in interpreting the provisions of this SBE Policy, may rely on the provisions, rules, standards, and other guidance under the Disadvantaged Business Enterprise Program of the City and County of San Francisco, S.F. Administrative Code Chapter 14A, to the extent that those provisions, rules, standards, and guidance are consistent with this SBE Policy.

Q. The SBE Agreement executed by the developer and/or contractor is the implementation document for the SBE Policy.

ATTACHMENT 17

Prevailing Wage Provisions (Labor Standards)

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 Disposition and Development Agreement (DDA) between the Developer and the Agency of which this Attachment No. __ 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 DDA 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 No. __:

(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 Attachment No. __ of the DDA including the Construction Work Force Agreement and the Permanent Work Force Agreement. Any conflicts between the languages contained in these Labor Standards and Attachment No. __ shall be resolved in favor of the language set forth in Attachment No. __; 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**

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 the _____ area and then other 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 _____ area residents and then other 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 residents (of the_____ and then other San Franciscans) 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, _____ area residents 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

_____ and 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 (including _____ area), 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, Attachment ___ 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

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 DDA 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

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 the _____ area and then other 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 _____ area residents and then other 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 residents (of the_____ and then other San Franciscans) 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, _____ area residents 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

_____ and 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.**

R. **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.

S. **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.

T. **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.

U. **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.

V. **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.

W. **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.

X. **Discovery.** In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

Y. **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.

Z. **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.

AA. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

BB. **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.

CC. **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.

DD. **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.

EE. **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.

FF. **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.

GG. **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.

HH. **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 (including _____ area), 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, Attachment ___ 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

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 Disposition and Development Agreement (DDA) between the Developer and the Agency of which this Attachment No. __ 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 DDA 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 No. __:

(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 Attachment No. __ of the DDA including the Construction Work Force Agreement and the Permanent Work Force Agreement. Any conflicts between the languages contained in these Labor Standards and Attachment No. __ shall be resolved in favor of the language set forth in Attachment No. __, 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 19

Affordable Pricing Chart

ATTACHMENT No. 19

AFFORDABLE PRICING CHART

Unit Type	Net Square Footage	Quantity	AMI Median Income	Household Size	Affordable Sales Price	Gross Sale Proceeds
1 Bedroom, 1 Bath	640	3	70%	1	$146,996	$440,988
1 Bedroom, 1 Bath	640	3	80%	1	$160,201	$480,602
1 Bedroom, 1 Bath	640	1	90%	1	$173,406	$173,406
Subtotal 1 BRs		*7*				**$1,094,996**
2 Bedroom, 2 Bath	960	7	70%	3	$210,401	$1,472,809
2 Bedroom, 2 Bath	960	7	80%	3	$227,378	$1,591,643
2 Bedroom, 2 Bath	960	3	90%	3	$244,354	$733,061
Subtotal 2 BRs		*17*				**$3,797,513**
3 Bedroom, 2.5 Bath	1,280	4	70%	4	$241,832	$967,330
3 Bedroom, 2.5 Bath	1,280	4	80%	4	$260,699	$521,398
3 Bedroom, 2.5 Bath	1,280	2	90%	4	$279,566	$559,132
Subtotal 3 BRs		***8***				**$2,047,860**
Subtotal Gross Sales						**$6,940,369***
BEGIN Subsidy						$960,000
TOTAL		**32**				**$7,900,369**

*Sales prices reflect 2009 AMI and will be adjusted to reflect AMI during the actual sales year. Pricing shown is effective sales price before adding the $960,000 ($30,000 per unit) adjustment for BEGIN down payment assistance.

ATTACHMENT 20

Form of Limited Equity Home Ownership Program

Attachment A - Promissory Note Secured By Deed of Trust

Attachment B - Deed of Trust

Attachment C - Addendum to Deed of Trust

Attachment D - Form of Income Certification

Attachment E - Approved Title Exceptions

Attachment F - Loan Disclosure Information

ATTACHMENT No. 20

FORM OF LIMITED EQUITY HOME OWNERSHIP PROGRAM

DECLARATION OF RESTRICTIONS FOR FOR-SALE AFFORDABLE HOUSING UNITS AND OPTION TO PURCHASE AGREEMENT

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

WHEN RECORDED RETURN TO:
Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Attention: Housing Division, Anna H. Wong

Space above for Recorder

(Assessor's Block _____, Lot _____)

Section 1. Parties.

THIS DECLARATION OF RESALE RESTRICTIONS AND OPTION TO PURCHASE AGREEMENT ("Declaration") is made as of _____, 20__, (the "Effective Date") by and between _____ as _____ [**indicate manner in which owner takes title**] ("Owner") and the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California ("Agency"). Owner is purchasing that certain real property in the City with a street address of _____, San Francisco, California _____, and more particularly described on Exhibit A to the Grant Deed ("Property"). Capitalized terms used in this Declaration have the meanings given to them in Section 4 below.

Section 2. Recitals.

The following recitals of fact are a material part of this Declaration:

(a) The Agency has developed a program to provide home ownership opportunities to individuals and families with low and moderate incomes by offering homes for sale at prices which are below those otherwise prevailing in the market;

(b) The Agency's intent is to preserve the affordability of such homes by restricting the resale price;

(c) Such homes constitute a valuable community resource; and

(d) It is necessary, proper and in the public interest for the Agency to protect and preserve this resource by administering occupancy and resale controls by means of this Declaration.

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the affordable housing program, Owner and the Agency agree as follows:

Section 3. Owner's Affordable Purchase Price.

The Owner's Affordable Purchase Price for the Property described in Section 1, above, is $_____. This is the purchase price which is affordable to a household earning [75%-120%] of Area Median Income, adjusted for a Household Size of one person for one-bedroom units, and one person per bedroom plus one for all other unit sizes, using a five percent (5%) down payment and a thirty (30)-year, fixed rate mortgage with commercially reasonable points and fees, and with a total annual payment for principal, interest, taxes, insurance and homeowner's association dues which does not exceed 33% of the household's Gross Annual Income. The mortgage interest rate used in the calculation shall be the higher of 1) the ten-year rolling average interest rate, as calculated by the Agency (or its successor) based on data provided by Fannie Mae, Freddie Mac, or an equivalent, nationally recognized mortgage financing institution, or 2) the current, commercially reasonable rate available through an Agency-approved lender.

Section 4. Definitions.

As used in this Declaration, the capitalized terms set forth below shall have the following meanings:

(a) "Addendum to Deed of Trust" means the supplemental document to the Deed of Trust, executed by a Qualified Purchaser in favor of the Agency.

(b) "Affordable Purchase Price" for Owner is defined in Section 3.

(c) "Agency" is defined in Section 1.

(d) "Agency Note" is the promissory note executed by Owner in favor of the Agency, which is secured by a Deed of Trust executed by Owner in favor of the Agency, in the form attached.

(e) "Area Median Income" ("AMI") means the median income for a household, adjusted solely for Household Size, residing in the City, as determined by the Agency pursuant to publications issued by the United States Department of Housing and Urban Development for the San Francisco Primary Metropolitan Statistical Area, from time to time.

(f) "Broker" means a real estate broker licensed by the State of California Department of Real Estate and approved by the Agency to assist Owner in identifying Qualifying Purchasers for the Transfer of the Property.

(g) "Buyer Acknowledgement" means the acceptance of terms and conditions of this Exhibit C, in the Agency's Loan Disclosure Information form.

(h) "Capital Improvements" is defined in Section 10.1.

(i) "Catastrophic Illness" means an illness or injury that incapacitates Owner for an extended period of time, or that incapacitates a member of Owner's family, which incapacity requires Owner to take time off from work for an extended period to care for that family member, and taking extended time off from work creates a financial hardship for Owner because he or she has exhausted all of his or her sick leave and other paid time off.

(j) "Certificate Holder" means those households with a valid Certificate of Preference issued by the Agency that entitles the holder to receive preference in consideration for housing due to displacement by prior redevelopment activities.

(k) "City" means the City and County of San Francisco.

(l) "Closing Costs" means the reasonable and customary costs incurred by Owner in transferring the Property.

(m) "Damage" means deficiencies in the Property occurring during Owner's ownership of the Property, including without limitation: (1) violations of applicable building, plumbing, electric, fire or housing codes; (2) needed repair to appliances furnished to Owner upon purchase of the Property; (3) holes and other defects (except for holes from picture hangers) in walls, ceilings, floors, doors, windows, screens, carpets, drapes, countertops and similar appurtenances; and (4) repairs needed, as determined by Agency, to put the Property into saleable condition, including without limitation cleaning and painting.

(n) "Declaration" is defined in Section 1.

(o) "Deed of Trust" means one or more Deeds of Trust on this Property, executed by Owner in favor of the Agency.

(p) "Developer" is defined in Section 5.1.

(q) "Domestic Partner" means any person who has or enters into a domestic partnership currently registered with a governmental body pursuant to State or local law authorizing such registration.

(r) "Down Payment Assistance Loan" is a loan of down payment funds made by the Agency to Owner for purchase of the Property.

(s) "Effective Date" is defined in Section 1.

(t) "Events of Default" are defined in Section 11.1.

(u) "Fair Market Value" means the cash purchase price for the Property that a willing buyer would pay to a willing seller at the time of sale, neither being under a compulsion to buy or sell, as determined by an independent, MAI-certified appraiser who has experience in residential appraisals in San Francisco.

(v) "Household Size" means the number of persons for whom the Property will be a Principal Residence. The Affordable Purchase Price shall be established by using a Household Size that assumes occupancy by one person for one-bedroom units. For all other units, the assumption is occupancy by one person per bedroom plus one. Household Size for occupancy shall be a minimum of one person per bedroom.

(w) "Grant Deed" is defined in Section 8.1(b).

(x) "Gross Annual Income" means pre-tax money earned annually by a household including overtime pay, commissions, dividends, and any other source of income.

(y) "Income Certification" has the meaning set forth in Section 7.

