

EXCLUSIVE NEGOTIATIONS AGREEMENT

200 Sixth Street

South of Market Redevelopment Project Area

THIS EXCLUSIVE NEGOTIATIONS AGREEMENT (hereinafter “**ENA**” or “**Agreement**”) dated as of November 16, 2010, is between the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California (the “**Agency**”) and Mercy Housing California 51, a California limited partnership (the “**Developer**”).

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

1. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq., the “**Law**”), the Agency undertakes programs for the reconstruction and construction of slums and blighted areas in the City and County of San Francisco.

2. In accordance with the Law, the City and County of San Francisco (the “**City**”), acting through its Board of Supervisors, originally approved as the Redevelopment Plan for the South of Market Earthquake Recovery Redevelopment Project Area (the “**Project Area**”) by Ordinance No. 234-90 adopted on June 11, 1990, and amended by Ordinance No. 276-05 on December 6, 2005. The Redevelopment Plan is referred to as the “South of Market Redevelopment Plan.” In cooperation with the City, the Agency is responsible for implementing the South of Market Redevelopment Plan.

3. The South of Market Redevelopment Plan provides for the redevelopment, construction and revitalization of the area generally bounded by the Seventh Street, Mission Street, Fifth Street, and Harrison Street.

4. The Agency acquired the land and existing building at 200 Sixth Street (the “**Site**”), formerly known as the Hugo Hotel, through an eminent domain action. Redevelopment Agency v. Branch Limited Partnership (Superior Ct.San Francisco, No. CGC-08-475882) final order of condemnation filed October 30, 2009.

5. In acquiring the Site, the Agency used tax exempt bond proceeds to compensate the previous owner.

6. For several years, the building at the Site has been the location of a Defenestration Sculpture, which remains attached to the building by virtue of a Permit to Enter between the Agency and Brian Goggin, Permittee, and which is subject to termination upon ninety (90) day notice to the permittee and other conditions as described in the Permit to Enter. Agency Resolution No. 137-2009 (Dec. 1, 2009).

7. On May 27, 2010, the Agency issued a Housing Development Request for Proposals (the “**RFP**”) for the development and management of very low-income, rental housing and ground

floor uses at the Site. Agency staff made extensive outreach efforts to attract submittals from qualified developers by the June 29, 2010 deadline. The RFP set forth specific submission requirements to be met in order to be fully reviewed by Agency staff. The RFP also set forth that the Agency would seek to enter into an exclusive negotiations agreement for development rights on the Site.

8. The Agency received five submittals, all of which met the minimum threshold requirements defined in the RFP. After a thorough review of the submittals, an interview with an interdisciplinary selection panel, and presentation to the South of Market Project Area Committee, the selection panel unanimously determined the development team lead by the Developer had the strongest submittal and was well-suited to enter into an ENA with the Agency. Subsequently, the Agency Executive Director recommended that the Agency Commission select the Developer and enter into the ENA.

9. At its meeting on November 2, 2010, the Agency Commission authorized the Agency Executive Director to execute an ENA with the Developer to enable the Developer to pursue predevelopment activities for the construction and management of affordable, rental, family housing (“**Project**”). The Agency and Developer are contemplating entering into a ground lease and other agreements. The ENA will further define a series of milestones that will result in the execution of a ground lease agreement (“**Ground Lease**”) for consideration by the Agency Commission after a public hearing, as required by law.

10. The Developer and Agency anticipate that various regulatory approvals and permits are required for the development of the Project, which may include without limitation, environmental review pursuant to the California Environmental Quality Act (“CEQA”) and compliance with the City Planning Code. The Agency has delegated the administration of land use controls to the Planning Department, which will review and approve the Project.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Agency and the Developer agree as follows:

1. **Exclusive Right.**

For the Exclusive Negotiations Period set forth in Section 2 below and subject to the terms and conditions of this Agreement, the Agency and the Developer, acknowledging that time is of the essence, agree to negotiate diligently and in good faith with each other to enter into the Ground Lease and any necessary financing agreements leading to the conveyance, redevelopment and management of the Site (collectively, the “**Agency Agreements**”). The Agency grants to the Developer the exclusive right to negotiate the Ground Lease (the “**Exclusive Right**”) during the exclusive negotiations period. The Agency agrees not to solicit any other proposals or negotiate with any other developer with respect to the subject of the negotiations set forth herein. The negotiations conducted under this Agreement shall be based on the development opportunity described in the RFP and the Schedule of Performance attached as Attachment 2 hereto.

The Developer acknowledges and agrees that under this Agreement the Agency is not committing itself or agreeing to enter into the Agency Agreements or undertake any exchange or transfer of real property, any disposition of any real property interests to the Developer, approve

any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Agency or any agency, commission or department of the City. This Agreement does not constitute the disposition of property.

2. Term.

(a) The term of the Agreement shall be from November 5, 2010 until November 30, 2011, unless extended pursuant to Section 4 below or terminated pursuant to subsection 2(b) below ("**Exclusive Negotiations Period**").

(b) This ENA shall automatically terminate upon the occurrence of any of the following events: (i) the expiration of the Exclusive Negotiations Period; (ii) Developer's breach under the terms of the ENA unless such breach is cured within the period allowed or such default is expressly waived by the Agency in its sole discretion; (iii) Developer's default under the terms of the Agency Agreements unless such default is cured within the period allowed or such default is expressly waived by the Agency in its sole discretion; or (iv) the Agency's execution of a Ground Lease approved by the Agency Commission.

(c) Upon termination, neither party shall have any further rights or obligations except with respect to those matters that survive termination under Section 11.14.

