GROUND LEASE AGREEMENT

TRANSBAY BLOCK 2 EAST CHILDCARE AND COMMUNITY COMMERCIAL AIR SPACE PARCEL

by and between

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

and

TRANSBAY 2 FAMILY COMMERCIAL LLC,

a California limited liability company

for

TRANSBAY BLOCK 2 EAST CHILDCARE AND COMMUNITY COMMERCIAL SPACES

[ADDRESS]

San Francisco, CA 94105

DATED AND EXECUTED AS OF [ ], 2024

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CHILDCARE/COMMUNITY COMMERCIAL GROUND LEASE AGREEMENT

TRANSBAY BLOCK 2 EAST
CHILDCARE/COMMUNITY COMMERCIAL AIR SPACE PARCEL

THIS CHILDCARE AND COMMUNITY COMMERCIAL GROUND LEASE AGREEMENT ("**Lease**") is entered into as of [____________________], 2024 by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California (commonly known as the Office of Community Investment and Infrastructure and referred to herein as "**OCII**" or "**Landlord**"), and TRANSBAY 2 FAMILY COMMERCIAL LLC, a California limited liability company (consisting of Mercy Housing Calwest), as tenant ("**Tenant**"). The "**Effective Date**" of this Lease is the date of recordation of the Memorandum of this Lease in the Official Records of the City and County of San Francisco.

RECITALS

A. OCII is the fee owner of certain real property described in Exhibit 1 attached hereto (the "**Site**").

B. In furtherance of the objectives of the Community Redevelopment Law of the State of California, the former Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") undertook programs to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area ("**Project Area**").

C. In 2003, the Transbay Joint Powers Authority ("**TJPA**"), the City and County of San Francisco ("**City**") and the State of California ("**State**") entered into a Cooperative Agreement setting forth the process for the transfer of certain State-owned parcels in the Project Area to the City and the TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1, which requires that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households ("**Transbay Affordable Housing Obligation**"). In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement ("**Implementation Agreement**") which incorporates the affordable housing requirements of AB 812 and requires the Former Agency (now OCII) to prepare and sell certain formerly State-owned parcels, to construct and fund new infrastructure improvements (such as parks and streetscapes), and to meet affordable housing obligations.

D. The Board of Supervisors of the City and County of San Francisco ("**Board of Supervisors**") approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006, filed in the Office of the Recorder of the City and County of San Francisco ("**Official Records**") as Document No. 2006-I224836, as amended by Ordinance No. 84-15 (June 16, 2015) as Document No. 2015-K135871, as amended by Ordinance No. 62-16 (April 26, 2016) as Document No. 2016-K333253,

and as amended by Ordinance No. 09-23 (January 24, 2023) as Document No. 2023041529 (and as it may be further amended from time to time, the "**Redevelopment Plan**").

E. The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the land use controls of the Redevelopment Plan and the Development Controls and Design Guidelines for the Transbay Redevelopment Project (2005) (and as currently amended "**Development Controls**") are applicable and administered by the Former Agency (now OCII), and Zone Two in which the San Francisco Planning Code is applicable and administered by the City Planning Department.

F. On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency, by operation of law pursuant to California Health and Safety Code Section 34170 et seq. ("**Redevelopment Dissolution Law**"). Under the authority of the Redevelopment Dissolution Law and San Francisco Ordinance No. 215-12 (October 4, 2012) (establishing the Successor Agency Commission ("**Commission**") and delegating to it state authority under the Redevelopment Dissolution Law), OCII is administering the enforceable obligations of the Former Agency. The Redevelopment Plan, Development Controls, Transbay Affordable Housing Obligation, Implementation Agreement and other relevant Project Area documents remain in effect and OCII retains all affordable housing obligations in the Project Area.

G. Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal. Health & Safety Code § 34177.5(a). On April 15, 2013, the California Department of Finance ("**DOF**") finally and conclusively determined that the Transbay Affordable Housing Obligation and the Implementation Agreement is a continuing enforceable obligation of OCII under the Redevelopment Dissolution Law. DOF has confirmed that "any sale, transfer, or conveyance of property related to [the Transbay Final and Conclusive Determination] is authorized." Email from Justyn Howard, Assistant Program Budget Manager, DOF, to Tiffany Bohee, Executive Director, OCII (September 10, 2013, 09:17 am).

H. In accordance with its obligations under the Redevelopment Plan, the Transbay Affordable Housing Obligation and the Implementation Agreement, OCII intends to fund the development of two affordable housing developments on Block 2 as said block is depicted in the Redevelopment Plan ("**Block 2**"), by subdividing Block 2 into two vertical subdivisions ("**Block 2 West**" and "**Block 2 East**"), providing a subsidy for development and operation of mixed-use residential and ground-floor community commercial developments on Block 2 West and Block 2 East, and entering into ground lease agreements with affordable housing developers to cause the construction and operation of the two developments. OCII anticipates that its subsidy will facilitate additional public and private financing necessary to make the development and operation of the Block 2 financially feasible.

I. On April 6, 2021, by Resolution No. 09-2021, the Commission affirmed the selection of the development team for Block 2, including Mercy Housing California ("**Mercy**", the sole member of Tenant) and co-developer Chinatown Community Development Center ("**CCDC**") and approved an Exclusive Negotiations Agreement ("**ENA**"). In accordance with Mercy and CCDC's development proposal and their Joint Development Agreement dated as of March 30, 2021 ("**JDA**"), which defines the roles and responsibilities of Mercy and CCDC in

developing Block 2, including requiring commercial affiliates of Mercy and CCDC to enter into a retail leasing agreement, reasonably reviewed and approved by OCII, providing Mercy commercial affiliate Mercy Commercial California ("**Mercy Commercial**") with control over the marketing and leasing of community commercial spaces developed on the Block 2 Site ("**Community Commercial Leasing Agreement**"), subject to the requirements of this Lease and of any similar agreement between OCII and Mercy or an affiliate of CCDC.

J. On November 1, 2022, by Resolution Nos. 39-2022 through 44-2022, the Commission recommended an amendment to the Redevelopment Plan authorizing additional height and bulk for Block 2, conditionally approved schematic designs and related actions modifying the scope of development for Block 2 to include approximately 335 affordable residential units and approximately 11,351 square feet of community commercial space in two separate buildings on Block 2 comprised of 151 residential units, amenities and open space, and 2,945 square feet of commercial space on Block 2 West ("**Block 2 West Project**") and 184 residential units, amenities and open space, and 8,406 square feet of community commercial space ("**Block 2 East Project**"). On February 3, 2023, by Ordinance No. 09-23, the City adopted amendments to the Redevelopment Plan permitting the modified scope for the development of Block 2.

K. To maximize the ability of the residential portion of the Block 2 East Project (the "**Residential Component**") to obtain affordable housing financing, Mercy determined that the Project (as defined in Recital N below) should be constructed separately from the Residential Component by an affiliate of Mercy and within a separate air rights parcel under a separate ground lease and loan agreement. Mercy succeeded in obtaining a State affordable housing bond and tax credit allocations for the Residential Component on December 6, 2023.

L. The Project and the Residential Component are integrated portions of the overall Block 2 East Project, with the Project providing community-focused uses that are beneficial to residents of the Residential Component and the surrounding community, and the Residential Component providing a stable base of customers for the goods and services provided in the Project.

M. The Development Controls and Design Guidelines for the Transbay Redevelopment Project (2005) ("**DCDG**") states that "[g]round floor commercial spaces are required along the Folsom Boulevard frontage." DCDG at p. 24, section C.3. of Zone One-Transbay Downtown Residential. The Block 2 East Project includes frontage along Folsom Boulevard and therefore must include commercial space.

N. Tenant intends to construct a commercial space consisting of three (3) community-serving commercial units, including one approximately 6,447 square-foot unit intended for use as a childcare facility, finished to a warm shell condition (in compliance with the Mayor's Office of Housing and Community Development ("MOHCD") Commercial Guidelines) totaling approximately 8,406 square feet (each, a "**Community Commercial Unit**") and an approximately 600 square-foot ground floor private internal courtyard, and an approximately 1,200 square foot second floor patio for childcare use ("**Courtyard**"), on Block 2 East, all as more particularly set forth in the Schematic Design conditionally approved on November 1, 2022 by Commission Resolution No. 44-2022, and as further set forth in Design Development Documents

approved by OCII on October 4, 2023 and as may be further revised in accordance with Redevelopment Requirements (collectively, the "**Project**").

O. On August 4, 2023, the Citywide Affordable Housing Loan Committee approved a total OCII subsidy for the development of the Block 2 East Project in an aggregate amount not to exceed Seventy-Two Million Nine Hundred Seventy Two Thousand One Hundred Seventy Nine Dollars ($72,972,179) comprised of (i) an approximately $8,676,682 permanent loan to fund construction of the Project ("**Community Commercial Loan**"); (ii) an approximately $61,961,845 permanent loan for the construction and operation of the Residential Component (as defined in Recital N, below); and (iii) approximately $2,333,653 to reimburse costs associated with site preparation.