(z) "Notice" is defined in Section 13.4.

(aa) "Notice of Proposed Transfer" is defined in Section 7.1.

(bb) "Occupancy Certificate" is defined in Section 13.3.

(cc) "OPA" is defined in Section 5.1.

(dd) "Owner" is defined in Section 1, and upon Owner's death includes the personal representative administering the Owner's estate.

(ee) "Owner Developer" is the Owner referred to in the OPA described in Section 5.1.

(ff) "Owner's Proceeds" means the amount due to Owner upon Transfer of the Property to a Qualifying Purchaser or upon exercise of the Agency's Purchase Option, according to the terms of this Declaration.

(gg) "Permitted Exceptions" means those title exceptions that are listed on the Permitted Exceptions attachment.

(hh) "Principal Residence" means the location at which an individual resides for at least ten (10) months out of each calendar year or such shorter period of time as the Agency, in its sole discretion, shall determine.

(ii) "Property" is defined in Section 1.

(jj) "Purchase Option" is defined in Section 9.1.

(kk) "Purchase Option Assignee" is defined in Section 9.3.

(ll) "Qualifying Purchaser" means persons and families who are first time homebuyers as defined in Internal Revenue Service Code and approved by the Agency whose Gross Annual Income, adjusted for Household Size, does not exceed one hundred percent (100%) of Area Median Income.

(mm) "Repair Costs" means the costs to repair Damage to the Property.

(nn) "Resale Affordable Price" means a purchase price which is affordable to a household earning [75% to 120%] of current Area Median Income, adjusted for a Household Size of one person for one-bedroom units and one person per bedroom plus one for all other unit sizes, using a five percent (5%) down payment and a thirty (30)-year fixed mortgage with commercially reasonable points and fees, and with a total annual payment for principal, interest, taxes, insurance and homeowner's association dues which does not exceed 33% of the household's Gross Annual Income. The mortgage interest rate used in the calculation shall be the higher of 1) the ten-year rolling average of interest rates, as calculated by the Agency (or its successor) based on data provided by Fannie Mae, Freddie Mac, or an equivalent, nationally recognized mortgage lending institution, or 2) the current, commercially reasonable rate available through an Agency-approved lender.

(oo) "Senior Lender" means a bank, savings and loan association, insurance company, pension fund, publicly traded real estate investment trust, governmental agency, or charitable organization engaged in making loans which customarily makes residential purchase money loans and has loaned money to Owner or a Qualifying Purchaser to purchase or refinance the purchase of the Property.

(pp) "Senior Lien" means a single deed of trust for the purpose of securing a loan from the Senior Lender to finance or refinance the purchase of the Property.

(qq) "Transfer" means any voluntary or involuntary sale, assignment or transfer of any interest in the Property.

(rr) "Unauthorized Transfer" is defined in Section 11.

Section 5. Related Documents.

5.1 Owner Participation Agreement or Disposition and Development Agreement. The Agency and _____, a California limited liability company ("Owner Developer") entered into that certain Owner Participation Agreement or Disposition and Development Agreement, dated for reference purposes only as of _____, 2004 and recorded on _____, 2004 as Document No. _____ in the City's Official Records ("OPA" or "DDA"), including the Limited Equity For-Sale Affordable Housing Program attached thereto as Attachment F to the OPA/DDA (the "Housing Program"), concerning the development of affordable housing units. The OPA/DDA, and the Housing Program are on file with the Agency as public records and are incorporated herein by reference. Under the OPA/DDA, and the Housing Program, the Property is income and price restricted to be affordable to persons or households earning not more than **one hundred percent (100%) of Area Median Income. USE ACTUAL LIMIT FOR THIS UNIT****. This Declaration is being

executed and recorded in accordance with the OPA and partially satisfies the requirements therein.

5.2 **Mission Bay North Redevelopment Plan.** The Property is in the City, within the Mission Bay North Project Area and is subject to the provisions of the Redevelopment Plan for the Mission Bay North Redevelopment Project adopted by Ordinance No. 327-98, on October 26, 1998.

5.3 **Agency Note and Deed of Trust.** Owner executed an Agency Note in favor of Agency, dated _____, 20___, secured by a Deed of Trust and Addendum to Deed of Trust on the Property.

Section 6. Affordability Restrictions.

6.1 **Restrictions.** Owner shall own and occupy the Property as Owner's Principal Residence, and Owner shall not lease the Property, or any portion thereof, without the Agency's prior written consent. Owner shall submit to the Agency on an annual basis a certification that Owner has occupied the Property as Owner's Principal residence for at least ten (10) months in the preceding year.

6.2 **Term.** This Declaration shall remain in effect for forty-five (45) years from the Effective Date until such time as the Property is Transferred pursuant to the terms of this Declaration, at which time a declaration with the same form and substance as this Declaration shall become effective for forty-five (45) years from the effective date of such declaration. Upon the expiration of this Declaration due to completion of the 45-year Term, Owner must repay to the Agency the difference between the Resale Affordable Price and the Fair Market Value, as determined at the completion of the Term. In lieu of this payment to the Agency, Owner may renew the Term of this Agreement for an additional forty-five (45) years.

6.3 **Owner Representations and Warranties.** In applying to purchase the Property, Owner submitted an Income Certification form. Owner acknowledges that reasonable efforts may be made to verify such Income Certification, including without limitation calling Owner's employers or other sources of income to confirm the income shown. Owner represents and warrants to the Agency that the Income Certification and any financial and other information Owner previously provided to Agency for the purpose of qualifying to purchase the Property was true and correct at the time it was given and remains true and correct as of the date of this Declaration.

Section 7. Transfer Procedures.

7.1 **Notice of Proposed Transfer.** Except as provided in Sections 7.5 and 7.6(a), if Owner desires to Transfer the Property, Owner shall deliver written notice to Agency ("Notice of Proposed Transfer"), and Agency shall calculate the Resale Affordable Price and notify Owner of the same.

7.2 **Priority to Certificate Holders.** An Owner may transfer the Property only to a Qualifying Purchaser or the Agency. The Agency shall give notice to Certificate Holders who shall have priority in purchasing the Property over all other Qualified Purchasers, except for

transferees under Section 7.5 and 7.6(a) and the Agency. If no Certificate Holders express interest in purchasing the Property or are not otherwise qualified, then Owner shall market the Property as set forth in Section 7.3 below.

7.3 **Marketing the Property**. Owner shall work with Broker to locate a Qualifying Purchaser for Transfer of the Property at the Resale Affordable Price. Owner and Broker shall use diligence and good faith in marketing the Property as evidence by all of the following:

- Listing the Property on the MLS Listing;
- Advertising the Property in the Real Estate section of at least two (2) newspapers of general circulation in the City;
- Conducting at least two (2) open houses of the Property; and
- Requesting that the Agency list the Property on the Agency's website.

If Owner and Broker, acting diligently and in good faith, are unable to locate a Qualifying Purchaser after one hundred and fifty (150) days from the date of Agency's receipt of the Notice of Proposed Transfer, then the percentage of AMI defining Qualifying Purchasers shall be increased to 150% of the AMI set forth in Section 3., up to a maximum of 120% of AMI. The Resale Affordable Purchase Price shall remain the same, unless adjusted pursuant to Section 8.4.

7.4 **Inspection.** Within thirty (30) days after the Agency's receipt of the Notice of Proposed Transfer, Agency shall have the right to enter and inspect the Property. The Agency shall give Owner twenty-four (24) hours prior written notice before conducting an inspection. The Agency may inspect the Property to determine if any Damage exists. In the event any Damage is noted, the Agency shall determine the Repair Costs and shall deliver written notice to Owner specifying the Damage and the Repair Costs. Owner shall either: (a) repair the Damage at Owner's cost, or (b) cause the escrow agent at closing to pay the Repair Costs to Agency from Owner's Proceeds, as provided in Section 8.3. If Owner elects to repair the Damage, the Agency shall have the right to re-inspect the Property under the terms of this Section 7.4 after the repairs are complete. If the Agency determines in the Agency's sole discretion that Damage still remains, Owner shall cause the escrow agent at closing to pay the remaining Repair Costs to the Agency, but only to the extent such funds are available after payment of the Senior Lien. If Owner elects to repair the Damage, all repairs and the re-inspection shall be completed without extending the closing date, unless extended by mutual written agreement of both the Agency and Owner.

7.5 **Transfer to Spouse or Domestic Partner.** If an Owner marries or becomes a Domestic Partner after purchasing the Property, the spouse or Domestic Partner may become a co-Owner. An Owner intending to add a spouse or Domestic Partner as a co-Owner must present his or her marriage certificate or Domestic Partnership registration to the Agency for review, and the proposed co-Owner shall execute an addendum to this Declaration and any other Agency documents related to the Property by which the co-Owner shall assume the same rights and responsibilities with respect to those documents as the Owner.

7.6 **Transfer Upon Owner's Death.**

(a) Upon Owner's death, the Property may be Transferred to any co-Owner previously approved by the Agency without further Agency approval, but such co-Owner shall notify Agency within thirty (30) days of the Transfer.

(b) Upon the death of Owner and all Agency approved co-Owners, the Property may be Transferred by inheritance, will, or any other function of law to a Qualifying Purchaser. The proposed transferee shall submit an Income Certification form and any other information reasonably requested by the Agency to verify that the proposed transferee meets the requirements for a Qualifying Purchaser. The Agency shall have forty-five (45) days after receipt of all required information to determine whether the proposed transferee is a Qualifying Purchaser. If the Agency determines that the proposed transferee is a Qualifying Purchaser, the Property may be Transferred to the proposed transferee for no consideration. The proposed transferee shall execute a new Declaration and any other Agency documents related to the Property by which the proposed transferee shall assume the same rights and responsibilities with respect to those documents as the Owner. If the Agency determines that the proposed transferee is not a Qualifying Purchaser, the Property shall be Transferred pursuant to Sections 7.1 – 7.4, inclusive.

Section 8. Closing.