3. Negotiation Deposits; Agency/City Costs.

3.1 Performance Deposit.

In connection with its selection by the Agency Commission as the Developer of the Site in response to the RFP, the Developer has paid to the Agency the cash sum of One Thousand Dollars (\$1,000) as an earnest money deposit (the "**Deposit**"). The Developer will pay to the Agency an additional sum of Nine Thousand Dollars (\$9,000) in cash (the "**Additional Deposit**") at the time it executes the ENA. The Additional Deposit shall be combined with the Deposit to form the performance deposit ("**Performance Deposit**"). Except as provided in Sections 3.1(a) and 3.1(b), the Agency shall hold the Performance Deposit until completion of the development, which is defined as the Developer having completed all project construction, achieved 100% lease up of the project, and submitted IRS form 8609 as required by the California Tax Credit Allocation Committee "**Project Completion**".

(a) Subject to subsection 3.1(b) below, if the parties fail to reach agreement on the Ground Lease despite the Developer's good faith negotiations or if the Agency Agreements are not approved by the Agency Commission, executed and delivered as contemplated hereby for any reason outside of the Developer's control, and, in either instance, the Developer is not in default under this Agreement, then upon termination of this Agreement, the Agency shall within thirty (30) days return the Performance Deposit (together with interest actually accrued thereon) to the Developer.

(b) The parties agree that the Agency's actual damages for unreimbursed administrative expenses (exclusive of any transaction costs covered by Section 3.2 below), in the event of Developer's default would be extremely difficult or impracticable to determine. The parties agree that, considering all the circumstances existing on the date of this Agreement, the amount of the Performance Deposits together with all accrued interest thereon as herein provided

is a reasonable estimate of the damages for unreimbursed administrative expenses that the Agency would incur in such event.

IF THE PARTIES DO NOT REACH AGREEMENT ON THE AGENCY AGREEMENTS OR IF THE AGENCY AGREEMENTS ARE NOT APPROVED, EXECUTED AND DELIVERED AS CONTEMPLATED HEREBY DUE, IN EITHER INSTANCE, TO ANY DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT, THEN, WITHOUT LIMITING ANY OF ITS OTHER REMEDIES HEREUNDER, AT LAW OR IN EQUITY, THE AGENCY SHALL BE ENTITLED TO RETAIN THE PERFORMANCE DEPOSIT, TOGETHER WITH ALL INTEREST THEREON AS HEREIN PROVIDED, AS LIQUIDATED DAMAGES FOR THE UNREIMBURSED ADMINISTRATIVE EXPENSES OF THE AGENCY. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

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3.2 Agency/City Costs.

Entitlement Costs. The Developer shall pay or cause to be paid all costs associated with applying for, obtaining and maintaining any necessary or appropriate entitlements for the development of the Site. The Agency will reimburse the Developer for all Project-related expenses approved by the Agency in its sole discretion, and will endeavor to make such reimbursement within thirty (30) days of Developer's reimbursement request.

4. Extension of Exclusive Negotiations Period.

The Agency's Executive Director may extend the Exclusive Negotiations Period for an additional two (6) month periods beyond the initial term in his/her sole discretion to permit the completion of the negotiations or to comply with statutory public notice requirements.

5. Developer's Obligations.

During the Exclusive Negotiations Period, the Developer agrees that:

5.1 Schedule of Performance.

The Developer shall comply with the requirements of the Schedule of Performance, which is attached as Attachment 2, by completing the identified tasks by the deadlines ("Performance Milestones").

5.2 Other Obligations.

(a) The Developer shall comply with the requirements of all applicable City and Agency ordinances, resolutions, regulations or other Regulatory Approvals in all aspects (planning, design, construction, management and occupancy) of developing the Site, including, without limitation, the South of Market Redevelopment Plan and any amendments thereto, the City Planning Code, the Agency's Small Business Enterprise Program (including, but not limited to, the selection of consultants during the pre-development period), Labor Standards and

Prevailing Wages Provisions, Minimum Compensation Policy, and Health Care Accountability Policy.

(b) At the request of the Agency and/or the City and at the Developer's sole expense, which funds may come from a predevelopment loan if provided by the Agency, the Developer shall prepare (or cause expert consultants approved by the Agency to prepare) and submit all reports, studies or other information reasonably necessary to obtain Regulatory Approvals. Such expenses may be paid with proceeds from the predevelopment loan.

(c) The Developer shall commit sufficient financial and personnel resources required to undertake and complete the Site as a priority project and to fulfill the Developer's obligations under this Agreement in an expeditious fashion.

(d) In making any entry onto the Site, the Developer shall not cause a release or migration of any Hazardous Materials defined in Section 5.3.2 below and shall not cause the Incidental Migration of any Hazardous Material. For purposes of this section, the term "Incidental Migration" shall mean any non-negligent activation, migration, mobilization, movement, relocation, settlement, stirring, passive migration, passive movement, and/or other incidental transport of any Hazardous Substance existing at, on or under the Site prior to the effective date of the Agreement.

(e) In making any entry onto the Site, neither the Developer nor any of its agents, contractors or representatives shall interfere with or obstruct the permitted, lawful use of the Site, including the Interim Use permitted for the display of the Defenestration sculpture, as authorized under the Permit to Enter between Brian Goggin, Permittee, and the Agency (Dec. 1, 2009), attached as Attachment 4.

(f) The Developer shall notify the Agency within five (5) days of any event or circumstance that occurs during the Exclusive Negotiations Period and that causes a material breach of any representation and warranty made by the Developer under Section 9 or any other provision of this Agreement. Material breaches include, but are not limited to, events or circumstances that cause the representations and warranties in this Agreement to be inaccurate or misleading.