P. On __________, 2024, by Resolution No. __-2024, the Commission authorized a Community Commercial Loan Agreement by and between OCII and Tenant for disbursement of the Community Commercial Loan for development and operation of the Project ("**Community Commercial Loan Agreement**"), and this Lease by and between OCII and the Tenant for development and operation of the Project on the Site. Also on _____, 2024, the Commission separately approved a loan and residential ground lease for the purpose of constructing and thereafter operating on Block 2 East approximately one eighty two (182) units of low-income rental housing and two unrestricted managers' units ("**Residential Component**").

Q. In furtherance of the foregoing, OCII has subdivided Block 2 by Final Subdivision Map No. 11541 (recorded in the Official Records on December 1, 2023 as Document No. 2023097238 in Book 53 of Parcel Maps at Pages 160 to 163, "**Final Map**"), creating two vertical subdivisions of roughly equal size (Parcels 015 and 016 of the Final Map constituting Block 2 West and Parcels 017 and 018 of the Final Map constituting Block 2 East). The Project will be constructed within the Site, which is Parcel 018 of the Final Map. The Residential Component of Block 2 East will be constructed within Parcel 017 of the Final Map (the "**Residential Parcel**").

R. OCII now intends to lease the Site to Tenant for the purposes of constructing and maintaining the Project on the Site, in accordance with the terms of this Lease.

S. Upon completion of the Project, OCII intends to assign its rights and obligations under this Lease and the Loan Documents (as defined herein), together with conveyance of fee title to Block 2 East (including the Site and the Residential Component) as a mixed-use housing assets to MOHCD, which is the designated Housing Successor of the City and County of San Francisco under Board of Supervisors Resolution 11-12 (January 24, 2012), as required by Redevelopment Dissolution Law, Health & Safety Code § 34176 (a), and OCII's approved Long-Term Property Management Plan dated December 2015.

T. As a mixed-use asset under Section 34176 (f) of the Health and Safety Code, the Residential Component and the Project will be transferred to MOHCD as an affordable housing asset because of the overall value to the community and the benefit to taxing entities of keeping these uses together.

NOW, THEREFORE, in consideration of the mutual promises and covenants, the purposes stated in the above Recitals, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant (each a "**Party**" and collectively the "**Parties**") hereby agree as follows:

ARTICLE 1 PREMISES; TERMS; EXTENSION OPTIONS; DEFINITIONS

1.01 Premises.

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Site together with all appurtenant rights, privileges, and licenses as of the Effective Date, for and in consideration of the ground rents and the covenants and agreements contained in this Lease.

1.02 Initial Term.

The Term of this Lease (the "**Term**") will commence on the Effective Date and will be coterminous with the term of any ground lease for the Residential Component.

1.03 Notice of Extension.

Provided that the Tenant is not in default under the terms of this Lease or the Loan Documents beyond any notice, grace or cure period either at the time of giving of an Extension Notice (defined below) or on the Termination Date, not later than one hundred eighty (180) days before the Termination Date, the Tenant may notify Landlord in writing that it wishes to exercise its option to extend the term of this Lease (an "**Extension Notice**"). The Term will be extended for twenty-four (24) years from the Termination Date upon Tenant's exercise of this option, for a total Term not to exceed ninety-nine (99) years; provided, however, that in all circumstances, the Term of this Lease will be coterminous with the term of any ground lease for the Residential Component.

1.04 Termination Concurrent with Ground Lease for Residential Component.

Notwithstanding anything to the contrary herein or in the Loan Documents, this Lease will automatically terminate upon the termination of any ground lease for the Residential Component, unless specified in writing by Landlord prior to the termination of said Residential Component ground lease. Tenant will have no right to cure any default under any Residential Component ground lease or otherwise object to a termination of this Lease based on termination of any Residential Component ground lease.

1.05 Definitions and Exhibits.

All capitalized terms used herein have the meanings given them when first defined or as set forth in this Section 1.05, unless the context clearly requires otherwise. Whenever an article, section, subsection, or paragraph is referenced, it is a reference to this Lease unless otherwise

specifically referenced. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Attachments are incorporated herein.

"**Additional Ground Rent**" means all sums (other than Ground Rent) that may be or become payable by Tenant to Landlord under this Lease.

"**Annual Statement**" is defined in Section 3.01(e).

"**Base Rent**" is defined in Section 3.01(a).

"**Block 2**" is defined in Recital H.

"**Block 2 East**" is defined in Recital H.

"**Block 2 West**" is defined in Recital H.

"**Block 2 East Project**" is defined in Recital J.

"**Books and Records**" is defined in Section 3.01(f).

"**Business Day**" means a day in which normal business is transacted. Generally, Monday through Friday but not weekends or holidays.

"**Carrying Costs**" is defined in Section 3.02.

"**Certificate of Occupancy**" means a Temporary Certificate of Occupancy or a Final Certificate of Occupancy as issued by the San Francisco Department of Building Inspection.

"**CCDC**" is defined in Recital I.

"**Change**" is defined in Section 8.01(b).

"**Certificate of Completion**" is defined in Section 7.01.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**Claim(s)**" is defined in Section 20.01.

"**Commercial Use**" has the meaning set forth in the MOHCD Commercial Underwriting Guidelines.

"**Common Interest Agreements**" is defined in Section 5.04.

"**Community Commercial Loan**" is defined in Recital O.

"**Community Commercial Spaces Operating Agreement**" has the meaning set forth in Recital I.

"**Community Commercial Unit**" is defined in Recital M.

"**Community Serving Use**" has the meaning set forth in the MOHCD Commercial Underwriting Guidelines.

"**Condemnation**" means the taking of all or any part of any property or the possession thereof under the power of eminent domain or voluntary sale of all or any part of any property to any person having the power of eminent domain, provided that the property or such part thereof is then under the threat of condemnation.

"**Condemnation Date**" means the earlier of: (a) the date when possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

"**Construction Documents**" is defined in Section 6.02.

"**Courtyard**" is defined in Recital N.

"**Declaration of Restrictions**" means the restrictions and covenants substantially in the form of Exhibit K to the Loan Documents.

"**Effective Date**" is defined in the introductory paragraph hereof.

"**Environmental Law**" is defined in Section 20.02(b)(ii).

"**Event of Default**" is defined in Section 25.01.

"**Extension Notice**" is defined in Section 1.03.

"**Facilities Condition Report**" has the meaning set forth in Section 15.03.

"**Final Financial Plan**" has the meaning set forth in the Loan Documents.

"**Force Majeure**" is defined in Section 25.02.

"**Former Agency**" is defined in Recital B.

"**Ground Rent**" is defined in Section 3.01.

"**Hazardous Substance**" is defined in Section 20.02(b)(i).

"**Implementation Agreement**" is defined in Recital C.

"**Impositions**" is defined in Section 11.01(b).

"**Improvements**" means all physical construction, buildings (or portions thereof), structures and anything else to be erected, built, placed, installed or constructed upon or within the Site (exclusive of personal property, and furniture, fixtures and equipment).

"**Indemnified Party or Parties**" is defined in Section 20.01.

"**Landlord**" is defined in the introductory paragraph hereof.

"**Laws**" shall mean all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, or the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to the Premises or any part thereof, including, without limitation, any vault space, sidewalks, curbs or alleyways, use thereof and the buildings and improvements thereon, and similarly the phrase "Law and Ordinance" shall be construed to mean the same as the above in the singular as well as the plural.

"**Lease**" is defined in the introductory paragraph hereof, and means this ground lease agreement.

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

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

"**Leasehold Mortgage**" means any mortgage, deed of trust, trust indenture, letter of credit or other security instrument, and any assignment of the rents, issues and profits from the Premises, or any portion thereof, which constitute a lien on the Leasehold Estate.

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

"**Memorandum of Ground Lease"** has the meaning set forth in Article 50. A form of the Memorandum of Ground Lease is included as Exhibit 4.

"**MOHCD**" means the San Francisco Mayor's Office of Housing and Community Development, the Housing Successor to the Redevelopment Agency of the City and County of San Francisco, as designated under Board of Supervisors Resolution No. 11-12 (January 26, 2012).

"**MOHCD Commercial Underwriting Guidelines**" means MOHCD's Commercial Underwriting Guidelines effective March 3, 2023, as they may be amended from time to time, or any similar guidance later promulgated by MOHCD.

"**Mortgagee**" means the holder of a Leasehold Mortgage.

"**Net Commercial Cash Flow**" means Commercial Income minus Commercial Expenses for a given period.

"**Occupant**" or "**Occupants**" means any Community Commercial Unit subtenant, licensees, concessionaire, or other person, firm or entity entitled to use and occupy any area within the Premises under Tenant.