8.1 **Conditions to Closing.** Except as provided in Sections 7.5, 7.6(a) and Transfers by foreclosure or the Senior Lender's acceptance of a deed in lieu of **foreclosure**, all Transfers shall take place through an escrow with a mutually acceptable escrow company. It shall be a condition to closing, other than a Transfer to a co-Owner pursuant to Sections 7.5 or 7.6(a), that the escrow agent involved in the closing has received the following:

(a) Written confirmation from the Agency of the Resale Affordable Price and either (i) the identity of the Qualifying Purchaser or (ii) notification that the Agency is exercising the Purchase Option;

(b) A standard title company form grant deed, executed and acknowledged by Owner (or the Agency as attorney in fact for Owner) granting the Property to the Qualifying Purchaser ("Grant Deed"), which shall be recorded in the City's Official Records;

(c) A declaration with the same form and substance as this Declaration executed and acknowledged by the Qualifying Purchaser and the Agency, which shall be recorded in the City's Official Records;

(d) An Agency Note secured by a Deed of Trust and Addendum to Deed of Trust, executed by the Qualifying Purchaser on the Agency's standard forms, which Deed of Trust and Addendum shall be recorded in the City's Official Records; and

(e) A signed copy of the Buyer Acknowledgement contained in the Loan Disclosure Information.

8.2 **Closing Procedures For Sale to Qualifying Purchaser.** At closing, Owner shall convey the Property to the Qualifying Purchaser by Grant Deed. Owner shall cause a mutually acceptable title company to issue to the Qualifying Purchaser a CLTA standard coverage owner's form of title insurance policy in the amount of the Resale Affordable Price insuring title to the Property vested in the Qualifying Purchaser, subject only to standard printed form exceptions, the Agency's Deed of Trust and exclusions, liens for current taxes and assessments not yet due or payable, the new declaration and such other matters as were exceptions to title as of _____ [**date of sale to first Owner**] or are accepted by the Qualifying Purchaser in writing, as set forth in the Permitted Exceptions attachment. All closing costs and title insurance premiums shall be paid pursuant to the custom in the City.

8.3 **Owner's Proceeds.** The value of the Owner's Proceeds from a Transfer of the Property shall be calculated as follows. Owner's Proceeds equal:

(a) The Resale Affordable Price;

(b) Less the amount necessary to release the Senior Lien;

(c) Less Closing Costs;

(d) Less any Repair Costs due to the Agency pursuant to Section 7.4;

(e) Plus the amortized value of Capital Improvements.

8.4 **Resale Affordable Price.**

(a) Notwithstanding anything in this Declaration to the contrary, if the Resale Affordable Price is less than the original value of the Senior Lien, then the Agency may increase the percentage of AMI to a level sufficient to allow for a Resale Affordable Price which covers the original value of the Senior Lien, up to a maximum of 120% of AMI. If, after adjustment of the Resale Affordable Price described above, if any, the Resale Affordable Price is less than the sum of the Owner's Affordable Price plus the Closing Costs, then the Agency through its Executive Director as authorized in Resolution No. 73-2000 dated May 23, 2000 shall deposit into escrow the funds necessary to cover the Owner's original down payment funds and Closing Costs. Such deposit into escrow shall be in addition to Agency's deposit into escrow of the amortized value of the Capital Improvements. After such adjustment, the value of the Owner's Proceeds shall be calculated according to Section 8.3.

(b) Agency and Owner acknowledge that the Senior Lien holder will not release the Senior Lien unless it is repaid in full. If the Senior Lien holder does not release the Senior Lien because the Owner has not or cannot fully repay it, then the sale will be cancelled or the Owner will be in default under the Senior Lien.

Section 9. Agency's Purchase Option.

9.1 **Grant of Option.** Owner grants to Agency an option to purchase the Property upon the occurrence of an Event of Default under Section 11.1 ("Purchase Option").

9.2 **Exercise of Option.** Agency may exercise the Purchase Option as follows:

(a) If the Purchase Option is triggered as a result of an Event of Default under Sections 11.1(a) – (d), then the Agency may exercise the Purchase Option within ninety (90) days after the Agency gives written notice of default to Owner.

(b) If the Purchase Option is triggered as a result of Owner's default under the Senior Lien as defined in Section 11.1(e), then the Agency may exercise the Purchase Option by giving written notice to Owner and Senior Lender at any time prior to five (5) business days before the date of a foreclosure sale, as the same may be postponed from time to time, under the Senior Lien pursuant to California Civil Code § 2924f. Though the Senior Lender shall not be required to do so, the Senior Lender shall endeavor to provide the Agency with a copy of any notice of default that it issues to Owner.

9.3 **Assignment of Purchase Option.** Prior to or after exercise of the Purchase Option, the Agency may assign the Purchase Option to a governmental agency, non-profit organization, or a Qualifying Purchaser ("Purchase Option Assignee"), who shall be subject to this Declaration.

9.4 **Grant of Power of Attorney.** Owner hereby grants to the Agency an irrevocable power of attorney coupled with an interest to act on Owner's behalf to execute, acknowledge and deliver any and all documents relating to the Purchase Option.

9.5 **Non-Liability of Agency.** The Agency shall not be held liable by reason of its exercise or non-exercise of the Purchase Option.

Section 10. Capital Improvements; Maintenance.

10.1 **Capital Improvements.** A "Capital Improvement" is a permanent improvement to the Property made during Owner's ownership of the Property which: (a) has a value in excess of one-half of one percent (0.5%) of the Affordable Purchase Price originally paid by Owner but less than ten percent (10%) of the Affordable Purchase Price originally paid by Owner; (b) has a useful life of greater than five (5) years subsequent to the proposed Transfer by Owner; and (c) has been made with all required permits and approvals, including without limitation homeowner's association and governmental approvals obtained prior to the construction or installation of the Capital Improvement(s).

10.2 **Credits for Capital Improvements.** Owner shall receive credit at the time of Transfer for Capital Improvements made to the Property as follows:

(a) At least thirty (30) days prior to the date of Transfer, Owner shall deliver to the Agency a list of the Capital Improvement(s), if any, made to the Property. The Agency shall determine whether the proposed improvements qualify as Capital Improvement(s), as defined in Section 10.1.

(b) The value of Capital Improvements shall equal the sum of all Capital Improvements with each improvement amortized by a factor of seven percent (7%) per year from the date of the Capital Improvement's completion.

10.3 Maintenance. Owner shall not destroy or damage the Property, allow the Property to deteriorate, or commit waste on the Property. Owner shall maintain the Property in compliance with all applicable laws, ordinances and regulations and in a good and clean condition and all appliances and fixtures shall be in good working order.

Section 11. Default and Remedies.

11.1 Events of Default. The occurrence of any one of the following events or circumstances shall constitute an "Event of Default" by Owner under this Declaration.

(a) Owner has actually Transferred or attempted to Transfer the Property in violation of the covenants and restrictions contained in this Declaration ("Unauthorized Transfer").

(b) The Agency has determined in the Agency's sole discretion that the Property is not Owner's Principal Residence.

(c) Owner fails to pay real estate taxes, assessments or homeowner's association dues, when due or Owner fails to maintain insurance in such amounts as required under this Declaration; or Owner places any mortgages, encumbrances or liens upon the Property in violation of this Declaration; and such event or condition shall not have been cured within thirty (30) days following the date of written notice to cure by the Agency to Owner.

(d) Owner fails to perform any other agreements or obligations on Owner's part to be performed under this Declaration, and such failure continues for thirty (30) days following the date of written notice to cure by the Agency to Owner, or in the case of a default not susceptible of cure within thirty (30) days, Owner fails to promptly commence such cure within thirty (30) days and thereafter fails to diligently prosecute such cure to completion.

(e) Owner causes or permits a default under the Senior Lien and fails to cure the same in accordance with the cure provisions in the Senior Lien.

(f) Owner is in default of a term of the Agency Note and/or the Deed of Trust.

11.2 Remedies. Upon the occurrence of an Event of Default by Owner, Agency may exercise any or all of the remedies set forth below:

(a) Agency shall have the right to exercise the Purchase Option;

(b) Agency shall have the right to institute an action for specific performance of the terms of this Declaration, for an injunction prohibiting a proposed Transfer in violation of this Declaration, or for a declaration that a Transfer is void; and

(c) Agency shall have the right to institute an action for foreclosure on its Deed of Trust and/or to accept a deed in lieu of foreclosure.

(d) Agency shall have the right to exercise all other remedies permitted by law or at equity.

Section 12. Lender Provisions.

12.1 Purposes of Financing. Subject to the Agency's prior written approval, Owner may encumber title to the Property for the sole purpose of securing (a) purchase money financing, (b) refinancing (but only up to the amount of the original financing), or (c) refinancing up to the amount of the original financing, plus fifty percent (50%) of the value of the Resale Affordable Price less the Owner's Affordable Purchase Price. Refinancing under option (c), above, shall be permitted only for making Capital Improvements to the Property, meeting post-secondary educational expenses incurred by a household member after the date of purchase, meeting the costs of an Owner's or Owner's immediate family member's Catastrophic Illness, or securing funds required to implement a dissolution of marriage or domestic partnership agreement. Owner shall not cause or permit any other mortgages, encumbrances or liens upon the Property. Owner shall submit to the Agency on an annual basis a certification that Owner has not refinanced the Property in violation of this Section 12.1.

12.2 Subordination. This Declaration shall be subordinate to the Agency-approved Senior Lien.

12.3 Default and Foreclosure. Owner shall provide a copy of any notice of default under the Senior Lien to the Agency within three (3) days of Owner's receipt. In the event of any default under the Senior Lien, Agency, in addition to any other rights and remedies it may have under this Declaration, at law or in equity, shall have the right to:

(a.) cure such default pursuant to Section 12.4;

(b) exercise its Purchase Option pursuant to Section 9.2(b); or

(c) foreclose its Deed of Trust on the Property.