5.3 Indemnity.

5.3.1 The Developer shall indemnify and defend the Agency, the City and their respective commissioners, officers, agents and employees (individually or collectively, an "Indemnified Party") from and against any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable Attorneys' Fees and Costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise ("Losses") arising out of (a) any default by the Developer in the observance or performance of any of the Developer's obligations under the ENA (including, without limitation, those obligations set forth in Section 5.2 above), (b) any failure of any representation by the Developer to be correct in all respects when made, (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Site, caused by the negligence or any other act or omission of the Developer and its officers, agents and employees, (d) (any claim, demand or

cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnified Party that relates to or arises out of the Agency Agreements or any transaction contemplated by, or the relationship between the Developer and the Agency under this Agreement, (e) any failure of the Developer or its agents or contractors to comply with all applicable environmental requirements relating to the development of the Site, (f) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency, whether meritorious or not, which directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (e) above, provided that no Indemnified Party shall be entitled to indemnification under this Section for matters caused solely by such Indemnified Party's gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnified Party by reason of a claim arising out of any loss for which the Developer has indemnified the Indemnified Party, and upon written notice from such Indemnified Party, the Developer shall at its sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnified Party. The Indemnified Party shall have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnified Party in connection with the matters covered by this Agreement. The provisions of this paragraph shall survive the termination of this Agreement.

5.3.2 The Developer shall further indemnify the Indemnified Party against any release, spill or escape of Hazardous Materials (as defined below) on or about the Site caused by the Developer or its agents, contractors or representatives; except for losses resulting from the gross negligence or willful misconduct of any of the Indemnified Parties. For purposes hereof, "Hazardous Material" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or under Section 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Site, or are naturally occurring substances on, in or about the Site; and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids:

5.3.3 The indemnity shall include, without limitation, the Developer's obligation to pay reasonable Attorney's Fees and Costs (as defined in Section 11.7) and fees of consultants and experts, laboratory costs, and related costs, as well as the Indemnified Party's costs of investigating any loss.

5.4 Insurance.

5.4.1 Developer's Insurance. Without in any way limiting Developer's indemnification obligations under this Agreement, and subject to approval by the Agency's Risk Manager of the insurers and policy forms, the Developer shall obtain and maintain, at the

Developer's expense, the following insurance and bonds throughout the Term of this Agreement, unless otherwise provided in this Agreement:

5.4.2 Minimum Scope of Insurance. Coverage shall be at as broad as:

- (a) Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).
- (b) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01 covering-any auto).
- (c) Workers' Compensation insurance as required by the State of California and Employers Liability insurance.
- (d) Professional Liability insurance covering all negligent acts, errors and omissions in Developer's Architectural and Engineering Professional Design Services. As an alternative to Developer's providing said Professional Liability insurance, Developer shall require that all professional consultants for the Project have liability insurance covering negligent acts, errors and omissions.

5.4.3 Minimum Limits of Insurance. Developer shall maintain limits no less than:

- (a) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required occurrence limit.
- (b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (c) Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the State of California and Employers Liability limits of \$1,000,000 for each accident, injury, or illness.
- (d) Professional Liability: \$1,000,000 per claim and in the annual aggregate covering Developer's Architectural and Engineering design team-members including all architects, engineers and surveyors. As a preferred alternative, Developer may provide project specific Professional Liability coverage with limits of \$1 Million per claim and \$2 Million in the policy aggregate. Developer shall maintain or cause to be maintained, insurance required under this subsection for at least three (3) years beyond completion of construction. Developer shall provide evidence of such required insurance for three (3) years after completion of construction.

5.4.4 Deductibles and Self-Insured Retentions. Any deductibles or self insured retentions over \$25,000 must be declared to and approved by the Agency's Risk Manager. At the option of the Agency's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the "San Francisco Redevelopment Agency, the City and their respective commissioners, members, officers, agents, and employees", or

Developer shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

5.4.5 Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions.

(a) General Liability and Automobile Coverages.

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

(ii) For claims related to this project, Developer’s insurance coverage shall be primary insurance with respect to “the San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees”. Any insurance or self-insurance maintained by the Agency, the City and their respective commissioners, members, officers, agents, and employees shall be in excess of Developer’s insurance and shall not contribute with it.

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

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

(b) All Coverages. Developer is precluded from suspending, cancelling, terminating, or reducing the coverage or limits of, each insurance policy required by this Section without the prior written consent of the Agency at least thirty (30) days prior to its effective date. Developer shall e-mail a copy of any cancellation notice it receives for any insurance policy required by this Section to the Agency’s Risk Manager within two (2) days of receipt from the insurance carrier.

5.4.6 Acceptability of Insurers. Insurance is to be placed with insurers with a Current Best’s rating of no less than A:VII, unless otherwise approved by the Agency’s Risk Manager.

5.4.7 Verification of Coverage. Developer shall furnish the Agency with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Agency’s Risk Manager before work commences and prior to

any disbursement of funds. The Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

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

5.4.9 Review. The Agency's Risk Manager shall evaluate the insurance coverage required under this Section for adequacy if and when the Exclusive Negotiations Period is extended. The Agency may require the Developer to increase the insurance limits and/or forms of coverage in the reasonable discretion of the Agency's Risk Manager.

5.5 Force Majeure

The occurrence of any of the following events shall excuse performance of such obligations of Developer as are rendered impossible to perform while such event continues: acts of God; strikes; lockouts; labor disputes;; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotions; fire or other casualty; nonperformance by Agency which prevents the performance of Developer; and other causes beyond the control of the Developer. The occurrence of such events shall excuse performance only in the event that the Developer has provided written notice to the Agency within thirty (30) days after the occurrence or commencement of the event of force majeure and such excuse shall terminate thirty (30) days after the termination of the event giving rise to the delay. However, under no circumstances shall this force majeure provision apply to Developer's indemnification and defense obligations under Section 5.3 and/or Developer's insurance obligations under Section 5.4 above.