"**OCII**" means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California and commonly referred to the Office of Community Investment and Infrastructure, Landlord under this Lease.

"**Official Records**" is defined in Recital D.

"**Percentage Rent**" means forty percent (40%) of annual Net Commercial Cash Flow.

"**Permitted Exceptions**" means liens in favor of the Landlord, real property taxes and assessments that are not delinquent, any leasehold liens created in accordance with Article 23, and any other liens and encumbrances the Landlord expressly approves in writing.

"**Personal Property**" means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other personalty that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

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

"**Prime Rate**" as reported by the Wall Street Journal's bank survey.

"**Prohibited Use**" is defined in Section 9.02.

"**Project**" is defined in Recital N. If indicated by context, Project means the Leasehold Estate and the fee interest in the Improvements on the Site.

"**Project Area**" is defined in Recital B.

"**Project Expenses**" means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (a) all charges incurred

in the operation of the Project for utilities, maintenance, common area maintenance ("CAM") charges and other fees due and payable under Common Interest Agreements, Carrying Costs, Impositions, audits, income taxes, franchise taxes, real estate taxes and assessments, asset management fees, and premiums for insurance required under this Lease or by other Mortgagees providing secured financing for the Project; (b) all other expenses actually incurred by Tenant to cover operating costs of the Project, including maintenance, repairs, and turnover expenses; (c) required, or necessary, deposits to the Replacement Reserve Account, Operating Reserve Account, Leasing Reserve Account, Tenant Improvements Reserve Account, and any other reserve account required under the Loan Documents or required by another Mortgagee or regulatory agency, each as approved by OCII and MOHCD pursuant to the Final Financial Plan; (d) annual Ground Rent payments and Percentage Rent payments (if any); and (e) any extraordinary expenses approved in advance by OCII (other than expenses paid from any reserve account). Project Expenses excludes depreciation, amortization, depletion, other non-cash expenses or expenditures from reserve accounts.

"**Project Fees**" means any fees established in the Final Financial Plan and/or consistent with the limitations set out in the MOHCD Commercial Guidelines.

"**Project Income**" means all revenue, income, receipts in any form, and other consideration received by Tenant from the operation of the Project, including without limitation: all rents, fees, deposits, accrued interest disbursed from any reserve account required under the Loan Documents for a purpose other than that for which the reserve account was established; reimbursements and other charges paid to Tenant in connection with the Project; and the proceeds of business interruption or similar insurance. Project Income does not include interest accruing on any portion of the Community Commercial Loan.

"**Public Benefit Use**" is a land use, typically programs or services, that primarily benefits low-income persons, is implemented by one or more 501(c)(3) public benefit corporations, and has been identified by the City or community as a priority use.

"**Redevelopment Dissolution Law**" is defined in Recital F.

"**Redevelopment Plan**" is defined in Recital D.

"**Redevelopment Requirements**" means Redevelopment Plan and Plan Documents (as defined in the Redevelopment Plan).

"**Release**" is defined in Section 20.02(b)(iii).

"**Residential Component**" is defined in Recital O.

"**Residential Parcel**" is defined in Recital P.

"**Schedule of Performance**" is attached hereto as Exhibit 2.

"**Significant Change**" is defined in Section 19.01.

"**Site**" is defined in Recital A.

"**Space Sublease**" means any lease, sublease, license, concession or other agreement by which any Tenant leases, subleases, demises, licenses or otherwise grants to any person, firm or corporation, in conformity with the provisions of this Lease, the right to occupy portions of the Premises to the exclusion of others.

"**Space Subtenant**" means any person, firm or corporation, including its agents, subtenants, assignees, licensees, and concessionaires, that leases, occupies or has the right to occupy under and by virtue of a Space Sublease or otherwise occupies and/or conducts any operation of any kind in the Project.

"**Subtenant Improvements**" means any fixtures, furniture, furnishings, equipment, machinery, supplies and other personalty of a quantity and quality necessary for the occupancy of any Space Subtenant.

"Successor Agency" means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure or OCII, and its successors and/or assigns.

"**Surplus Cash**" means all Project Income in any given Lease Year remaining after payment of Project Expenses and Project Fees. The amount of Surplus Cash will be based on figures contained in audited financial statements. All permitted uses and distributions of Surplus Cash will be governed by Section 5.03(d) of this Lease.

"**Tenant**" is defined in the introductory paragraph hereof.

"**Term**" means the period of time during which this Lease is effective, commencing as of the Effective Date and ending upon expiration or termination in accordance with Section 1.02.

"**Termination Date**" is defined in Section 1.02.

"**Transbay Affordable Housing Obligation**" is defined in Recital C.

ARTICLE 2 CONDITION OF SITE – "AS-IS"

2.01 As-Is Condition.

Tenant acknowledges and agrees that Tenant is familiar with Block 2 and the Site, the Site is an air rights parcel created by vertical subdivision of Block 2, and the Site is being leased and accepted in its "AS IS" condition, without any improvements or alterations by Landlord, without representation or warranty of any kind, and subject to all applicable Laws governing their use, development, occupancy and possession, and Tenant agrees to take possession of the Premises in its "AS IS" condition on the Effective Date, subject to the provisions of this Lease. Tenant represents and warrants to Landlord that Tenant has investigated and inspected, either

independently or through agents of Tenant's own choosing the condition of Block 2 East and the Site and the suitability of the Site for Tenant's business and intended use (including without limitation the Phase I and Phase II Environmental Site Assessment Reports prepared by AEW Engineering, Inc., dated November 3, 2020 and December 4, 2023 respectively, the contents of which shall be considered disclosed to and acknowledged by Tenant for purposes of compliance with any applicable Laws). Tenant acknowledges and agrees that neither Landlord nor any of its agents have made, and Landlord hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Site, the physical or environmental condition of Block 2 East or the Site, the present or future suitability of the Site for Tenant's business, or any other matter whatsoever relating to Block 2 East or the Site, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose; it being expressly understood that the Site is being leased in an "AS IS" condition with respect to all matters.

2.02 Accessibility Disclosure.

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

ARTICLE 3 RENT AND FINANCIAL ACCOUNTING

3.01 Ground Rent During Term.

Tenant shall pay Landlord per lease year (i) Base Rent as defined in subsection (a) below, and (ii) if applicable, Percentage Rent, as defined in subsection (b), below, without offset of any kind and without necessity of demand, notice or invoice from Landlord (together, "**Ground Rent**").

(a) Base Rent.

(b) "**Base Rent**" means, One and No/100 Dollars ($1.00) for any given Lease Year (or, as applicable, for any partial Lease Year, an amount prorated to the duration of the partial Lease Year). Base Rent shall be due and payable in arrears on January 31st following the Lease Year for which it is owed; provided, however, that at Tenant's election, Tenant may prepay the cumulative Base Rent for the entire Term in one lump sum in the First Lease Year.

(c) Percentage Rent. Commencing immediately upon full repayment of the Community Commercial Loan, Tenant shall owe Percentage Rent (if any) to Landlord, payable to Landlord in accordance with this subsection. "**Percentage Rent**" means forty percent (40%) of the "**Net Commercial Cash Flow**," being Project Income minus Project Expenses and Project Fees (if any) for the applicable Lease Year (or portion thereof).

(i) Payments of Percentage Rent.

(1) Except for the Last Lease Year, Percentage Rent shall be paid to OCII in arrears on June 30th following the Lease Year for which it is owed. For the Last Lease Year, Percentage Rent shall be paid on or before the [sixtieth (60th) day immediately following the end of the Term (which obligation shall survive the expiration of the Term, including by early termination).]

(2) Landlord's acceptance of any sums paid by Tenant as Percentage Rent as shown by the applicable Annual Statement (defined below) will not be an admission of the accuracy of the Annual Statement or the amount of the Percentage Rent payment. Landlord's receipt of a portion of Percentage Rent will be deemed strictly as rental and nothing in this Lease will be construed to create the legal relation of a partnership or joint venture between Landlord and Tenant.

(3) Tenant will maintain adequate accounting systems and controls reasonably satisfactory to OCII to ensure that Project Income collected and all Project Expenses incurred are properly accounted for and recorded on a cash basis.

(4) Any provision to the contrary notwithstanding, it will be a material breach of this Lease if, at any time, Tenant takes any action or enters into any arrangement or agreement with any Space Subtenant of any portion of the Site, or Tenant's employees, creditors, officers or any other person which arrangement or agreement is intended to understate or to conceal Tenant's Percentage Rent under this Lease.

(d) Annual Statements.