Agency's rights under this Section 12.3 shall not prevent the Senior Lender from commencing a judicial or nonjudicial foreclosure of the Senior Lien. If the Agency, in its sole discretion, does not act pursuant to Sections 12.3(a-b) above, and the Senior Lender acquires the Property through foreclosure or acceptance of a deed-in-lieu of foreclosure, future sales of the Property shall not be subject to the resale restrictions provided herein.

12.4 Right to Cure. Although the Agency has no obligation to do so, the Agency may perform any act required of Owner in order to prevent a default under, or an acceleration of the indebtedness secured by, the Senior Lien or the commencement of any foreclosure or other action to enforce the collection of such indebtedness. If the Agency elects to cure any such default, Owner shall pay the expenses incurred by the Agency in effecting any cure upon demand within thirty (30) days, together with the interest thereon at the maximum interest rate permitted by law. Failure of Owner to timely reimburse the Agency shall constitute an Event of Default under Section 11.1(d).

Section 13. Miscellaneous.

13.1 Damage and Destruction; Condemnation; Insurance. If the Property is condemned or the improvements located on the Property are damaged or destroyed, all proceeds

from insurance or condemnation shall be distributed in accordance with this Section 13.1, subject to the requirements of the Senior Lien. Insurance shall be maintained in the types and amounts required under the Senior Lien. Unless Owner, the Agency, and Senior Lender otherwise agree in writing, insurance proceeds shall be applied to restore or repair the Property damaged. If Owner, the Agency and Senior Lender determine that restoration or repair cannot be made, or if the Property is condemned, the insurance or condemnation proceeds shall first be allocated to pay the outstanding value of the Senior Lien and all associated fees of the Senior Lender, with the balance distributed between the Owner and Agency as follows. The proceeds attributable to the Property shall be multiplied by a fraction. The numerator is the Resale Affordable Price as calculated under this Declaration and the denominator is the Fair Market Value of the Property as of the date immediately prior to the damage, destruction or condemnation. The resulting amount shall be allocated to the Owner and the balance shall be allocated to the Agency.

13.2 **No Discrimination; Lead-Based Paint Prohibition.** Owner shall comply with all applicable laws and regulations regarding non-discrimination and lead-based paint prohibitions.

13.3 **Owner Occupancy Verification.** To insure compliance with this Declaration's requirement that Owner use the Property as his/her Principal Residence, Owner shall provide Agency with a completed Occupancy Certificate ("Occupancy Certificate"), to be provided by the Agency by February 1 of each year for the previous calendar year.

13.4 **Notices.** Any notice, demand or other communication required or permitted to be given under this Declaration (a "Notice") by either party to the other party shall be in writing and sufficiently given or delivered if transmitted by (a) registered or certified United States mail, postage prepaid, return receipt requested, (b) personal delivery, or (c) nationally recognized private courier services, in every case addressed as follows:

If to Agency: San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: Executive Director

If to Owner: at the Property address

Any such Notice transmitted in accordance with this Section 13.4 shall be deemed delivered upon receipt, or upon the date delivery was refused. Any party may change its address for notices by written Notice given to the other party in accordance with the provisions of this Section 13.4.

13.5 **Remedies Cumulative.** Subject to applicable law, the Agency's rights and remedies, whether provided by law, in equity or by this Declaration, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise of any other or further rights or remedies for the same or any other default or breach. No waiver with respect to the performance of any of Owner's obligations shall be effective except to the extent the particular obligation is expressly waived, nor shall it be a waiver with respect to any other rights or remedies of any other of Owner's obligations.

13.6 **Attorneys' Fees for Enforcement**. If any action or legal proceeding is instituted by Owner or the Agency arising out of this Declaration, the prevailing party therein shall recover reasonable attorneys' fees and costs in connection with such action or proceeding. For purposes of this Agreement, reasonable fees of any in-house counsel for the Agency shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the Agency's in-house counsel's services were rendered who practice in law firms located within the City.

13.7 **Integration**. This Declaration constitutes an integration of the entire understanding and agreement of the Owner and the Agency with respect to the subject matter hereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically and expressly incorporated in this Declaration, shall not be binding on any of the parties, and Owner and the Agency each acknowledge that they have not relied, in entering into this Declaration, on any representation, warranty, promise or condition, not specifically and expressly set forth in this Declaration. All prior discussions and writings have been, and are, merged and integrated into, and are superseded by, this Declaration.

13.8 **Severability.** In the event that any provision of this Declaration is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

13.9 **Successors and Assigns.** This Declaration shall be binding upon and inure to the benefit of the successors and assigns of the Agency. The Agency may assign or transfer its rights under this Declaration upon thirty (30) days written notice to Owner. It is expressly agreed by Owner that Owner may assign his or her rights to this Declaration only by Transfer pursuant to Section 7 or by the Agency's exercise of the Purchase Option pursuant to Section 9.

13.10 **Headings.** The headings within this Declaration are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Declaration.

13.11 **Time for Performance.** Time is of the essence in the performance of the terms of this Declaration. All dates for performance (or cure) shall expire at 5:00 p.m. on the performance or cure date. Any performance date which falls on a Saturday, Sunday or Agency holiday is automatically extended to the next Agency working day.

13.12 **Amendments.** Any modification or waiver of any provision of this Declaration or any amendment thereto must be in writing and signed by a person or persons having authority to do so, on behalf of both the Agency and Owner.

13.13 **Controlling Agreement.** Owner covenants that Owner has not executed and will not execute any other agreement with provisions contradictory to or in opposition to the provisions of this Declaration. Owner understands and agrees that this Declaration shall control the rights and obligations between Owner and the Agency.

13.14 **Governing Law.** This Declaration shall be governed by, and construed and enforced in accordance with, the internal laws of the state of California.

13.15 **Recordation.** Owner shall cause this Declaration to be recorded in the City's Official Records.

IN WITNESS WHEREOF, Owner and the Agency have executed this Declaration as of the date written above.

AGENCY:
Redevelopment Agency of the City and
County of San Francisco

By:_____
Amy Lee
Deputy Executive Director
Finance and Administration

OWNER:

_____

_____

ALL SIGNATURES MUST BE NOTARIZED.

---------- Attach All Purpose California Notary Acknowledgment ----------

APPROVED AS TO FORM:

By:_____
James B. Morales
Agency General Counsel

List of Attachments

Attachment A - Promissory Note Secured By Deed of Trust

Attachment B - Deed of Trust

Attachment C - Addendum to Deed of Trust

Attachment D - Form of Income Certification

Attachment E – Approved Title Exceptions for Individual Units

Attachment F - Loan Disclosure Information

ATTACHMENT No. 20-A

PROMISSORY NOTE SECURED BY DEED OF TRUST

Date: _____ San Francisco, California

THIS NOTE MAY NOT BE PREPAID

FOR VALUE RECEIVED, the undersigned _____ ("Debtor"), promises to pay to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California, ("Holder" or "Agency"), at One South Van Ness Avenue, 5th Floor, San Francisco, California 94103, or any other place designated in writing by Holder to Debtor, the amount calculated under the formula stated in this Promissory Note ("Note").

Debtor and Holder executed a Declaration of Resale Restrictions and Option to Purchase Agreement ("Declaration"), dated the same date as this Note, which, in part, establishes the rights and obligations of the Debtor and Holder in the event Debtor desires to Transfer the real property described in the Declaration (the "Property"). "Transfer" means any voluntary or involuntary sale, assignment or transfer of any interest in the Property.

Debtor obtained a loan ("Senior Lien") from _____ ("Senior Lender"), which loan is secured by a first deed of trust lien on the Property ("First Deed of Trust"). The Declaration and this Promissory Note are subordinate to the Senior Lien.

This Note is secured by a Second Deed of Trust, dated the same date as this Note, executed by Debtor in favor of Holder, with _____ as Trustee, which secures the payment of the debt evidenced by this Note, and all renewals, extensions and modifications of the Note ("Agency's Deed of Trust").

Capitalized terms used herein and not defined shall have the meanings set forth in the Declaration or in Agency's Deed of Trust, as applicable.

Upon Debtor's actual, attempted or pending Transfer of the Property other than as permitted under the Declaration, or upon default under the Senior Lien (the "Trigger Date"), Debtor shall pay to Holder:

a. The difference between (1) the Fair Market Value of the Property as of the Trigger Date and (2) the Resale Affordable Purchase Price as of the Trigger Date, had such Transfer been executed in accordance with the Declaration. Fair Market Value shall be determined by an appraisal of the Property. The appraiser shall be an independent, MAI-certified appraiser who has experience in residential appraisals in San Francisco, and shall be selected by Holder; plus

b. Any amounts disbursed by Holder under Section 5 of the Deed of Trust to protect Holder's rights in the real property described in the Declaration and Deed of Trust; plus

c. Commencing from the Trigger Date, interest on the amounts due at an annual rate of 10%, compounded.

With or without the filing of any legal action, proceeding or appeal, or appearance in any bankruptcy proceeding, Debtor agrees to pay on demand, together with interest at the above rate from the date of such demand until paid, all reasonable attorneys' fees, costs of collection, costs, and expenses incurred by Holder in connection with the defense or enforcement of this Note and the Deed of Trust.

No previous waiver and no failure or forbearance by Holder in acting with respect to the terms of this Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Note, the Deed of Trust, or the Declaration. A waiver of any term of this Note, the Deed of Trust, or the Declaration must be made in writing, signed by both parties, and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the debt evidenced by this Note, the terms of this Note shall prevail.

If this Note is executed by more than one person as Debtor, the obligations of each such person shall be joint and several, and each shall be primarily and directly liable hereunder. Debtor waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of acceleration, notice of protest and nonpayment, notice of costs, expenses or losses and interest thereon, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interest in or to properties securing payment of this Note.

Time is of the essence with respect to every provision in this Note. This Note shall be construed and enforced in accordance with the substantive and procedural laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and all persons and entities in any manner obligated under this Note consent to the jurisdiction of any Federal or State Court within the State of California having proper venue and also consent to service of process by any means authorized by California or Federal law.