6. Agency's Obligations.

Subject to the provisions of Section 8, the Agency agrees as follows:

- (a) Subject to environmental review under CEQA and the National Environmental Protection Act (NEPA) as applicable, the public review process and all required governmental approvals, as further provided in this Agreement, the Agency shall use good faith efforts to diligently negotiate, prepare and submit for approval the Agency Agreements.
- (b) The Agency shall make available all public record studies and other documents in the Agency's possession or control as necessary to perform the Developer's due diligence investigations of the Site, provided that the Agency makes no representations or warranties whatsoever regarding the completeness or accuracy of such information and the Developer must perform its own independent analysis.
- (c) The Agency shall reasonably cooperate with the Developer in providing access to the Site for the purpose of performing tests, surveys and

inspections, and obtaining data necessary or appropriate to negotiate the Agency Agreements provided, however, the Developer shall give prior written notice to the Agency of any such entry and shall, if the Agency requires, obtain a Permit to Enter from the Agency for such entry and comply with such insurance and indemnification requirements as the Agency may impose with respect to such inspections as contained in the Permit to Enter. In the case of invasive tests under any permit to enter required and granted by the Agency, the Agency may impose such insurance, indemnification, guaranty and other requirements as the Agency determines appropriate, in its reasonable discretion as contained in the Permit to Enter.

- (d) The Agency shall reasonably cooperate with the Developer in the provision of information and assistance in the filing, processing and obtaining of land use entitlements and regulatory approvals for the Developer's proposed development and operation of the Site, but neither the Agency nor the City shall be required to satisfy any conditions for any approval, except as may be specifically agreed to by the Agency or the City, as applicable, in its respective sole and absolute discretion.

7. **Non-Assignment.**

7.1 **Definitions.**

For purposes of this Section and where such initially capitalized terms are elsewhere used in this Agreement, the following terms shall have the meaning given below:

"Affiliate" means any person that directly or indirectly Controls, is Controlled by or is under Common Control with, the Developer (or a managing or other member of the Developer, as the case may be).

"Control" means the ownership (direct or indirect) by one Person of (i) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of equity interests (including rights to acquire such interests), or (ii) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of interests that have a right to nominate, vote for or otherwise select the members of the board or other governing body that directs or causes the direction of substantially all of the management and policies of that Person.

"Controlled," "Controlling Interest" and "Controlling" have correlative meanings.

"Common Control" means that two Persons are both Controlled by the same other Person.

"Person" means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or federal, state or political subdivision thereof.

"Significant Change" means any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in the Developer.

7.2 Non-Assignment.

The Agency and the Developer acknowledge and agree that the Agency is entering into this Agreement and granting the Exclusive Right to the Developer on the basis of the particular experience, financial capacity, skills and capabilities of the Developer and its members. The Exclusive Right is personal to the Developer and is not assignable and no Significant Change may occur under any circumstance (whether by agreement or operation of law) without the prior written consent of the Agency, which may be given, withheld or conditioned in the Agency's sole and absolute discretion.

8. Default and Remedies.

8.1 Developer's Event of Default.

The occurrence of any of the following (each an "Event of Default") shall constitute a default by the Developer after the Agency gives notice of the default specifying in reasonable detail the basis for the determination of the default and after expiration of the applicable cure period:

- (a) Failure to pay any sums due under this Agreement within thirty (30) days after written notice by the Agency.
- (b) Failure to meet a Performance Milestone contained in the ENA Schedule of Performance.
- (c) Failure of Developer to comply with the terms and conditions set forth in any written notice of default delivered by the Agency to the Developer as a result of the failure by Developer to abide by the terms and conditions of this Agreement.
- (c) Any material breach of any representation and warranty made by the Developer under Section 9 or any other provision of this Agreement unless the Developer notifies the Agency within five (5) business days of the material breach and cures such breach within ten (10) days from the date on which the Developer was obligated to notify the Agency.
- (d) Any assignment, attempted assignment or Significant Change in violation of Section 7.2.
- (e) Any filing of a petition to have the Developer adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization liquidation or arrangement under any bankruptcy or insolvency law, or any assignment for the benefit of creditors, or seeking appointment of a trustee, receiver, liquidator of the Developer or any substantial part of the Developer's assets, if such petition is not dismissed within sixty (60) days.
- (f) The debarment or prohibition of the Developer from doing business with any federal, state or local governmental agency, or any debarment or prohibition of any Affiliate of the Developer from doing business with any federal, state or local governmental agency to the extent such debarment or prohibition of the Affiliate could affect the redevelopment of the Site as contemplated hereby.

- (g) Failure to procure or maintain any of the insurance coverage required hereunder so that there is a lapse in required coverage and such breach is not cured within two (2) business days.
- (h) The occurrence of an uncured default under the terms of any of the Agency Agreements.

8.2 Agency's Remedies.

Remedies. In the event of a default by the Developer, except as otherwise provided in this ENA, the Developer shall have thirty (30) days from the receipt of written notice from the Agency to cure such default, or, if such default cannot reasonably be cured within such 30-day period, the Developer shall commence action to cure such failure within such 30-day period and diligently and continuously prosecutes such action to completion.

(a) If, after the time provided in Section 8.2 above, Developer has not cured the Event of Default, the Agency may, in its sole and absolute discretion, terminate this Agreement and the Exclusive Right. This remedy is not exclusive, but shall be cumulative with any and all remedies available to it at law or in equity and under this Agreement, including but not limited to specific performance. If the Agency chooses to terminate the ENA, the ENA shall be terminated and neither party shall have any rights against or liability to the other, except those provisions that are specified to survive such termination shall remain in full force and effect. Upon any such termination, the Agency shall have the right to retain the Performance Deposit.

(b) **Plans, Specifications, Reports and Studies.** If the Agency terminates this ENA, then subject to the proprietary rights of their authors and any confidentiality agreements and privileges recognized by applicable law, the Developer shall deliver to the Agency copies of any and all reports, studies, document lists and plans regarding the redevelopment of the Site in the Developer's possession or prepared by or on behalf of the Developer (the Developer's "**Work Product**"), but without any representation as to the accuracy of the Work Product. The Developer shall deliver its Work Product within ten (10) days after written demand from the Agency, which obligation shall survive the termination of this Agreement. The Agency may use the Work Product for any purpose relating to the Site, provided that the Agency shall release the Developer and the Developer's contractor, architect, engineer and other consultants ("Developer's Consultants") from any Losses arising out of the Agency's use of such documents, except to the extent that the Agency retains any of the Developer's Consultants and they agree to such continued liability.