(i) On or before May 30th immediately following each anniversary of the Effective Date, Tenant will deliver a complete statement (each, an "**Annual Statement**") showing the computation of the Project Income, Project Expenses and Project Fees for the immediately preceding Lease Year in a form approved by OCII. Each Annual Statement must show in reasonable detail (i) the Project Income for the immediately preceding Lease Year, including an itemized list of any and all deductions or exclusions from Project Income that Tenant may claim and that are expressly permitted under this Lease, (ii) the Project Expenses and Project Fees for the immediately preceding Lease Year, and (iii) a computation of the Percentage Rent for the immediately preceding Lease Year. Each Annual Statement must be certified as accurate, complete, and current by an independent certified public accounting firm acceptable to OCII. Tenant may submit its Annual Statement as part of a joint annual statement with lessee of the Residential Parcel.

(ii) If Tenant fails to deliver any Annual Statement within the time period set forth in this subsection 3.01(c), (regardless of whether any Percentage Rent is actually paid or due to Landlord for the preceding Lease Year) and that failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of the failure from Landlord, Landlord will have the right, among its other remedies under this Lease, to employ a certified public accountant to make an examination of Tenant's Books and Records (defined below) (and the Books and Records of any other occupant of the Community Commercial Units) as may be necessary to certify the amount of the Project Income, Project Expenses and [Project Fees] for the period in question. The certification will be binding upon Tenant and Tenant will promptly pay to

Landlord the total reasonable cost of the examination and Landlord's other reasonable costs (including attorneys' fees) in exercising its examination rights, together with the full amount of Percentage Rent due and payable for the period in question. Tenant acknowledges that the late submittal of any Annual Statement will cause Landlord increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Landlord will incur by reason of Tenant's lateness, but Landlord's acceptance of any such amount will not limit Landlord's rights or remedies under this Lease for Tenant's failure to perform its obligations under this Section.

(e) Books and Records; Audit.

(i) "**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to the business at or use of the Project, this Lease, the tenant improvements, any alterations, and the operation and maintenance of the Project, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the business in or use of the Project, and any other bookkeeping documents Tenant utilizes in its business operations for the Project. Tenant must maintain a separate set of accounts to allow a determination of all Project Expenses, Project Fees, all Project Income generated directly from the Project, and all exclusions therefrom.

(ii) Tenant agrees, and agrees to require, that the business conducted in the Project will be operated with a non-resettable register and so that a duplicate dated sales slip or such other recording method reasonably acceptable to Landlord is issued with each sale, whether for cash, credit, or exchange. Furthermore, Tenant will keep (and will cause its agents, Space Subtenants, assignees, licensees, and concessionaires, or otherwise to keep) at the Project, at all times between the Effective Date and the expiration or earlier termination of this Lease, complete and accurate Books and Records that contain all information required to permit Landlord to verify Project Income, deductions and exclusions therefrom, and Project Expenses that are in accordance with this Lease and with generally accepted accounting practices consistently applied from period to period with respect to all operations of the business to be conducted in or from the Project. Tenant will retain (and will cause its agents, Space Subtenants, assignees, licensees, and concessionaires, or otherwise to retain) such Books and Records for a period (the "**Audit Period**") that is the later of (i) four (4) years after the end of each Lease Year (or portion thereof) to which such Books and Records apply, or (ii) if an audit is commenced or if a controversy arises between the parties regarding the Percentage Rent payable, until such audit or controversy is terminated.

(iii) Tenant will make its Books and Records available to Landlord, any City auditor, or any auditor or representative designated by Landlord (each referred to in this subsection as "**Landlord's Audit Representative**"), on [a rolling basis] no less than fifteen (15) Business Days' prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after an Annual Statement is delivered to Landlord. Tenant will cooperate with Landlord's Audit Representative during the course of any audit, provided, however, such audit will occur at Tenant's business office, or at such other location in San Francisco where the Books and Records are kept, and no books or records may be removed by Landlord's Audit Representative without prior express written consent of Tenant (but copies may be made by Landlord's Audit Representative on site), and once commenced, with Tenant's cooperation, the

audit will be diligently pursued to completion by Landlord within a reasonable time, so long as Tenant makes available to Landlord's Audit Representative all relevant Books and Records in a timely manner. If an audit is made of the Books and Records and Landlord claims that errors or omissions have occurred, the Books and Records will be retained by Tenant and made available to Landlord's Audit Representative until those matters are expeditiously resolved with Tenant's cooperation. If Tenant operates the Project through one or more Space Subtenants or agents or otherwise, Tenant will require each such Space Subtenant or agent or other party to provide Landlord with the copy of this audit right. Upon completion of the audit, Landlord will promptly deliver a copy of the audit report to Tenant.

(iv) If an audit reveals that Tenant has understated its Net Commercial Cash Flow for the applicable audit period, Tenant will pay OCII, promptly upon demand, the difference between the Percentage Rent payment Tenant has paid and the Percentage Rent payment it should have paid to OCII, plus, if the difference is a material amount and if required by OCII, interest from the date of the error in the payment equal to ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under applicable law, if OCII elects to charge such interest. If an audit reveals that Tenant has overstated its Net Commercial Cash Flow for the applicable audit period, Tenant shall be entitled to a credit equal to the difference between the amount Tenant has paid and the amount it should have paid to OCII against the next installment of Percentage Rent owed by Tenant. If Tenant understates the Net Commercial Cash Flow for any audit period by three percent (3%) or more, Tenant will pay the reasonable cost of the audit. A second understatement of three percent (3%) or more within any three (3) Lease Year period will be a material default of this Lease.

(f) Tenant's Compliance with City Business and Tax Regulations Code. Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment OCII is required to make to Tenant under this Lease is withheld, then OCII will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

3.02 Tenant's General Obligation to Pay Carrying Costs.

In addition to other provisions of this Lease governing Tenant's obligation to pay certain costs, Tenant acknowledges and agrees that it is responsible for, and shall pay upon due (except as provided in Article 12) all taxes, maintenance and other costs, charges, impositions and obligations attributed to the Premises, any Subtenant Improvements, and Tenant's leasehold interest under this Lease ("**Carrying Costs**"). Failure to pay the Carrying Costs shall be a default under this Lease, subject to Landlord's remedies provided in Articles 14 and 26, including the ability to pay any Carrying Costs left unpaid after providing at least fifteen (15) days prior written notice to Tenant (unless for immediate safety reasons or to prevent cancellation of required insurance policies or to avoid the imposition of penalties if earlier payment is required, in which cases Landlord may act immediately and shall provide written notice to Tenant as soon as possible). If Landlord pays any

Carrying Costs, whether to cure a default or otherwise protect its interests hereunder, and provided Landlord has provided Tenant with notice and an opportunity to cure required in this subsection, Tenant shall reimburse Landlord the Carrying Costs as Additional Ground Rent on the Ground Rent payment date immediately following the date of Landlord's payment of Carrying Costs. Tenant is responsible for all of Tenant's expenses, and Tenant shall, in accordance with ARTICLE 20, indemnify, defend, and hold harmless Landlord and the other Indemnified Parties against all Claims (as such terms are defined in ARTICLE 20 below) arising in connection with Tenant's failure to pay Carrying Costs.

ARTICLE 4 LANDLORD COVENANTS

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

ARTICLE 5 TENANT COVENANTS

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

5.01 Authority.

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

5.02 Financial Assurance.

Tenant will submit for Landlord's approval, on the dates specified in the Schedule of Performance, evidence satisfactory to Landlord that Tenant has sufficient equity capital and commitments for construction and permanent financing, and/or such other evidence of capacity to proceed with the construction of the Improvements in accordance with this Lease as is acceptable to Landlord. Landlord acknowledges that as of the Effective Date Tenant has met this requirement.

5.03 Use of Site and Rents.

During the Term of this Lease, Tenant and its successors and assigns will comply with the following requirements:

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

(b) MOHCD Commercial Underwriting Guidelines. Tenant shall comply with the MOHCD Commercial Underwriting Guidelines, as amended from time to time, for the

purpose, among others, of establishing and maintaining that the overall value to the community and benefit to taxing entities is keeping the Project and the Residential Project intact as an affordable housing asset under Redevelopment Dissolution Law.

(c) Nondiscrimination. The Tenant herein covenants by and for itself its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:
That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the Tenant, 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 tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

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

(e) Permitted Uses of Surplus Cash. Until such time as the Community Commercial Loan is repaid in full, if the Tenant is in compliance with all applicable requirements and agreements under this Lease, Tenant shall use any Surplus Cash to make the following payments in the following order of priority:

(i) First, to replenish the Replacement Reserve Account and Operating Reserve Account, if necessary, up to the amount required by Mortgagees;

(ii) Second, two-thirds (2/3) of remaining Surplus Cash to OCII to repay the Community Commercial Loan; and
(iii) Then, any remaining Surplus Cash may be used by Tenant for any purposes permitted under MOHCD's residual receipt policy or other policy governing the Project, as it may be amended from time to time.