This Note shall be cancelled upon Debtor's Transfer of the Property in accordance with the Declaration.

_____

Debtor – [Name]

ATTACHMENT No. 20-B

DEED OF TRUST

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

WHEN RECORDED RETURN TO:
Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: Housing Division, Anna H. Wong

Space above for Recorder

(Assessor's Block _____, Lot _____)

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made on _____, 20___, between _____, **("TRUSTOR" or "OWNER")**, whose address is _____, and _____, a corporation, **("TRUSTEE")**, and the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, whose address is One South Van Ness Avenue, 5th Floor, San Francisco, California 94102, **("AGENCY" or "BENEFICIARY")**,

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in San Francisco County, California, described as:

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

INITIALS_____

To Protect the Security of this Deed of Trust, Trustor Agrees:

By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County October 18, 1961, and in all other counties October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz:

COUNTY	BOOK	PAGE
San Francisco	A332	905

which provisions, identical in all counties, (printed on the attached unrecorded pages) are hereby adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that Trustor will observe and perform said provisions; and that the references to property, obligations and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

STATE OF CALIFORNIA
COUNTY OF _____
ON _____ before me, _____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature _____

_____

_____

_____

_____

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious deed of trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property on requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

INITIALS _____

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such, rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

INITIALS _____

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of *any agreement hereunder,* Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

AFTER the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash of lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the proceeding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

AFTER deducting all costs, fees and expenses of Trustee and of this Trust, including cast of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and pages where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

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

INITIALS _____

REQUEST FOR FULL RECONVEYANCE

TO: _____, TRUSTEE:

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: _____

_____ _____

By: _____ By: _____

Please mail Reconveyance to:

_____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both original documents must be delivered to the Trustee for cancellation before reconveyance will be made.

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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

WITNESS my hand and official seal.

Signature _____

ATTACHMENT No. 20-C

ADDENDUM TO DEED OF TRUST

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

WHEN RECORDED RETURN TO:
Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: Housing Division, Anna H. Wong

Space above for Recorder

(Assessor's Block _____, Lot _____)

ADDENDUM TO DEED OF TRUST

THIS ADDENDUM TO DEED OF TRUST ("Addendum") is part of the Deed of Trust and Assignment of Rents dated _____, 20___ ("Deed of Trust"), to which it is attached, made on _____, 20___, between _____ ("Trustor" or "Owner"), whose address is _____, and _____, a corporation ("Trustee"), and the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, whose address is One South Van Ness Avenue, 5th Floor, San Francisco, California 94103 ("Agency" or "Beneficiary"). The following provisions are made a part of the Deed of Trust:

Owner obtained a loan ("Senior Lien") from _____ ("Senior Lender"), which Loan is secured by a first deed of trust lien on the Property ("First Deed of Trust").

Owner and Agency executed a Declaration of Resale Restrictions and Option to Purchase Agreement, dated the same date as the Deed of Trust ("Declaration"). The Declaration establishes, in part, the rights and obligations of Owner and the Agency in the event of a Transfer of the Property. "Transfer" means any voluntary or involuntary sale, assignment or transfer of any interest in the Property.

Owner and the Agency also executed a Promissory Note, dated the same date as the Deed of Trust and this Addendum to Deed of Trust, which is secured by the Deed of Trust ("Agency Note").

Capitalized terms used herein and not defined shall have the meanings set forth in the Declaration.

COVENANTS. Owner and the Agency covenant and agree as follows:

1. **Prior Deeds of Trust; Charges; Liens.** Owner shall perform all of Owner's obligations under the First Deed of Trust, including Owner's covenants to make payments when due. Owner shall pay on time and directly to the person owed payment all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Deed of Trust.

Except for the Senior Lien, Owner shall promptly discharge any other lien which shall have attained priority over this Deed of Trust unless Owner: (a) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which, in the Agency's sole discretion, operate to prevent the enforcement of the lien; or (b) obtains from the holder of the lien an agreement satisfactory to the Agency in its sole discretion subordinating the lien to this Deed of Trust. Except for the Senior Lien, if the Agency determines that any part of the Property is subject to a lien which may attain priority over this Deed of Trust, the Agency may give Owner a notice identifying the lien. Owner shall satisfy such lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

2. **Obligations Cancelled.** Upon a Transfer of the Property in accordance with the Declaration, Owner's obligations hereunder shall be cancelled, and the lien of this Deed of Trust shall be reconveyed.

3. **Sale of Note.** The Agency Note or a partial interest in the Agency Note (together with this Deed of Trust) may be sold one or more times without prior notice to Owner. If the Agency Note is sold, Owner will be given written notice of the sale in accordance with and containing any other information required by applicable law.

BY SIGNING BELOW, the Owner accepts and agrees to the terms and covenants contained in this Deed of Trust.

_____

Owner – [Name]

---------- Space Below This Line for Acknowledgment ----------

ATTACHMENT No. 20-D
FORM OF INCOME CERTIFICATION

INCOME CERTIFICATION FORM	See reverse for more information and examples.	Effective Date: / / 20 Completed by:

PART I: DEVELOPMENT DATA

Development Name:	Redevelopment Area:	
Address:	Unit #:	# of Bedrooms:

PART II: HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name and Middle Initial	Household Member	Date of Birth (mm/dd/yyyy)	Full-Time Student (Y or N)	Social Security or Alien Reg. #
1				/ /		
2				/ /		
3				/ /		
4				/ /		
5				/ /		
6				/ /		

PART III: GROSS ANNUAL INCOME

HH Mbr #	Wages	Social Security/Pensions	Public Assistance	Other Income
Totals	$ (a)	$ (b)	$ (c)	$ (d)
TOTAL GROSS ANNUAL INCOME Add (a) through (d)				$ (e)

PART IV: INCOME FROM ASSETS *(Attach additional sheets if necessary)*

HH Mbr #	Type of Asset	Cash Value of Asset	Annual Income from Asset
Totals		$ (f)	$ (g)
Imputed Income (See example on reverse)			
Enter (f) less $15,000 to a maximum of $100,000.	$ x 10% = $ (h)		

Enter (f) less $115,000. Enter zero if (f) is less than or equal to $115,000.	$ x 35% = $	(i)	
TOTAL IMPUTED INCOME Add (h) and (i)		$	(j)
TOTAL INCOME FROM ASSETS Enter the greater: (g) or (j)		$	(k)
PART V: TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES Add (c) and (k)		$	(l)

PART VI: DETERMINATION OF INCOME ELIGIBILITY

Area Median Income for Family Size from Income Limits for San Francisco PMSA determined by HUD annually	$ (m)	**Household Percentage of Area Median Income** Divide (l) by (m), then multiply by 100	%

B **PART VII: HOUSEHOLD CERTIFICATION & SIGNATURES**

The information on this form will be used to determine income eligibility. I/we have listed in Part II all persons in my/our household. I/we have provided for each person(s) set forth in Part II acceptable verification of current annual income. I have also disclosed ALL assets held by each person listed in Part II, and have provided documentation thereof. Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the Purchase and Sale Agreement.

Applicant's Signature	Applicant's Printed Name	Date
Co-signee's Signature	Co-signee's Printed Name	Date

ADDITIONAL INFORMATION FOR COMPLETING INCOME CERTIFICATION FORM

Part I: Development Data - Enter the property information.

Part II: Household Composition - Enter the full name of all intended occupants of the unit. If there are more than six occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification form. State each household member's status using one of the following:

Adult	-	Adult household member
Child	-	Applicant's child or unrelated minor
Other	-	Please specify (e.g., "Other - Niece")

Enter the date of birth, full-time student status, and social security number or alien registration number for each occupant.

Part III: Annual Income - See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.
Complete a separate line for each income-earning member. List the respective household member number from Part II. If there is not enough room to list all sources of income for each household member, use an additional sheet of paper to list the remaining income sources and attach it to the certification form. In the event of a person with documented disability and documented ongoing medical expenses, such expenses may be deducted from gross income for purposes of this calculation.

Wages	Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
Social Security/ Pensions	Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
Public Assistance	Enter the annual amount of income received from public assistance (e.g., TANF, general assistance, disability, etc.).
Other Income	Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.

Part IV: Income from Assets - See HUD Handbook 4350.3 for complete instructions on verifying income from assets, including acceptable forms of verification.

List the respective household member number from Part II and complete a separate line for each member. If there is not enough room to list all assets for each household member, use an additional sheet of paper to list the remaining household members and attach it to the certification form.

Type of Asset	List the type of asset (e.g., checking account, savings account, etc.)
Cash Value of Asset	Enter cash value of the respective asset
Annual Income from Asset	Enter the anticipated annual income from the asset (e.g., savings account balance multiplied by the annual interest rate).

Example of Imputed Income if Total Current Value of Assets (f) is $145,000:

Imputed Income		
Enter (f) less $15,000 to a maximum of $100,000.	**$100,000** x 10% = **$10,000** (h)	
Enter (f) less $115,000. Enter zero if (f) is less than or equal to $115,000.	**$30,000** x 35% = **$10,500** (i)	
TOTAL IMPUTED INCOME Add (h) and (i)		**$20,500** (j)

ATTACHMENT No. 20-E

FORM OF APPROVED TITLE EXCEPTIONS FOR INDIVIDUAL UNITS

[INSERT APPROVED TITLE EXCEPTIONS HERE]

SAN FRANCISCO

REDEVELOPMENT AGENCY

LIMITED EQUITY HOMEOWNERSHIP PROGRAM

Loan Disclosure Information

MAY 2005

TABLE OF CONTENTS

IMPORTANT
NOTE TO THE READER

The purpose of this document is to explain the San Francisco Redevelopment Agency's Limited Equity Homeownership Program ("Program"). Homes sold through this Program are subject to price controls at resale, as well as other terms and restrictions that affect your rights as a homeowner. Some of the terms and provisions are complex, and require that you thoroughly understand them prior to your purchase of a home. **IF YOU DESIRE TO PARTICIPATE IN THE PROGRAM AND PURCHASE A HOME, YOU MUST ATTEST TO YOUR FULL UNDERSTANDING OF AND AGREEMENT TO ALL THE PROGRAM'S TERMS AND CONDITIONS BY SIGNING BELOW PRIOR TO CLOSING ESCROW.**

I, the undersigned, hereby acknowledge and accept all the terms and conditions contained in the Declaration of Resale Restrictions and Option to Purchase, the Promissory Note Secured by a Deed of Trust, and the Short Form Deed of Trust and Assignment of Rents ("Agency Documents"), all of which I have agreed to comply with in return for purchasing my home at a below-market-rate price. I acknowledge that a staff member of the Redevelopment Agency of the City and County of San Francisco ("Agency") explained the

terms and provisions of the Agency Documents to me, and that I have had a chance to review this Limited Equity Homeownership Program Loan Disclosure Information document, which further explains the Agency Documents. I have also been provided enough time to seek an independent legal opinion about the Agency Documents and my purchase of the home, if I so chose.