8.3 Termination and Developer's Risk.

(a) **Developer's Risk.** The Developer acknowledges and agrees that it is proceeding at its own risk and expense until such time as the Agency Agreements are approved and without any assurance that the Agency Agreements will be approved.

9. Representations and Warranties of the Developer.

9.1 Representations and Warranties.

The Developer represents, warrants and covenants as follows:

(a) **Valid Existence; Good Standing; Joint Venture Relationships.** The Developer is a California limited partnership duly organized and validly existing under the laws

which prohibits former Agency employees and consultants from working on behalf of another party on a matter in which they have participated personally and substantially unless the Agency consents to such scope of work. As to the provisions referred to in clause (i), the Developer does not know of any facts that constitute a violation of such provisions. As to the policy in clause (ii), the Developer has disclosed to the Agency in writing any and all personnel or consultants covered by such policy as of the date of this Agreement, and concurrently herewith the Agency Commission has elected to waive or not to waive the conflict as to such specific personnel or consultants.

(h) Skill and Capacity. The Developer has the skill, resources and financial capacity to acquire, manage and fully redevelop the Site consistent with the development opportunity described in the RFP.

(i) Consultants. As of the date of this Agreement, the Developer has retained the following consultants in connection with the proposed redevelopment of the Site: Kennerly Architecture and Planning. The Developer shall promptly notify the Agency of the termination of any consultant previously approved by the Agency, and the Developer shall, to the extent required to fulfill its obligations under this Agreement, replace such consultant with a new consultant reasonably approved by the Agency. In addition, the Developer shall promptly notify the Agency of the addition of any new consultant associated with the Project. Nothing herein shall limit the provisions of subsection (g) above regarding conflicts of interest.

(j) Not Prohibited from Doing Business. Neither the Developer (nor any Affiliates of the Developer) have been debarred or otherwise prohibited from doing business with any local, state or federal governmental agency.

(k) Business Licenses. The Developer has obtained all licenses required to conduct its business in San Francisco and is not in default of any fees or taxes due to the City and County of San Francisco.

(l) No Claims. As of the date of this Agreement, the Developer does not have any claim, and shall not make any claim, against the Agency and the City, or either of them, or against the Site, or any present or future interest of the Agency or the City therein, directly or indirectly, by reason of: any aspect of the RFP or the developer selection process; any statements, representations, acts or omissions made by the Agency's and/or City's respective officers, commissioners, employees or agents with regard to the Site or any aspect of the negotiations under this Agreement; and the Agency's exercise of discretion, decision and judgment in conformance with this Agreement.

9.2 Survival

The representations and warranties in this Section 9 shall survive any termination of this Agreement.

10. Notices

A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

(i) In the case of a notice or communication to the Agency:

of the State of California. The Developer has all requisite power and authority to own its property and conduct its business as presently conducted. The Developer has made all filings and is in good standing in the jurisdiction of the State of California.

(b) Authority. The Developer has all requisite power and authority to execute and deliver this Agreement and the agreements contemplated by this Agreement and to carry out and perform all of the terms and covenants of this Agreement.

(c) No Limitation on Ability to Perform. Neither the Developer's articles of incorporation nor the organization documents nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of the Developer to enter into and perform all of the terms and covenants of this Agreement. The Developer is not a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument, which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person or entity is required for the due execution, delivery and performance by the Developer of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting the Developer before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Agreement, the ability of the Developer to perform the transactions contemplated by this Agreement or the business, operations, assets or condition of the Developer

(d) Valid Execution. The execution and delivery of this Agreement and the agreements contemplated hereby by the Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms. The Developer has provided to the Agency a written resolution of the Developer authorizing the execution of this Agreement and the agreements contemplated by this Agreement.

(e) Defaults. The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which the Developer may be bound or affected, (B) any law, statute, ordinance, regulation, or (C) the partnership agreement of the Developer

(f) Meeting Financial Obligations; Material Adverse Change. The Developer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and the Developer is not in default or claimed default under any agreement for borrowed money. The Developer shall immediately notify the Agency of any material adverse change in the financial condition of the Developer that affect the Developer's ability to complete the Project and such material adverse change shall constitute a default under this Agreement, subject to the cure and remedy provisions of Section 8.

(g) Conflicts of Interest. The Developer is familiar with (i) Section 87100 et seq. of the California Government Code, which provides that no member, official or employee of the Agency, may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly and (ii) the Agency's Personnel Policy,

11. General Provisions.

11.1 Amendments.

This Agreement may be amended or modified only by a written instrument executed by the Agency and the Developer.

11.2 Severability.

If any provision of this Agreement, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement. Without limiting the foregoing, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this Agreement, the parties shall promptly modify, amend or suspend this Agreement, or any portion of this Agreement, to the extent necessary to comply with such provisions in a manner which preserves to the greatest extent possible the benefits to each of the parties to this Agreement and to the Developer before such conflict with federal or state law. However, if such amendment, modification or suspension would deprive the Agency or the Developer of the substantial benefits derived from this Agreement or make performance unreasonably difficult or expensive, then the affected party may terminate this Agreement upon written notice to the other party. In the event of such termination, neither party shall have any further rights or obligations under this Agreement except as otherwise provided herein.

11.3 Non-Waiver.

No waiver made by either party with respect to the performance, or manner or time of performance, or any obligation of the other party or any condition to its own obligation under this Agreement will be considered (i) a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or (ii) a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

11.4 Non-Liability.

No member, official, agent or employee of the Agency or the City will be personally liable to the Developer, or any successor in interest (if and to the extent permitted under this Agreement), in an event of default by the Agency or for any amount that may become due to the Developer or successor or on any obligations under the terms of this Agreement. No director, officer, agent or employee of the Developer will be personally liable to the Agency in an event of default by the Developer or for any amount that may become due to the Agency or on any obligations under the terms of this Agreement.