Notwithstanding the foregoing, Tenant and Landlord agree that the distribution of Surplus Cash may be modified based on the requirements of other Mortgagees. Once the Community Commercial Loan has been repaid in full, subsections (d)(ii) and (d)(iii) shall be replaced by the provisions for payment of Percentage Rent.

5.04 Reciprocal Easements; Covenants, Conditions and Restrictions.

Subject to OCII review and approval, Tenant shall cooperate with the lessee of the Residential Parcel to prepare and execute a reciprocal easement agreement, covenants, conditions and restrictions and/or other similar document(s) ("**Common Interest Agreements**") to establish the terms for access, use, maintenance, repair, replacement to and of spaces, structural supports and all other components of the Block 2 East Project shared between or common or mutually

necessary to the development and/or operation of improvements on the Commercial Parcel and the Residential Parcel.

5.05 Landlord Deemed Beneficiary of Covenants.

In amplification and not in restriction of the provisions of the preceding subsections, it is intended and agreed that Landlord will be deemed beneficiary of the agreements and covenants provided in this Article 5 for in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Those agreements and covenants will run in favor of Landlord for the entire term of those agreements and covenants, without regard to whether Landlord has at any time been, remains, or is an owner of any land or interest therein, or in favor of, to which such agreements and covenants relate. Landlord or its successor will have the exclusive right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenants, to which it or any other beneficiaries of such agreements or covenants may be entitled.

ARTICLE 6 CONSTRUCTION OF IMPROVEMENTS

6.01 Schedule of Performance.

Tenant shall undertake and complete all physical construction of the Project, in accordance with the Schedule of Performance, Exhibit 2.

6.02 General Requirements and Rights of Landlord.

All construction documents for the construction of the Improvements by Tenant (the "**Construction Documents**") must be prepared by a person registered in and by the State of California to practice architecture and shall be in conformity with this Lease, including any limitations established in OCII's approval of the schematic drawings, preliminary construction documents, and final construction documents for the Project, and all applicable Federal, State, and local laws and regulations. The architect will use, as necessary, members of associated design professions, including engineers and landscape architects. All Improvements shall be owned, for federal income tax purposes, by Tenant, subject to the rights of Landlord upon expiration or early termination of the Lease.

6.03 OCII Approvals and Limitation Thereof.

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

(a) Compliance with Redevelopment Plan and Lease. OCII's approval with respect to the Construction Documents is limited to determination of their compliance with the Redevelopment Requirements, Schematic Design, this Lease and the Loan Documents. The Construction Documents will be subject to general architectural review and guidance by OCII as part of this review and approval process.

(b) Approval of Construction Documents by OCII. Tenant will submit and OCII will approve or disapprove the Construction Documents referred to in this Lease within the times established in the Schedule of Performance, so long as each set of the applicable Construction Documents are complete and properly submitted within the time frames set forth in the Schedule of Performance. Failure by OCII either to approve or disapprove within the times established in the schedule of Performance will entitle Tenant to a day for day extension of time for completion of any activities delayed as a direct result of OCII's failure to timely approve or disapprove the Construction Documents.

(c) Disapproval of Construction Documents by OCII. If OCII disapproves the Construction Documents in whole or in part as not being in compliance with Redevelopment Requirements or this Lease, Tenant will submit new or corrected Construction Documents which are in compliance within thirty (30) days after written notification to it of disapproval, and the provision of this section relating to approval, disapproval and re-submission of corrected Construction Documents will continue to apply until the Construction Documents have been approved by OCII; provided, however, that in any event Tenant must submit satisfactory Construction Documents (*i.e.*, approved by OCII) no later than the date specified therefor in the Schedule of Performance.

(d) OCII Does Not Approve Compliance with Construction Requirements. OCII's approval is not directed to engineering or structural matters or compliance with local building codes and regulations, the Americans with Disabilities Act, or any other applicable Law relating to construction standards or requirements. Nothing in this Lease will limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, OCII is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable Laws.

6.04 Construction of Improvements to be in Compliance with Construction Documents and Law.

(a) Compliance with Approved Documents. Construction of the Improvements must be in compliance with all OCII-approved Construction Documents.

(b) Compliance with Local, State and Federal Law. Construction of the Improvements must be in strict compliance with all applicable Laws, including all laws relating to accessibility for persons with disabilities and all applicable mitigation measures identified in the Final Environmental Impact Statement/Environmental Impact Report for the Transbay Redevelopment Project Area. Tenant understands and agrees that Tenant's use of the Premises and construction of the Improvements permitted under this Lease will require authorizations, approvals, or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, City agencies. Tenant will be solely responsible for obtaining any and all such regulatory approvals. Tenant will bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and will be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Project or OCII's interest therein must first be approved by OCII in its sole discretion. Any fines or penalties levied

as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval will be immediately paid and discharged by Tenant, and Landlord will have no liability, monetary or otherwise, for any such fines or penalties. Tenant will indemnify, defend, and hold harmless OCII and the other Indemnified Parties hereunder against all Claims (as such terms are defined in ARTICLE 21 below) arising in connection with Tenant's failure to obtain or failure by Tenant, its agents, or invitees to comply with the terms and conditions of any regulatory approval except to the extent such Claims are caused by gross negligence or willful misconduct of the party seeking indemnification.

6.05 Issuance of Building Permits.

(a) Tenant will have the sole responsibility for obtaining all necessary building permits and will make application for such permits directly to the City's Department of Building Inspection. Landlord understands and agrees that Tenant may use the Fast Track method of permit approval for construction of the Improvements. Tenant shall report permit status every thirty (30) days to OCII. Failure to timely file and to diligently pursue issuance of permits shall be a breach of this Lease.

(b) The Tenant is advised that the Central Permit Bureau will forward all building permits to OCII for approval of compliance with Redevelopment Requirements. OCII's approval under this Section 6.05(b) is limited to its determination of compliance with Redevelopment Requirements and does not include Section 6.03(d) matters. OCII evidences such compliance by signing the permit and returning the permit to the Central Permit Bureau for issuance directly to the Tenant. Approval of any intermediate permit, however, is not approval of compliance with all Redevelopment Requirements necessary for a full and final building permit.

6.06 Performance and Payment Bonds.

Except as provided elsewhere in this Lease or the Loan Documents, before commencement of construction of the Improvements, and subject to the reasonable approval of OCII, Tenant will deliver to OCII performance and payment bonds, each for the full value of the cost of construction of the Improvements, which bonds will name OCII as co-obligee, or such other completion security which is acceptable to OCII. The payment and performance bonds may be obtained by Tenant's general contractor and name Tenant and OCII as co-obligees.

6.07 OCII Approval of Changes after Commencement of Construction.

Tenant may not approve or permit any change to the Construction Documents approved by OCII without OCII's prior written consent, except as may be permitted under the Loan Documents.

6.08 Times for Construction.

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

6.09 Reports.

Commencing when construction of the Improvements commences and continuing until completion of construction of the Improvements, Tenant will make a report in writing to OCII every month, in such detail as may reasonably be required by OCII, as to the actual progress of the Tenant with respect to the construction. During such period, the work of the Tenant shall be subject to inspection by representatives of OCII, at reasonable times and upon reasonable advance notice.

6.10 Notice of Completion.

Promptly upon completion of the construction of the Improvements in accordance with the provisions of this Lease, Tenant will file a Notice of Completion ("**NOC**") and record the NOC in the San Francisco Recorder's Office. Tenant will provide OCII with a copy of the recorded NOC.

6.11 Completion of Improvements by New Developer.

In the event a Holder or a successor thereto forecloses, obtains a deed in lieu of foreclosure, or otherwise realizes upon the Premises and undertakes construction of the Improvements ("New Developer") (a) the New Developer will not be bound by the provisions of the Schedule of Performance with respect to any deadlines for the completion of the Improvements but will only be required to complete the Improvements with due diligence and in conformance with a new Schedule of Performance as agreed upon by the New Developer and OCII, (b) the New Developer will only be required to complete the Improvements in accordance with all applicable building codes and ordinances, and the OCII-approved Construction Documents with such changes that are mutually agreed upon by OCII and the New Developer under the following clause (c); and (c) OCII and New Developer will negotiate in good faith such reasonable amendments and reasonable modifications to the Schedule of Performance and Article 6 of this Lease as the parties mutually determine to be reasonably necessary based upon the financial and construction conditions then existing.

ARTICLE 7 COMPLETION OF IMPROVEMENTS

7.01 Certificate of Completion—Issuance.

After completion of the construction of the Improvements in accordance with the provisions of this Lease, if requested by Tenant together with reasonable supporting documentation, including an architect's certification of completion, OCII will furnish Tenant with an appropriate instrument so certifying (the "**Certificate of Completion**"). OCII's Certificate of Completion will be a conclusive determination of satisfaction and termination of the agreements and covenants of this Lease regarding Tenant's obligation to construct the Improvements in accordance with approved Construction Documents. The Certificate of Completion will include the dates of the beginning and completion of construction of the Improvements, but the Certificate of Completion will not constitute evidence of compliance with or satisfaction of Tenant's obligations to any Mortgagee, or any insurer of a Leasehold Mortgage, securing money loaned to finance the construction or any part thereof; provided further, that OCII's issuance of a Certificate of Completion does not relieve Tenant or any other person or entity from any and all OCII

requirements, regulatory approvals, or conditions relating to construction or occupancy of the Improvements, which requirements or conditions must be complied with separately.