I understand that by my execution of the Agency Documents, I agree that the resale price of my home will be restricted to a price that is affordable to a household of a predetermined size, earning a pre-determined percentage of Area Median Income ("AMI"), based on figures published by the Mayor's Office of Housing, based on data published by the U.S. Department of Housing and Urban Development (or any government agency subsequently assuming this responsibility). I understand that the Agency will determine the resale affordable price applicable to my home when I notify the Agency of my intent to sell. I understand that fair market value will not determine the resale price of my home.

I further understand that the Agency's calculation of the resale affordable purchase price for my home will consider, in addition to the current income for a pre-determined AMI level, an interest rate which is the higher of 1) the 10-year rolling average of rates as calculated by the Agency (or its successor) and based on data provided by Fannie Mae, Freddie Mac, or an equivalent, nationally recognized mortgage lending institution, or 2) the current, commercially reasonable rate available through an Agency-approved lender, as well as other current housing costs, such as insurance, HOA dues, and taxes. I know that any proceeds I receive from the sale of my home will be affected by the value of these factors, since they will be used to calculate the resale affordable purchase price of my home.

I understand that the Agency imposes resale restrictions on homes that it subsidizes so that it can provide homeownership opportunities to many generations of low- and moderate-income families over time and that the equity I will be able to build in my home will be limited so that

the Program is available to the next purchaser of my home. I understand that my ability to purchase my home at an affordable price is contingent upon my agreement to comply with the resale controls and Program restrictions.

PROPERTY ADDRESS: _____

SIGNED:_____ DATE:_____

PROGRAM SUMMARY

- The purpose of the San Francisco Redevelopment Agency's Limited Equity Homeownership Program ("Program") is to provide homeownership opportunities to low- and moderate-income households ("Eligible Buyers") who otherwise would not be able to purchase a home in San Francisco.
- To make homes affordable to Eligible Buyers, the Agency may sell land to developers at below-market-rate prices and/or provide construction funding. In return for this assistance, developers agree to sell the homes to Eligible Buyers. Eligible Buyers, in turn, purchase their homes at affordable prices and agree to comply with Program requirements.
- The Agency is able to offer the benefits of homeownership to many generations of Eligible Buyers through restrictions on resale prices, which limit the amount of equity that an Eligible Buyer is able to build. By limiting Eligible Buyers' equity, a given home can be resold at affordable prices again and again. Market fluctuations, which often result in prices beyond the affordability of low- and moderate-income households, do not affect limited equity resale affordable prices.

(B) PROGRAM ELEMENTS

#1: ***Eligibility***

To qualify as an Eligible Buyer, households must meet the following criteria:

- Household income (including income imputed from assets) within the AMI "target range" of low- to moderate-income buyers.
- Demonstrated ability to qualify for a mortgage, i.e., good credit, stable employment, and manageable debt.
- Savings available for a 5% down payment (up to 2% may be gift funds).
- First-time homeowner status.
- Commitment to use the property as the principal residence.

The San Francisco Mayor's Office of Housing publishes AMI levels for San Francisco annually, based on data published by the U.S. Department of Housing and Urban Development. The AMI target ranges that determine a household's eligibility to purchase will vary from development to development, based on the amount of subsidy provided by the Agency to the developer. The Agency will qualify all first-time homebuyers for both initial sales and for resales. Documentation of household size and income and assets, such as W-2s, tax returns, bank statements, and deferred income balance statements, is required.

#2: Affordable Purchase Prices

When developers set affordable purchase prices for units they sell, they use very specific information, as described below:

- AMI level: Developers in contract with the Agency are obligated to sell their units at prices affordable to households within a certain AMI "target range." For example, a developer in 2005 may be obligated to sell his/her units to households making between 75% and 100% of AMI. For a household of 3, this translates to incomes between $64,125 and $85,500.
- Household size: For the pricing calculation, the Agency assumes a household size of one person for a one-bedroom unit, and, for all other units, one person more than the number

of bedrooms. For example, a household of three people is assumed for a two-bedroom unit, four people for a three-bedroom, and so on. (For occupancy, the Agency requires a minimum of one person per bedroom. For example, a single person can apply for a studio or one-bedroom unit only. A two- person household could apply for a studio, one- or two-bedroom unit.)

- 33% "PITI": Principal, interest, taxes, and homeowners' insurance – total housing costs – are assumed to be 33% of a household's gross monthly income.
- First mortgage interest rate: the Agency's calculation assumes a fixed mortgage interest rate based on the higher of the following: 1) a 10-year rolling average of interest rates as calculated by the Agency, or 2) market conditions at the time the homes are offered for sale. The Agency will not permit a variable rate mortgage or an interest-only mortgage, as such financing instruments are contrary to the objectives of long-term affordability and stability of the first time homebuyer program.
- Owner down payment: The Agency assumes (and requires at a minimum) that the household will make a cash down payment of 5% of the affordable purchase price, 2% of which may be gift funds.

Once a developer knows, for each unit, what the applicable AMI level is, the household size, the cost of taxes and insurance, and the interest rate, s/he can set the affordable purchase price. For example, a two-bedroom unit assumes a household of three. If the developer's obligation calls for pricing at an AMI level of 95% (with income eligibility up to a maximum of 100% of AMI), the three-person household's income would be $81,225 in 2005. 33% of that income level is $26,804, or $2,235 per month. This figure, $2,235, is the target total monthly payment for housing costs for all households buying at this income level. If the household's HOA dues were $400 per month, taxes were $235 per month, and personal property insurance was $50 per month, the total monthly income available to pay the first mortgage would be $1,550 per month (i.e., $2,235 - $400 - $235 - $50 = $1,550). Using a 7.5% interest rate on a 30-year, fixed-rate first mortgage, the supportable mortgage would be $221,680. Assuming a 5% down payment (since the first mortgage would cover 95% of the purchase price), the affordable purchase price would be $233,345.

#3: Resale Affordable Purchase Prices

When a household decides to sell its home, it notifies the Agency, and the Agency calculates the resale affordable purchase price, using the same AMI percentage and household size that were used to calculate the seller's affordable purchase price. To follow the example given above, the family of 3 earning 95% of AMI that bought its home for $233,345 in 2005 might decide to sell the home five years later. The Agency will determine the resale price by taking the income for a 3-person household at 95% of AMI in 2010 and limiting payments for PITI to 33% of gross monthly income. The calculation will use the higher of the current mortgage interest rate or the then current 10-year rolling average of rates, and current HOA, tax, and insurance costs, and it will assume a 5% down payment by the new Eligible Buyer. So, for example, if the ten-year average interest rate increased .5% between 2005 and 2010, AMI increased 15%, and taxes and insurance increased 5%, the resale affordable purchase price would be $265,395. After subtracting the cost of necessary repairs (if any) and closing costs, the seller would be entitled to the difference between the old affordable price and the new affordable price. The example is shown numerically below:

95% AMI, 3-person HH income, 2010 (2005 + 15%):	$93,410	
33% of gross income:		$30,825
Per month:	$2,570	
Monthly HOA dues, taxes & insurance, 2010 (2005 + 5%)		($720)
Monthly income available for 1st mortgage:		$1,850
Mortgage (assuming 8% interest, 30-yr fixed)	$252,125	
5% Down payment:		$13,270
Resale Affordable Purchase Price:		**$265,395**
Resale Affordable Purchase Price:		$265,395
Closing costs (6%)		($15,925)
Repayment of full 1st mort + down payment:		($233,345)
Owner's new equity:		$16,125
Plus principal paid on the mortgage:		$11,235
Plus return of owner's down payment:	$11,665	
NET RETURN TO OWNER:	**$39,025**	

+ Amortized value of capital improvements, if any, and less any repair costs attributable to the owner.

By transferring this property from one 95% AMI household to another under the Program, the home remains affordable, the benefits of homeownership are passed along, and all owners have a chance to earn limited equity!

#4: Capital Improvements

As shown above, AMI levels and current housing costs such as interest rates and insurance

costs determine affordable prices. Affordable purchase prices alone cannot, therefore, reflect improvements and upgrades that an owner has made to his/her unit, such as new floors and countertops. To avoid discouraging owners from improving their properties, the Agency will allow owners to recover the depreciated value of approved capital improvements.

To qualify, each capital improvement must meet certain criteria:

- It must be a permanent improvement.
- It must have a value greater than 0.5% but less than 10% of the affordable purchase price originally paid by the owner.
- It must have a useful life longer than 5 years after the owner sells the home.
- It must have been installed with all required permits and approvals.

Owners wishing to sell and recover a portion of the cost of capital improvements must give the Agency a list of capital improvements and the date installed or completed, with invoices or other verifying documentation, at least thirty (30) days before the property is sold or transferred. The Agency must approve the capital improvements (i.e., make sure they meet the criteria described above), and will allow owners to recover the approved, depreciated amount at escrow closing. The credit for each capital improvement is depreciated by a factor of 7% per year from the date of the capital improvement's completion.