11.5 Successors and Assigns; Third Party Beneficiary.

This Agreement shall inure to the benefit of and bind the respective successors and assigns of the Agency and the Developer, subject to the limitations on assignment by the Developer set forth in Section 7 above. The City is an intended third party beneficiary of this Agreement, provided that no approval of the City shall be required to amend this Agreement.

San Francisco Redevelopment Agency
1 South Van Ness Ave., Fifth Floor
San Francisco, CA 94103
Attn: Executive Director
Reference: 200 Sixth Street
Telefacsimile: (415) 749-2590
Telephone: (415) 749-2400

With a copy to:
San Francisco Redevelopment Agency
1 South Van Ness Ave., Fifth Floor
San Francisco, CA 94103
Attn: General Counsel
Reference: 200 Sixth Street
Telefacsimile: (415) 749-2575
Telephone: (415) 749-2400

- (ii) And in the case of a notice or communication sent to the Developer:

Regional Director
Mercy Housing California 51
1360 Mission Street, Suite 300
San Francisco, CA 94103
Telefacsimile: (415) 355- 7101
Telephone: (415) 355- 7100

For the convenience of the parties, copies of notice may also be given by telefacsimile.

Every notice given to a party hereto, pursuant to the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

- (a) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if approval is being requested, shall be clearly marked "Request for Approval under South of Market Redevelopment Project Area, 200 Sixth Street, Exclusive Negotiations Agreement"; and
- (d) if a notice of a disapproval or an objection, which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

Except as provided above with respect to the City, this Agreement is for the exclusive benefit of the parties hereto and not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

11.6 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. As part of the consideration for the Agency's entering into this Agreement, the Developer agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of the Agency, be litigated in courts located within the County of San Francisco, State of California, and the Developer expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon the Developer wherever the Developer may then be located, or by certified or registered mail directed to the Developer at the address set forth in this Agreement.

11.7 Attorneys' Fees and Costs.

If either party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable Attorneys' Fees and Costs (as defined below). Any such Attorneys' Fees and Costs incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be several from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Agency's General Counsel shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Agency's General Counsel's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. "Attorneys' Fees and Costs" means any and all attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, attachment preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

11.8 Interpretation of Agreement.

(a) Attachments. Whenever an "Attachment" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Attachments are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles

and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term “including,” “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) References. Wherever reference is made to any provision, term or matter “in this Agreement,” “herein” or “hereof” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

(e) Recitals. In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail.

(f) No Presumption Against Drafter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

11.9 Entire Agreement.

This Agreement, including the Attachments, contains all the representations and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this Agreement.

11.10 Time for Performance.

(a) Expiration. All performance dates, including cure dates, expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekends and Holidays. A performance date, which falls on a Saturday, Sunday, or City holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Agreement, including, without limitation, each milestone set forth in the attached Schedule of Performance.

11.11 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

11.12 Approvals and Consents.

Unless this Agreement otherwise expressly provides or unless the Community Redevelopment Law requires, all approvals, consents or determinations to be made by or on behalf of (i) the Agency under this Agreement shall be made by the Agency's Executive Director or her designee and (ii) the Developer under this Agreement shall be made by Valerie Agostino (the "Developer Representative") or such other employee or agent of the Developer as the Developer may designate to act as the Developer Representative for a particular matter. Unless otherwise herein provided, whenever approval, consent or satisfaction is required of a party pursuant to this Agreement, it shall not be unreasonably withheld or delayed. The reasons for disapproval shall be stated in reasonable detail in writing. Approval by the Developer or the Agency to or of any act or request by the other shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

11.13 Real Estate Commissions.

The Developer and the Agency each represents to the other that it engaged no broker, agent or finder in connection with this Agreement or the transactions contemplated hereby. In the event any broker, agent or finder makes a claim, the party through whom such claim is made agrees to indemnify the other party from any Losses arising out of such claim.

11.14 Survival.

Notwithstanding anything to the contrary in this Agreement, any indemnity or other obligation that arises and was not satisfied before termination shall survive any termination of this Agreement, except to the extent otherwise provided herein. In the event of any termination of this Agreement (other than a termination due to a default by the Agency), the Developer shall furnish copies of plans, specifications, studies and reports to the Agency as provided in Section 8.2(b).

11.15 Nondiscrimination and Small Business Enterprise Policy.

(a) The Developer covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, religion, creed, national origin, ancestry, sex, gender identity, age, marital or domestic partner status, familial status, lawful source of income (as defined in Section 3304 of the San Francisco Police Code) sexual orientation or disability (including HIV or AIDS status) against any employee or applicant for employment with Developer, in any of the Developer's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social, or other establishments or organizations operated by the Developer.

(b) The Developer shall include in all subcontracts relating to this Agreement a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above

(c) The Developer does not as of the date of this Agreement and will not during the Exclusive Negotiations Period, in any of its operations or in San Francisco or with respect to its operations under this Agreement elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in the Agency's Non-Discrimination in Contracts and Benefits Policy, adopted September 9, 1997, as amended February 4, 1998.

(d). If the Developer intends to utilize subcontractors in the provision of services under this Agreement, it must consult with the Agency's Contract Compliance Division and comply with all the applicable provisions of the Agency's Purchasing Policy and Procedures in regard to subcontracting pursuant to the Small Business Enterprise Policy, which is attached as Attachment 5.

(f) The Developer shall provide all services to the public under this Contract in facilities that are accessible to persons with disabilities as required by state and federal law.

11.17 Relationship of the Parties.

The subject of this Agreement is a private development with neither party acting as the agent of the other party in any respect. None of the provisions in this Agreement shall be deemed to render the Agency a partner in the Developer's business, or joint venturer or member in any joint enterprise with the Developer.