OCII may elect to issue Tenant a Certificate of Completion if no events of default by Tenant are then existing under this Lease or the Loan Documents, and Tenant has completed the Improvements in accordance with this Lease, except for: (1) punch list items; and (2) other items that do not adversely affect or impair Tenant's use and occupancy of the Improvements for the purposes contemplated by this Lease and that do not preclude the City's issuance of a Certificate of Occupancy or other certificate or authorization of Tenant's use and occupancy of the Improvements. However, OCII will not be obligated to issue a Certificate of Completion in these circumstances unless and until Tenant has provided to OCII, at OCII's request, a bond, letter of credit, certificate of deposit, or other security reasonably acceptable to OCII in an amount equal to 110% of the estimated cost to OCII of completing the items described in clauses (1) through (3) above, as reasonably determined by OCII.

7.02 Certifications to be Recordable.

The Certificate of Completion will be in a form that permits it to be recorded with the Recorder of the City.

7.03 Certification of Completion—Non-Issuance Reasons.

If OCII refuses or fails to provide a Certificate of Completion in accordance with the provisions of Section 7.01, OCII will provide Tenant with a written statement indicating in adequate detail in what respects Tenant has failed to complete the construction of the Improvements in accordance with the provisions of this Lease or is otherwise in default hereunder and what measures or acts will be necessary, in the opinion of OCII, for Tenant to take or perform in order to obtain a Certificate of Completion.

ARTICLE 8 CHANGES TO IMPROVEMENTS; TITLE TO IMPROVEMENTS

8.01 Changes to the Improvements.

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

(b) Definition of Change. "**Change**" as used in this Article means any alteration, modification, addition and/or substitution of or to the Community Commercial Units and the Improvements which differs materially from that which existed upon the completion of construction of the Improvements, and shall include without limitation the exterior design, exterior materials and/or exterior color, and/or relocation or removal of either the control room, the

transformer room, or both. For purposes of the foregoing, exterior shall mean and include the roof of the Improvements. "Change" does not include any repair, maintenance, cosmetic interior alterations (e.g., paint, carpet, installation of moveable equipment and trade fixtures, and hanging of wall art) in the normal course of operation of the Improvements, any subtenant improvements to the Community Commercial Units installed for a permitted use of the Community Commercial Units, or as may be required in an emergency to protect the safety and well-being of the employees, guests and invitees of Tenant or a Space Subtenant.

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

8.02 Title to Improvements.

Fee title to any Improvements shall be vested in Tenant and shall remain vested in Tenant during the term of this Lease. As further consideration for Landlord entering into this Lease, at the expiration or earlier termination of this Lease, fee title to all the Improvements shall vest in the City without further action of any party, without any obligation by the City to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to Landlord. Notwithstanding the foregoing, if requested by Landlord, upon expiration or sooner termination of this Lease, Tenant shall execute and deliver to Landlord an acknowledged and good and sufficient grant deed conveying to Landlord Tenant's fee interest in the Improvements. For so long as it is not in default of this Lease, Tenant shall have the exclusive right to deduct, claim retain and enjoy any and all rental income appreciation, gain, depreciation, amortization, and tax credits for federal and State tax purposes relating thereto, substitution therefor, fixtures therein and other property relating thereto.

8.03 City Requirements.

Upon OCII's assignment of its right title and interest to the Site and this Lease to MOHCD, Tenant shall comply, and shall require its Space Subtenants to comply, with the applicable requirements of San Francisco Administrative Code Section 23.61, as further set forth in Exhibit 7.

ARTICLE 9 USE OF PREMISES; CHANGE OF USE

9.01 Permitted Uses.

The permitted uses of the Premises are limited to the construction and operation of the Project, which includes a childcare facility and other community commercial space and a private internal courtyard and second floor patio for childcare use, consistent with the MOHCD Commercial Underwriting Guidelines, as amended from time to time, the Declaration of Restrictions, and otherwise compatible with the use and operation of the Residential Component by providing a direct benefit to the community in which the Project is located. Community Commercial Units not used for the childcare facility may be used for Public Benefit Use, Community Serving Use, or, in the sole and absolute discretion of Landlord, for other commercial

uses. All Space Subtenants and Space Subleases must be approved in advance by Landlord, which approval will not be unreasonably withheld. Any use by Space Subtenants of common areas or of the sidewalk adjacent to the Premises shall be required to obtain prior approval by OCII or its successor prior to the commencement or installation of such use. Tenant and Space Subtenants shall at all times comply with the relevant conditions of approval of the Project's Schematic Design.

9.02 Prohibited Uses.

No part of the Premises shall be used or operated for: (i) any use which violates Redevelopment Requirements or any applicable zoning ordinance; (ii) any unlawful or disreputable purpose or any activity which is inappropriate for a comparable mixed-use residential complex conducted in accordance with good and generally accepted standards of operations; or (iii) any activity that exposes occupants or permittees to health or safety risks. No noxious or offensive activities shall be carried on, upon or within the Premises, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable disturbance, or hazard or annoyance to the Residential Component, or its residents. Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "**Prohibited Use**" and collectively, "**Prohibited Uses**"), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

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

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

(c) any activity or object that will overload or cause damage to the Premises excluding normal wear and tear;

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

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

(f) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Landlord, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Landlord;

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

(h) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes, except to the extent necessary during construction of the Project or during critical maintenance or repairs to the Project or its shared systems for the timeframe reasonably necessary to complete such maintenance or repairs;

(i) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials, except to the extent necessary during construction of the Project or during critical maintenance or repairs to the Project or its shared systems for the timeframe reasonably necessary to complete such maintenance or repairs;

(j) the washing of any vehicles or equipment;

(k) bars, retail liquor sales, marijuana sales, or any other non-community-benefit-uses that cater exclusively to adults;

(l) any structure or improvement that will preclude, limit or impede the intended use of the Courtyard for childcare purposes; and

(m) any structure or improvement that will impede public ingress and egress across the Pedestrian Mews.

9.03 Compliance with Common Interest Agreements.

Tenant shall at all times comply with the provisions of all applicable Common Interest Agreements and shall require in the Space Subleases that all Space Subtenants comply with all applicable Common Interest Agreements.

9.04 Purchase of Personal Property by Landlord.

At the termination of this Lease, if no Event of Default exists, Landlord has the right to purchase all Personal Property of Tenant, including, without limitation, all signs, furniture, furnishings, equipment and supplies, placed in or on the Premises by Tenant, except any logos, trademarks, symbols, designs or Personal Property not owned by Tenant, at a price determined by Tenant and agreed to by Landlord not to exceed the fair market value thereof. If at the termination of this Lease, no Event of Default exists and Landlord elects not to purchase such Personal Property, Tenant must remove all such Personal Property within sixty (60) days of the termination of this Lease. If Tenant fails to remove such Personal Property within said period of time, such Personal Property will be deemed abandoned by Tenant and become the property of Landlord.

9.05 Temporary Cessation of Business.

Temporary cessation of business by Tenant when necessary for the purpose of making alterations, repairs or restoration, or by reason of such reasonable interruptions as may be incidental to the conduct of its business will not be deemed a discontinuance of the operation of Tenant so long as the cessation is as brief as reasonably required to address the permitted purpose for said cessation and the affected Premises are reopened promptly upon completion of such act or event. Nothing contained in this Section limits the effect of the Force Majeure provisions herein.

ARTICLE 10 UTILITY SERVICES

In no event shall Landlord be obligated to provide any utility, sewer, mechanical or other services with respect to the Site or any portion thereof. Tenant will procure water and sewer service from the City and electricity, telecommunications, natural gas, if applicable, and any other utility service from the City or utility companies providing such services, and will pay all connection and use charges imposed in connection with such services. Tenant will be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service. Tenant will pay or cause to be paid as the same become due all charges for all public or private utility services at any time rendered to or in connection with the Site or any part thereof and will do all other things required for the maintenance and continuance of all such services. Tenant hereby expressly waives any and all claims against Landlord for compensation, damages, payments or offset based upon or with respect to any and all loss or damage now or hereafter sustained by Tenant by reason of any failure by Landlord to furnish, supply or provide any service or utility furnished or supplied to or used by Tenant or any other party in connection with the use, occupancy, maintenance, or operation of the Premises or any part thereof. Such services and utilities shall include, without limitation, the water supply system, drainage, sewer system, wires leading to or inside the Premises, gas, electric or telephone services.