#5: Minimum Resale Value

As described above, the resale affordable purchase price is subject to variable factors that fluctuate over time, such as mortgage interest rates, taxes, and insurance costs. Because of the variability of these factors, ***owners assume some risk when they purchase their homes!*** For example, if the interest rate used in the pricing calculation increases from the time of initial purchase to time of resale, and increases in AMI over that same time do not compensate for the interest rate increase, a resale affordable purchase price could actually be lower than the original price an owner paid. The Agency's use of the 10-year rolling average of interest rates is intended to minimize the interest rate risk at resale, but there is no guarantee that the available interest rates or the 10-year average will not increase over time. To further minimize the risk owners take when they participate in the Program, the Agency will increase the applicable AMI level on a resale, up to 120% of AMI, when the original AMI level applicable to that home does not result in a resale affordable price high enough to pay off the original value of the first mortgage.

If, after making this adjustment to ensure first mortgage payoff, the resultant resale affordable price is still not high enough to return an owner's original down payment funds and to cover standard closing expenses, the Agency will deposit funds into escrow to cover these expenses, as a credit to the owner.

The Agency's goal is to ensure that owners in the Program will recover at least the original

purchase price of their home, so that their sale proceeds equal, at a minimum, the value of their down payment and any principal paid down on the first mortgage. The Agency also seeks to prevent closing costs from wiping out this minimum return, and will therefore cover closing costs as necessary.

But owners still assume risk! Owners are solely responsible for:

- Repair costs. When an owner notifies the Agency of its intent to sell, the Agency has the right to inspect the unit, determine if damage exists, and calculate the value of repair. If the owner does not satisfactorily make the itemized repairs, owners will be held responsible for repair costs at the close of escrow.
- Payments due on junior liens and first mortgage equity refinancing. The Agency will only increase a resale affordable purchase price to the original value of the first mortgage. If the owner has refinanced the home and withdrawn equity, the owner is solely responsible for paying off the incremental value of the refinanced mortgage or new, junior liens.
- If the resale affordable purchase price produced using 120% of AMI is still insufficient to pay off the first mortgage, the owner is solely responsible for his/her mortgage debt beyond that adjusted resale affordable purchase price. Please note that the first mortgage lender will not release its lien unless the mortgage is repaid in full. If the first lender does not release its lien because the owner has not or cannot fully repay it, then the sale will be cancelled or the owner will be in default.

#6: Owner Refinancing

To protect its investment and to preserve the intent of the Program, the Agency must approve all refinancing agreements.

Owners can refinance up to the original value of their first mortgage in order to obtain a lower interest rate or withdraw principal paid down on the mortgage.

Owners may also refinance their homes to withdraw up to 50% of the difference between the resale affordable purchase price and their original affordable purchase price, for the

following reasons only:

- To make capital improvements to the home
- To pay for post-secondary educational expenses of a household member
- To meet the cost of an owner's or owner's immediate family member's catastrophic illness
- To secure funds required to implement a marriage dissolution agreement or domestic partnership dissolution agreement.

The owner must submit documentation to the Agency verifying the use of funds for any of the four refinancing purposes above. Funds will not be released without evidence to the Agency's satisfaction.

#7: Permissible Transfers & Resales

Owners may only transfer their homes to other Eligible Buyers or to the Agency. Though each owner bears sole responsibility for finding an Eligible Buyer if s/he seeks to sell his/her unit, the Agency will attempt to assist owners in locating Eligible Buyers, whether through a mailing to interested persons, accessing a waiting list, or conducting a lottery. Once an owner identifies a potential buyer for his/her unit, only the Agency can certify that the buyer is actually an Eligible Buyer.

If an owner has conducted a good faith effort to sell his/her home and still cannot locate an Eligible Buyer after 150 days from the date s/he listed the property for sale, the Agency will authorize a 50% increase to the AMI level defining "Eligible Buyer" for that particular home. ("Good faith effort" means use of all standard marketing tools, such as a Multiple Listing Service listing, advertised open houses, and other, additional advertising.) For example, if an owner's good faith effort to find an Eligible Buyer at 80% of AMI failed after 150 days, s/he could renew the search and include as potential buyers households earning up to 120% of AMI. The resale affordable purchase price would remain the same (i.e., based on the 80% AMI income), thus enhancing the home's marketability to the higher-income households.

#8: Agency Purchase Option

While the Agency may purchase the home as an Eligible Buyer (in a standard sale transaction), it retains an option to purchase the home in the event of owner default, under either the Agency Documents or the first mortgage.

#9: Owner Default and Agency Remedies

An owner is in default of the Agency Documents if any of the following occur:

- A transfer of the property in violation of the Declaration of Resale Restrictions and Option to Purchase;
- Use of the property other than as owner's principal residence (owners must certify that they occupy the home at least 10 months out of every 12 annually);
- Failure to pay required housing costs, such as taxes, homeowner dues, assessments, or insurance;
- Placement of any mortgages, liens or encumbrances on the property that the Agency has not approved;
- Any other violation of the Agency Documents; or
- A default on the first mortgage.

If an owner is in default and doesn't or can't cure the default within the times specified in the Agency Documents or first mortgage documents, the Agency can exercise its purchase option, commence an action for specific performance or an injunction to prevent an impermissible sale, foreclose on its deed of trust, and/or exercise any other remedy permitted by law.

#10: Agency Promissory Note and Deed of Trust

To protect its investment, the Agency requires that all owners execute a promissory note and deed of trust when they purchase their homes. Unlike standard promissory notes for conventional mortgages, the Agency promissory note has no face value and cannot be prepaid. Its purpose is to protect the Agency's investment if an owner defaults on the first mortgage or Agency obligations. An owner default "triggers" the promissory note and Agency deed of trust, which secures the promissory note against the property and is recorded to provide public notice of the owner's obligations under the Program. In the case of default, the promissory note states that the owner must pay the Agency the difference between the resale affordable purchase price and fair market value, in addition to any costs incurred by the Agency to enforce its rights and a default interest payment on the sum due. An independent appraiser will determine fair market value.

Financing for the 3-person, 95% AMI household can again illustrate the issue. This household had a resale affordable purchase price of $265,395. If they defaulted on their loan, and fair market value was, for example, $700,000, they would owe the Agency $434,605 (plus default-related costs) under the Agency's promissory note.

If an owner transfers his/her property according to the Program requirements and complies

with all other Agency and first mortgage obligations, the Agency will simply terminate the promissory note and deed of trust at resale.

#11: Transfer by Marriage, Domestic Partnership, and Inheritance

If an owner marries or enters a domestic partnership, the spouse or partner can become a co-owner by executing an addendum to the Agency Documents. The addendum confers the same rights and obligations of the owner upon the spouse or partner.

Upon the death of a property owner or owners, the home can be transferred to an heir, as long as the heir is an Eligible Buyer approved by the Agency. If the heir does not qualify to occupy the home, the home must be sold according to the terms of the Agency Documents, and the owner's proceeds will transfer to the owner's estate.

#12: Term

The term of the Agency Documents – or the period of time that resale restrictions and all other Agency obligations apply – is 45 years. At the end of the term, owners are obligated to pay to the Agency the difference between the resale affordable purchase price and fair market value (both as calculated at the time the term ends). In lieu of this payment, an owner may opt to renew his/her agreements with the Agency for an additional 45-year term.

ATTACHMENT 18

Agency's Construction Workforce Policy

ATTACHMENT 18

Equal Opportunity Program

Included in this Attachment 18:

1. Small Business Enterprise Agreement
2. Nondiscrimination in Contracts and Benefits
3. Minimum Compensation Policy
4. Healthcare Accountability Policy
5. Construction Workforce Agreement
6. Permanent Workforce Agreement
7. Prevailing Wages

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	Consultant Fees
0	$ 0 – $249,999
1	$ 250,000 – $399,999
2	$ 400,000 – $599,999
3	$ 600,000 – $999,999
4	$1,000,000 – $1,999,999
5	$2,000,000 – 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 (Attachment 1-A hereto) completed by the SBE owner. However, a SBE that was previously certified by the Agency shall submit only the short SBE Eligibility Statement (Attachment 1-B hereto).

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 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 Attachment #1A, "Application for SBE Certification". If you are already an Agency certified SBE, you should execute Attachment #1B, "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

APPLICATION FOR CERTIFICATION
(SMALL BUSINESS ENTERPRISE AFFIDAVIT)
(To be completed by Small Business Enterprise Owner)

_____ _____
(Name of Project) (General Contractor if not the General itself)

1. Name of Firm _____
_____
(Has business operated under another name? _____ If so, explain under item 22.)

2. Contact Person _____
_____

3. Business Address _____
_____
(P. O. Box is Unacceptable)

4. Mailing Address _____
_____
(If different)

5. Telephone Number(s) _____ Fax: _____
_____

6. Email Address(es) _____ _____
_____

7. Is business address or phone number also that of a residence? _____ If so, please explain under item 22.

8. Indicate the type of industry or the business:

☐ Construction ☐ Professional Consultant ☐ Supplier
☐ Manufacturer ☐ Manufacturer's Representative ☐ Other
_____

Identify types of services or products offered. (Equipment operator or trucker should identify the equipment it owns here or under item 22.)

_____
_____
_____
_____
_____

9. Type of ownership: ☐ Corporation ☐ Sole Proprietor ☐ Partnership ☐ Joint Venture Indicate if another entity

_____

10. With your application, please submit true and correct copies of the following documents:

a. Proof of identification, such as birth certificate or driver's license.

b. Contractors' State License No. _____
(Name of person who qualified for license).