11.18 Cooperation.

In connection with this Agreement, the Developer and the Agency shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, the Developer and the Agency shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Agency and the Developer have duly executed and delivered this Agreement as of the date first written above.

AGENCY

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

By

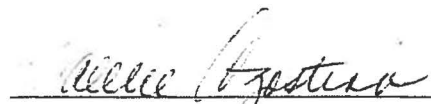

Amy Lee
Deputy Executive Director
Finance and Administration

DEVELOPER

MERCY HOUSING CALIFORNIA 51,
a California limited partnership

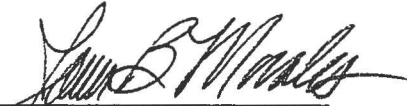
By: Mercy Housing Calwest,
a California nonprofit public benefit
corporation, its general partner

By


Valerie Agostino, Vice President

APPROVED AS TO FORM:

By


James B. Morales
Agency General Counsel

Authorized by Agency Resolution No. 137-2010, adopted Nov 16, 2010.

EXCLUSIVE NEGOTIATIONS AGREEMENT

LIST OF ATTACHMENTS

ATTACHMENT 1	Site Legal Description
ATTACHMENT 2	ENA Schedule of Performance
ATTACHMENT 3	ENA Scope of Development
ATTACHMENT 4	Permit to Enter between Brian Goggin and Agency (Dec. 1, 2009)
ATTACHMENT 5	Small Business Enterprise Policy

ATTACHMENT 1

Site Legal Description

(200 Sixth Street)

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

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

Being part of 100 Vara Block No. 395.

Assessor's Parcel Number: Lot 1, Block 3731

ATTACHMENT 2

200 Sixth Street

ENA Schedule of Performance

No.	Task	Deadline
1.	Submit initial design concept drawings acceptable to the Agency as described in Attachment 3.	By no later than June 30, 2011
2.	Submit historic resource evaluation strategy and plan acceptable to the Agency	By no later than April 31, 2011
2.	Submit a preliminary financing plan acceptable to the Agency.	By no later than October 31, 2011
3.	Submit preliminary marketing plan approved by Agency.	By no later than December 31, 2011
4.	Submit schematic design drawings acceptable to the Agency. The submission shall include the items specified in Attachment 3.	By no later than August 31, 2011
5.	Identify a general contractor and obtain a cost estimate based on the schematic design acceptable to the Agency.	By no later than December 31, 2011
6.	Execution of Ground Lease Agreement.	March 31, 2012

ATTACHMENT 3

200 Sixth Street

ENA Scope of Development

I. GENERAL DESCRIPTION OF DEVELOPMENT

The Site consists of one parcel located in the South of Market Redevelopment Project Area, at 200 Sixth Street at the corner of Sixth and Howard Streets in San Francisco, further described in Attachment 1, "Site Legal Description." The Developer has proposed a development program ("Project"), dated July 29, 2010, that is the basis for Agency approval of the Agreement. The Project shall include the following:

Construction of at least 56 units of affordable housing for very low-income families, including nine floors (eight residential floors and one floor at ground level), common areas, parking and open space. The unit distribution shall be approximately 17 one-bedroom (30%), 22 two-bedroom (40%), 17 three-bedroom (30%) apartments, with units affordable up to 50% of area median income. Affordability levels for all units must be approved by the Agency and will be set pursuant to limits required by selected financing sources.

II. GENERAL DESIGN OBJECTIVES

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

- A. Building(s) shall comply with the objectives of the South of Market Redevelopment Plan ("Redevelopment Plan").
- B. Building(s) shall comply with the objectives and policies of the General Plan, the City Planning Code, and to all applicable codes and ordinances of the City and County of San Francisco as modified by the express provisions of the Redevelopment Plan.
- C. Design and scale of the building façades should be compatible with the surrounding neighborhood context of lodging houses and other residential/commercial mixed-use buildings. As the development is anticipated to approach the 85-foot height limit, the design must be modulated and articulated to break down the apparent mass of the building.
 - C.1 Create an attractive and appropriately sized retail space along Sixth Street at Howard Street.
 - C.2 Maximize active frontages along both streets and minimize the presence of parking, egress, mechanical, and electrical appurtenances along street frontages at the ground floor.

- C.3 Respect the existing pattern of mid-block open space of adjacent parcels.
- D. Any provided parking should be concealed with retail space or other active uses at the ground floor.
- E. Building massing and design should consider privacy, safety, views, and solar access for residences and associated open space(s).
- F. The development shall incorporate sustainable building methods and materials. Use the most feasible cost-effective energy efficient measures, with a minimum requirement of a score of 100 as set forth in the Green Point Rated Program and at a minimum, standards as specified in the City of San Francisco, Department of Building Inspection, Administrative Bulletin No. AB-093. Due to State and local Green Building ordinances, the Agency anticipates the project will greatly exceed this minimum score.

III. DEVELOPMENT STANDARDS

The Development of the Site shall comply with all Redevelopment and Planning Code requirements including but not limited to the following Land Use and Development Standards:

A. Site

1. General. It is the intent of the agency, in evaluating the development, to insure a compatible balance of land coverage, open spaces and architectural design in order to provide a development consistent with the goals and objectives of the redevelopment plan.

B. Architectural

1. General. The development shall be of high architectural quality and appearance, contributing to the surrounding community.
2. Design. The development shall be of a distinctive design and visually interesting as seen from Sixth, Howard and Harriet Streets.
3. Height Limitations. The development shall comply with current City height limits (85').
4. Roof Tops. Any appurtenances occurring on the roof shall be carefully grouped and screened from view in a manner approved by the Agency.
5. Utilities. All utility services on the Site shall be underground or concealed within buildings. Mechanical equipment, meters, and other items shall not be left exposed on building walls, in yard areas or on roofs.