ARTICLE 11 PAYMENT OF IMPOSITIONS

11.01 Taxes.

(a) Tenant's Covenant to Pay Impositions. Subject to any exemptions available to Tenant, Tenant covenants and agrees to pay all Impositions (defined below) assessed, levied, confirmed, imposed or that become a lien upon the Premises, Personal Property, Subtenant Improvements or the Leasehold Estate or any part thereof, that become payable until the later of (i) the last day of the Term, or (ii) the last day Tenant has possession of the Premises. Tenant shall pay all Impositions before delinquency and before any fine, penalty, interest or cost that may be added thereto for the nonpayment thereof. If any applicable law, code, regulation or rule permits Tenant to pay any such Imposition in installments, Tenant may pay the same (and any accrued interest thereon) in installments prior to delinquency and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof.

(b) Impositions. As used herein, "**Impositions**" means all taxes and all transit taxes, possessory interest taxes associated with the Premises, Personal Property, Subtenant Improvements or the Leasehold Estate or any part thereof and assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or

completed prior to the date hereof and whether or not to be completed within the Term of this Lease), taxes assessed by any governmental authority by virtue of any operations by Tenant conducted in on or out of the Premises, fees, water, sewer or similar rents, rates and charges, excises, levies, vault license fees or rentals, license fees, permit fees, inspection fees and other authorization fees and other governmental charges of any kind or nature whatsoever, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, except as expressly stated herein to the contrary (including all interest and penalties thereon), which at any time during or in respect of the period to the later of (i) the last day of the Term, or (ii) the later of the last day Tenant (a) is in or (b) has a right to possession of the Premises, may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises or the Leasehold Estate, any Personal Property or Subtenant Improvements now or hereafter located thereon, or which may be imposed upon any taxable interest of Tenant acquired pursuant to this Lease or on account of any taxable possessory right which Tenant may have acquired pursuant to this Lease, or any part thereof. Tenant must pay or reimburse Landlord, as the case may be, for any fine, penalty, interest or cost which may be added by the collecting authority for the late payment or nonpayment of any Imposition required to be paid by Tenant hereunder. All Impositions imposed for the tax years in which Tenant permissibly vacates the Premises (or portion thereof) will be apportioned and prorated between Tenant and Landlord. Upon demand made from time to time by Landlord, Tenant will furnish to Landlord for inspection, immediately upon receipt thereof, official receipts of the appropriate taxing authority, or other proof satisfactory to Landlord evidencing the payment of such Imposition.

(c) Landlord's Right to Pay. Unless Tenant is exercising its right to contest under and in accordance with the provisions of Article 12, if Tenant fails to pay and discharge any amounts payable pursuant to this Article 11, Landlord, at its option, may (but is not obligated to) pay or discharge the same. The amount paid by Landlord and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at an interest rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest accruing from the date of such payment, shall be deemed to be and shall be payable by Tenant as Additional Ground Rent and must be reimbursed to Landlord by Tenant on demand.

11.02 Taxes, Assessments, Licenses, Permit Fees and Liens

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

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

(f) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly

discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same pursuant to Article 12, below.

(g) Upon transfer of the Site to the City in accordance with Section 19.09, San Francisco Administrative Code Sections 23.38 and 23.39 require that the City report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to an assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

ARTICLE 12 CONTESTS

12.01 Contests.

Tenant has the right, after not more than ninety (90) days nor less than ten (10) Business Days' prior written notice to Landlord, to contest the amount or validity of any Imposition, Law or Ordinance, and/or lien by appropriate proceedings promptly initiated and conducted in good faith and with due diligence, at its sole cost and expense; provided, that (i) Landlord shall have determined reasonably that neither the Premises, nor any part thereof or interest therein, will be in danger of being sold, forfeited, terminated, canceled or lost, (ii) Tenant shall have furnished such security as may be required in such proceedings or as may from time to time be reasonably requested by Landlord, and (iii) Landlord shall have determined reasonably that Landlord shall not be in danger of being subjected to fines, penalties or criminal liability as a result of such contest. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. Before any fine, interest, penalty or cost may be added thereto for nonpayment, Tenant must pay and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Tenant. After such payment and discharge by Tenant, Landlord will promptly return to Tenant the unused portion of such security as Landlord received in connection with such contest, without interest. If Landlord is a necessary party with respect to any such contest, or if any law now or hereafter in effect requires that such proceedings be brought by and/or in the name of Landlord or any owner of the Premises, Landlord, at the request of Tenant and at Tenant's sole cost and expense and with counsel selected and engaged by Tenant, subject to Landlord's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Landlord, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any law now or hereafter in effect requires that such proceedings be brought by and/or in the name of Landlord or any owner of the Premises. Neither Landlord nor the Premises may be subjected to any liability for the payment of any fines, penalties, costs, fees, including attorneys' fees, or expenses in connection with any such proceeding, and Tenant covenants to indemnify, defend and hold harmless Landlord and the Premises from any such fines, penalties, costs, fees or expenses.

12.02 Contesting Impositions.

At its own cost and after notice to Tenant of its intention to do so, by appropriate proceedings conducted in good faith and with due diligence, Landlord may but in no event shall be obligated to contest the validity, applicability and/or the amount of any Impositions. Landlord in so contesting any Imposition, shall hold all other parties harmless from and against any loss, cost or damage they suffer by reason of such contest. Nothing in this Section requires Landlord to pay any Impositions as long as it contests the validity, applicability or the amount thereof in good faith and so long as it does not allow the portion of the Premises affected thereby to be forfeited to the imposer of such Impositions as a result of its nonpayment. Landlord must give notice to all other parties within a reasonable period of time of the commencement of any such contest and of the final determination of such contest.

ARTICLE 13 INSURANCE

Subject to approval of the insurers and policy forms by Landlord’s Risk Manager, Tenant must obtain and maintain, or cause to be maintained, the insurance and bonds as set forth in Exhibit 6 throughout the Term of this Lease at no expense to Landlord.

ARTICLE 14 LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

14.01 Landlord May Perform in Emergency.

Without limiting any other provision in this Lease, and in addition to all other remedies available to Landlord hereunder and/or at law or in equity, and without waiving any alternative rights or remedies, including, without limitation, the right to declare Tenant to be in default of its obligations under this Lease, Tenant covenants and agrees that upon any failure by Tenant to pay any obligation and/or perform any act, covenant, term, condition or agreement required to be paid or performed by Tenant hereunder within the time provided herein for such payment and/or performance, which failure shall give rise to an emergency, as reasonably determined by Landlord, after using reasonable efforts to notify Tenant of Landlord's intent, Landlord may, but shall not be obligated to, pay any such obligation and/or perform any such act, covenant, term, condition or agreement required to be paid or performed by Tenant hereunder for and on behalf of Tenant.

14.02 Landlord May Perform Following Tenant's Failure to Perform.

Without limiting any other provision in this Lease, but subject to the provisions of [Article 35], and in addition to all other remedies available to Landlord hereunder and/or at law or in equity, and without waiving any alternative rights or remedies, including, without limitation, the right to declare Tenant to be in default of its obligations under this Lease, Tenant covenants and agrees that if Tenant at any time fails to perform any act, covenant, term, condition or agreement on Tenant's part to be performed under this Lease, which failure to perform, in all cases other than as described in [Article 5], continues for thirty (30) days after written notice from Landlord; then, Landlord may, but shall not be obligated to, perform any such act, covenant, term, condition or agreement for and on behalf of Tenant. If Landlord believes that Tenant has failed to perform an obligation set forth in this Lease, then before performing such obligation, Landlord shall give Tenant as much notice as reasonably possible.

14.03 Tenant's Obligation to Reimburse Landlord.

If, pursuant to the provisions of Sections 14.01 or 14.02, Landlord pays and/or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse Landlord immediately upon demand for all sums so paid by Landlord, including, without limitation, all costs and expenses and reasonable attorney fees, incurred by Landlord in connection with the performance of any such obligation by Landlord, regardless of which party actually completes the same, together with interest from the date Landlord incurs the cost or expense until paid at a per annum rate equal to the sum of the Prime Rate plus 5%, which rate shall be reduced to the extent that it exceeds the maximum rate permissible by applicable law.

ARTICLE 15 REPAIR, MAINTENANCE AND OPERATION OF PREMISES

15.01 No Waste.

Subject to the applicable provisions of this Lease, Tenant covenants not to do or suffer any waste or damage, disfigurement or injury to the Premises.