***NOTE**: If you have formed a partnership or incorporated since becoming a contractor, the partnership or corporation must have its own Contractors' State License.*

c. Registration and license issued by the State Board of Architectural Examiners, the Board of Registration for Professional Engineers and Land Surveyors, the State Board of Accountancy or the State Bar of California.

d. Local business license(s) and permits(s).

e. Fictitious name filing, if you are doing business as a fictitious entity. The names on the Contractors' State License and the fictitious name filing must match.

f. Partnership Agreement, if the firm is a partnership. The names of the partners must match those shown to be partners on the Contractors' State License.

g. If the firm is a corporation:

i. Articles of Incorporation,
ii. Corporate Bylaws and
iii. Minutes of the first meeting.

h. Joint Venture Agreement (including dollar amount of capital contribution), if a joint venture is the applicant.

i. Federal personal tax returns, Form 1040, in full with W-2 statements and all supporting schedules and statements for ***all*** shareholders for the past three years.

j. Federal corporate tax returns, Form 1120 (including Schedule E), in full with ***all*** supporting schedules and statements such as Form 4562 for the past three years.

k. Resumes pointing out the years of specific experience to qualify for the responsibilities delegated to each ***Management*** person listed in item 15 of this Application.

l. Proof, if the firm is registered as a disadvantaged business under section 8(a) of the Small Business Act.

m. Inventory (not to exceed a 10-page extract), if the firm is a manufacturer or supplier.

11. List the owners who have an interest of five (5) percent or greater:

Name	Date of Ownership	Number of Shares	Vote %	U. S. Citizen (yes/no)

If more Owners, check here ☐ and continue listing under item 22.

12. List the contributions of money, equipment, real estate, or expertise of each of the owners for firms with less than 100 percent disadvantaged ownership.

13. Date firm was established _____. The total number of years the firm has been in business is _____. The number of years the firm has been in business under present ownership is _____. The following is a brief explanation of the change in ownership of the firm (if applicable):

14. Board of Directors:

Name	Title	Date Elected/ Expiration/Term
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

If more Directors, check here ☐ and continue listing under item 22.

15. If the Board of Directors has changed within the last three years, list the names of the former Directors and date of resignation under item 22.

16. **Management**: The following duties are actually performed by the persons indicated below:

a. Preparation of estimates and bids:

by _____ who reports to _____
name name

b. Hiring, firing of management personnel:

by _____ who reports to _____
name name

c. Purchasing of major equipment, material or supplies:

by _____ who reports to _____
name name

d. Financial control:

by _____ who reports to _____
name name

e. Negotiations and approval of contracts:

by _____ who reports to _____
name name

f. Administration of contracts:

by _____ who reports to _____
name name

g. Supervision of field operations:

by _____ who reports to _____
name name

h. Marketing and sales activities:

by _____ who reports to _____
name name

i. Warehouse inventory and control:

by _____ who reports to _____
name name

17. Federal identification no. _____

18. Indicate the firm's gross receipts and average number of employees for the last three tax years:

Year ending _____ Amount _____ Employees _____

Year ending _____ Amount _____ Employees _____

Year ending _____ Amount _____ Employees _____

19. **MANUFACTURERS AND SUPPLIERS ONLY**: For last year:

a. Lowest number of employees _____

b. Highest number of employees _____

c. Number of employees whose job lasted the entire year _____

d. Were any of the employees on another firm's payroll? _____ If so, identify the firm: _____

e. Value of current inventory $_____

f. Location of inventory _____

20. How were applications to other local agencies handled?

Name of local agency Date	SBE?	Approved Yes/No
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
d. _____	_____	_____

21. Name of Surety _____

Name of Agent _____ Telephone No. _____

Bonding Limit _____ Sources of letter of credit _____

22. If the firm or other firms with any of the same officers has previously been denied recognition as an SBE, please explain the circumstances.

_____

_____

_____

23. Identify any owner or management official of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Describe present business relationships, which include sharing space, equipment, financing or employees, as well as common owners. Please use this additional space to supplement the information provided above, especially under items 1, 6, 10, 11, 12 and 13. You may attach additional sheets.

_____

_____

_____

_____

24. The firm intends to subcontract _____ percent of the work to be performed under its contract with _____ to the following:

	Name	SBE Yes/No	Amount of Subcontract	Scope of Work
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____

AFFIDAVIT

(To be completed by Small Business Enterprise Owner)

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of _____

(Name of Firm)

as well as the ownership thereof. Further, the undersigned covenant(s) and agree(s) to provide to the local agency current, complete and accurate information regarding actual joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under state law concerning false statements."

NOTE:

a. The conditions outlined in this affidavit are applicable to any additional information that is required to be provided to authenticate the affiant's firm.

b. You are required to notify the agency if any significant changes occur that would alter your status as an SBE.

c. Section 94.4 of the Streets and Highways Code states that a SBE is subject to a civil penalty of not more than $5,000 if said firm willfully and knowingly makes a false statement with the intent to defraud this certification.

_____

_____

Name of Firm

Name of Firm

_____

_____

Signature

Signature

_____

Name and Title

_____

Name and Title

Date _____

Date _____

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

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

Witness my hand and official seal.

Notary Public

(Seal)

SAN FRANCISCO REDEVELOPMENT AGENCY

INSTRUCTIONS FOR DECLARATION FORM

Nondiscrimination in Contracts and Benefits

A. What is the Nondiscrimination in Contracts Policy?

The San Francisco Redevelopment Agency's Nondiscrimination in Contracts Policy (Policy) requires companies or organizations providing products or services to, or leasing a real property from, the Agency to agree not to discriminate against groups who are protected from discrimination under the Policy, and to include a similar provision in subcontracts and other agreements. Those provisions are the subjects of this form. The Policy is posted on the Web at: www.ci.sf.ca.us/sfra.

If you do not comply with the Policy, the Agency cannot do business with you, except under certain very limited circumstances.

B. What Agency contracts are covered by the Policy?

- Contracts or purchase orders where the Agency purchases products, services or construction with contractors/vendors whose total amount of business with the Agency exceeds a cumulative amount of $5,000 in a 12-month period.
- Leases of property owned by the Agency for a term of 30 days or more. In these cases, the Agency is the landlord. The Policy also applies to leases for a term of 30 days or more where the Agency is the tenant.

C. What are the groups protected from discrimination under the Policy?

You may not discriminate against:

- your employees
- an applicant for employment
- any employee of the Agency or the City and County of San Francisco
- a member of the public having contact with you.

D. What are prohibited types of discrimination?

You may not discriminate against the specified groups for the following reasons (see Question 1a on the declaration form).

- Race
- creed
- ancestry
- age
- sexual orientation
- marital status
- disability
- color
- religion
- national origin
- sex
- gender identity
- domestic partner status
- AIDS/HIV status

In the provision of benefits, you also may not discriminate between employees with spouses and employees with domestic partners, or between the spouses and domestic partners of employees, subject to the conditions listed in F.2 below.

E. How are subcontracts affected?

For any subcontract, sublease, or other subordinate agreement you enter into which is related to a contract you have with the Agency, you must include a nondiscrimination provision (See Question 1b on the Declaration Form). The

subcontracting provision need not include nondiscrimination in benefits as part of the nondiscrimination requirements. If you're unsure whether a contract qualifies as a subcontract, contact the Agency division administering your contract with the Agency. "Subcontract" also includes any subcontract of your subcontractor for performance of 10% or more of the subcontract.

INSTRUCTIONS FOR DECLARATION FORM

Nondiscrimination in Contracts and Benefits

F. Nondiscrimination in benefits for spouses and domestic partners

1. Who are domestic partners?

If your employee and another person are currently registered as domestic partners with a state, county or city that authorizes such registration, then those two people are domestic partners. It doesn't matter where the domestic partners now live or whether they are a same-sex couple or an opposite sex couple. A company/organization may also institute its own domestic partnership registry (contact the Agency for more information).

2. What is nondiscrimination in benefits?

You must provide the same benefits to employees with spouses and employees with domestic partners, and to spouses and domestic partners of employees, subject to the following qualifications (See Question 2c on the Declaration Form).

- If your cost of providing a benefit for an employee with a domestic partner exceeds that of providing it for an employee with a spouse, or vice versa, you may require the employee to pay the excess cost.
- If you are unable to provide the same benefits, despite taking all reasonable measures to do so, you must provide the employee with a cash equivalent. This qualification is intended to address situations where your benefits provider will not provide equal benefits and you are unable to find an alternative source or state or federal law prohibit the provision of equal benefits. (See Question 2d on the Declaration form).
- The Policy does not require any benefits be offered to spouses or domestic partners. It does require, however, that whatever benefits are offered to spouses be offered equally to domestic partners, and vice versa.

3. Examples of benefits

The law is intended to apply to all benefits offered to employees with spouses and employees with domestic partners. A sample list appears in Question 2c on the Declaration Form.

G. Form required

Complete the Declaration Form to tell the Agency whether you comply with the Policy. All parties to a Joint Venture must submit separate Declarations.

Please submit an original of the Declaration Form and keep a copy for your records. If an Agency division should ask you to complete the form again, you may submit a copy of the form you originally submitted (if the information has not changed), unless you are advised otherwise.

H. Attachments

If you provide equal benefits, as indicated by your answers to Question 2c on the Declaration form, **YOU MUST ATTACH DOCUMENTATION TO THIS FORM,** unless such documentation does not exist.

See item 3, "Documentation for Nondiscrimination in Benefits." If documentation does not exist, attach an explanation (e.g., some of your policies are unwritten).

I. If your answers change

If, after you submit the Declaration, your company/organization's nondiscrimination policy or benefits change such that the information you provided to the Agency is no longer accurate, you must advise the Agency promptly by submitting a new Declaration.

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

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: (1) for Commercial Business MCP the wage rate is $10.77. For Nonprofit MCP the wage rate is $9.00. (2) 12 days' paid vacation per year (or cash equivalent); (3) 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, (1) see the complete text of the MCP, available from the Agency's Contract Compliance Department; (2) contact James Fields at (415) 749-2426, Agency's Contract Compliance Department.

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

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 $2.00 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 $60 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; (2) contact James Fields at: (415) 749-2426.

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

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 DDA. 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 DDA 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 DDA 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:

6. 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.

7. 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.

8. 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.

9. 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.

10. 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