C. Signs

1. All signs on the Site shall be designed and constructed to be complementary elements in a total environment. Each sign shall be of size, shape, material, color, type of construction, method and intensity of lighting, and location to be in scale with and harmonious with the development of the Site and with adjacent sites in the Project Area.
2. No roof signs shall be permitted. No sign shall move or have any moving parts.
3. Signs for commercial portions of the development (including any occupants of storefront/retail spaces at the ground floor facing Sixth or Howard Streets) should be located below the first level of residential windows immediately above the occupancy's storefront.
4. Signs including directional signage for the non-commercial portions of the development shall identify only the development name, logo and/or addresses.
5. All signs visible from public rights-of-way to be located on the Site shall be reviewed and approved by the Agency for design, location, and compatibility with site development prior to submission to other City agencies for approval.

D. Construction

1. General. The construction of the development on the Site shall be performed in a manner which insures minimal disturbance to the adjoining property as well as to the neighborhood as a whole.
2. Dust and Disturbance. During construction of the development of the Premises the Contractor shall take all reasonable precautions to minimize dust and disturbance to adjacent properties.
3. Construction Barricade. During construction the Contractor shall erect and maintain a construction barricade at the perimeter of the Site, not less than 8 feet in height and of a design approved by the Agency.
4. Pile driving. Pile driving, as required, shall only be allowed from 8 a.m. to 5 p.m., Monday through Friday.

IV. DEVELOPER RESPONSIBILITIES

- A. In addition to the other Developer responsibilities set forth elsewhere in this Agreement, the Developer shall be responsible, at its sole expense, for the development of the Site and the installation and/or coordination of all public

improvements required for the development of the Site. Such public improvements, whether within the Site or in the adjacent public right-of-way, including, but shall not be limited to, the following:

1. Completion of an evaluation of the existing building, through an environmental impact review process as needed, as a potential historic resource.
2. All site preparation activities on the Site, including demolition as required.
3. All utility services required for the development either within the Site or the adjacent public right-of-way including, but not limited to, the following:
 - (a) Water
 - (b) Power
 - (c) Sewer
 - (d) Storm Drain
 - (e) Natural Gas
 - (f) Telephone

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

V. **SUBMITTALS**

This project is subject to review by various other authorities, including but not limited to the San Francisco Planning Department and Department of Building Inspection, whose requirements are not included in this document. The Developer shall submit Design and Construction Documents to the Agency which shall include, but not be limited to, the following:

A. **Basic Design Concept**(5 sets of drawings)

The following documentation is required:

1. Written statement of program to indicate the size and uses of the proposed project, number of parking and loading spaces, structural system, sustainability ("green" building) strategies, and principal building materials.
2. Site plan showing adjacent buildings as well as the ground floor of the proposed development including square footages. Scale: minimum 1/16"=1'0

3. Site sections showing all proposed buildings, amenities, and adjacent streets and buildings. Scale: minimum 1/16"=1'0
4. Building plans and sections of all proposed buildings at 1/16" scale.
5. Typical unit plans at 1/8" scale.
6. Roof plan(s) showing proposed mechanical equipment zones.
7. Sketches or perspective renderings to illustrate the character of the proposed development.

B. Schematic Design (5 sets of drawings)

The following documentation is required, and shall be presented to the Agency Commission for review:

1. Written statement of program to indicate the size and uses of the proposed project, number of parking and loading spaces, structural system, sustainability ("green" building) strategies, and principal building materials.
2. Site Plan showing buildings, landscaped areas, parking areas, loading areas, roads and sidewalks. All land uses shall be designated. Streets and points of vehicular and pedestrian access shall be shown. Scale: minimum 1/8"=1'0
3. Site sections showing all buildings and streets. Scale: minimum 1/8"=1'0
4. All building plans. Scale: minimum 1/8"=1'0
5. All building elevations. Scale: minimum 1/8"=1'0
6. Principal building sections (two to four sections as required to illustrate design). Scale: minimum 1/8"=1'0
7. Typical unit plans at 1/4" = 1'-0" scale.
8. Three dimensional building perspectives or renderings
9. Schematic exterior signage drawings (and perspectives as required by Agency staff) indicating locations and types of the proposed exterior signs.
10. Exterior materials and colors sample board.

C. Design Development

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

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

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

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

2. All building plans and elevations.
3. Building Sections showing cross sections as required to illustrate building design.
4. Conceptual project details illustrating structural, mechanical and plumbing systems; principal building systems (exterior envelope, foundations, and party wall, floor/ceiling and roof/ceiling assemblies); key design details; and bathroom and kitchen interior elevations. These details may be supplemented and complemented by the written statement (below).
5. Exterior sign locations and sizes.
6. Perspective sketches (at eye level) and/or model showing the architectural character of the proposed design.
7. Outline Specifications for materials and methods of construction.
8. Written statement to indicate the size and uses of the proposed project, number of parking and loading spaces, structural system, mechanical and plumbing systems, sustainability ("green" building) methods, and principal building systems (exterior envelope, foundations, and party wall,

floor/ceiling and roof/ceiling assemblies). Statement is to include the major building dimensions and gross area of buildings.

9. Where variances, waivers, or deviations from existing Agency, City, State, or Federal regulations are proposed, they shall be listed and progress toward obtaining such variances shall be stated.
10. Preliminary structural plans and sections.
11. Preliminary Cost Estimates provided by the general contractor selected by the Developer in compliance with the Agency's Contract Compliance requirements.

D. Construction Documents

Upon acceptance by the Agency of the Design Development documentation, the following documentation will be required:

1. Completed Site Plans for the final parcel development to working drawing level of detail.
2. Completed Working Drawings and Specifications ready for bidding.
3. Complete presentation of all exterior materials and color schedules including samples, if appropriate.
4. Complete designs for all exterior signs and graphics.
5. Final cost estimates.