15.02 Repair; Maintenance.

Tenant covenants to repair and maintain (or cause to be repaired and maintained) the Premises (including without limitation the exterior, interior, substructure, and foundation of the Premises and all fixtures, equipment, and landscaping from time to time located on the Site or any part thereof) now or at any time erected on the Site including all Personal Property and Subtenant Improvements within the Site owned by Tenant, in good and clean order, condition and repair, as may be necessary to maintain the same in first-class condition and in compliance with all applicable laws and governmental regulations, all at Tenant's own cost and expense. Furthermore, Tenant covenants promptly, at Tenant's own cost and expense, to make or cause others to make all necessary or appropriate capital and operating repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, reasonable wear and tear excepted, to the extent that the same is consistent with maintenance of the Premises in a first-class condition, with materials, apparatus and facilities as originally approved by Landlord and installed by Tenant under this Lease, or, if not originally subject to Landlord approval or not available, with materials, apparatus and facilities of quality at least equal in quality, appearance and durability of the materials, apparatus and facilities repaired, replaced or maintained. All such repairs and replacements made by Tenant shall be at least equivalent in quality, appearance, and durability to and in all respects consistent with the original work. Under no circumstances shall Landlord be obligated to make repairs or replacements of any kind or to maintain all or any portion of the Premises, Personal Property, Subtenant Improvements, or any portion thereof, as part of the consideration for rental, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced, or restated.

15.03 Facilities Condition Report.

Every five (5) years beginning on the fifth anniversary date of the issuance of the Certificate of Completion, Tenant will deliver to Landlord a facilities condition report for the Premises, prepared by a qualified team of construction professionals acceptable to Tenant and Landlord, describing at a minimum the condition and integrity of the Premises, foundation and structural

integrity of the Premises, and all utilities systems serving the building (the "**Facilities Condition Report**"). Tenant will provide with its submittal of the Facilities Condition Report, an anticipated schedule of and budget for, the repairs identified in the Facilities Condition Report. If Landlord reasonably believes the Facilities Condition Report does not adequately describe the condition and integrity of the listed items or the timing of required repairs, then Landlord will notify Tenant of the deficiency and Tenant will revise the Facilities Condition Report to address Landlord's concerns. If Tenant fails to provide a Facilities Condition Report to Landlord every five (5) years, then Landlord after giving thirty (30) days' notice to Tenant will have the right, but not the obligation, to cause a Facilities Condition Report to be prepared by a team of construction professionals of Landlord's choice, at Tenant's sole cost. Tenant will perform the repairs within the timeframe set forth in the Facilities Condition Report approved by Landlord.

15.04 Landlord's Right to Inspect.

Without limiting [ARTICLE 24] below, Landlord may, upon reasonable prior notice to Tenant, make periodic inspections of the Premises and other areas for which Tenant has obligations and may advise Tenant when maintenance or repair is required, but such right of inspection will not relieve Tenant of its independent responsibility to maintain the Premises, Improvements, and other areas as required by this Lease in a condition as good as, or better than, their condition at the completion of the Improvements, excepting ordinary wear and tear.

15.05 Landlord's Right to Repair.

If Tenant fails to maintain or to promptly repair any damage to the Premises as required by this Lease, then subject to applicable notice and cure periods, Landlord may repair the damage at Tenant's sole cost and expense and Tenant will immediately reimburse Landlord for all costs of the maintenance or repair.

15.06 Reserve Requirements.

Tenant may, at its discretion, establish and annually fund a segregated interest-bearing depository accounts for (1) a Replacement Reserve, (2) an Operating Reserve, (3) a Leasing Reserve, and/or (4) a Tenant Improvement Reserve. Tenant may establish other such reserves as necessary given prior written approval by City.

ARTICLE 16 DAMAGE OR DESTRUCTION

16.01 Notice.

In case of any damage to or destruction of the Premises, Tenant will promptly but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to Landlord describing, with as much specificity as is reasonable, the nature and extent of such damage or destruction.

16.02 Insured Casualty.

If the Premises or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant hereunder, Tenant shall promptly commence and diligently complete the restoration of the Premises as nearly as possible to the condition thereof prior to such damage or destruction; provided, however, that if more than fifty percent (50%) of the Premises are destroyed or are damaged by fire or other casualty and if the insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to accomplish the restoration, Tenant, with the written consent of Mortgagee(s), may terminate this Lease within thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. In the event Tenant is required or elects to restore the Premises, all proceeds of any policy of insurance required to be maintained by Tenant under this Lease shall be used by Tenant for that purpose and Tenant shall make up from its own funds, or obtain additional financing as approved by Landlord in its sole discretion, any deficiency between the amount of insurance proceeds available for the work of restoration and the actual cost thereof. In the event Tenant elects to terminate this Lease pursuant to its right to do so under this Section 16.02, or elects not to restore the Premises, the insurance proceeds shall be disbursed in the order set forth in Section 16.03 below.

16.03 Uninsured Casualty.

If (i) more than 50% of the Premises are damaged or destroyed and ten percent (10%) or more of the cost of restoration is not within the scope of the insurance coverage; and (ii) in the reasonable opinion of Tenant, the undamaged portion of the Premises cannot be completed or operated on an economically feasible basis; and (iii) there is not available to Tenant any feasible source of third party financing for restoration reasonably acceptable to Tenant; then Tenant may, with the written consent of each Mortgagee, terminate this Lease upon ninety (90) days written notice to the Landlord. If it appears that the provisions of this Section 16.03 may apply to a particular event of damage or destruction, Tenant shall notify the Landlord promptly and not consent to any settlement or adjustment of an insurance award without the Landlord's written approval, which approval shall not be unreasonably withheld or delayed. In the event that Tenant terminates this Lease pursuant to this Section 16.03, all insurance proceeds and damages payable by reason of the casualty shall be divided among Landlord, Tenant and Mortgagees in accordance with the provisions of Section 16.04. If Tenant does not have the right, or elects not to exercise the right, to terminate this Lease as a result of an uninsured casualty, Tenant shall promptly commence and diligently complete the restoration of the Premises as nearly as possible to their condition prior to such damage or destruction in accordance with the provisions of Section 16.02.

16.04 Distribution of the Insurance Proceeds.

In the event of an election by Tenant to terminate and surrender as provided in either Section 16.01 or 16.02, the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by Tenant hereunder shall be as follows:

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

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

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

(d) The remainder to Tenant.

16.05 Clean Up of Site.

In the event Tenant terminates this Lease pursuant to the provisions of this Article 16 and the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Section 16.04(b), Tenant shall have the obligation to pay the costs to clean-up the interior of the Site to the extent such costs are not covered by the insurance proceeds.

ARTICLE 17 CONDEMNATION

17.01 Parties' Rights and Obligations to be Governed by Agreement.

If, during the term of this Lease, there is any Condemnation (as defined in Section 1.05) of all or any part of the Premises or any interest in the leasehold estate is taken by Condemnation, the rights and obligations of the parties shall be determined pursuant to this Article 17, subject to the rights of any Mortgagee.

17.02 Total Taking.

If the Premises are totally taken by Condemnation, this Lease shall terminate on the date the condemnor has the right to possession of the Site.

17.03 Partial Taking.

If any portion of the Premises is taken by Condemnation, this Lease shall remain in effect, except that Tenant may, with Mortgagee's written consent, elect to terminate this Lease if, in Tenant's reasonable judgment, the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate pursuant to this paragraph by giving notice to the Landlord within thirty (30) days after the Landlord notifies Tenant of the nature and the extent of the taking. If Tenant elects to terminate this Lease as provided in this Section 17.03, Tenant also shall notify the Landlord of the date of termination, which date shall not be earlier than thirty (30) days nor later than six (6) months after Tenant has notified the Landlord of its election to terminate; except that

this Lease shall terminate on the date the condemnor has the right to possession of the Premises if such date falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within such thirty (30) day notice period, this Lease shall continue in full force and effect.

17.04 Effect on Rent.

If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect, then on the date of taking the rent shall remain calculated in accordance with this Lease.

17.05 Restoration of Improvements.

If there is a partial taking of the Premises and this Lease remains in full force and effect pursuant to Section 17.03, Tenant may use the proceeds of the taking to accomplish all necessary restoration to the remaining Premises, subject to Landlord's written approval.

17.06 Award and Distribution.

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

(a) First, to pay the any balance due on any outstanding Leasehold Mortgages in accordance with applicable loan documents and other outstanding or unpaid obligations and/or liabilities that could result in a lien on the Premises; and

(b) Second, to Tenant.

17.07 Payment to Mortgagees.

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

ARTICLE 18 LIENS

Tenant will not directly or indirectly create or permit the creation of or to remain, and will immediately discharge, any mortgage, deed of trust, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the Premises, or any part thereof or all or any portion of Tenant's interest therein, other than (i) this Lease and Space Subleases approved by Landlord, (ii) liens for Impositions not yet payable, or payable without the addition of any fine, penalty, interest or cost for nonpayment, or being contested as permitted by Article 4, (iii) the Permitted Exceptions, and (iv) the Leasehold Mortgage held by Landlord.

ARTICLE 19 ASSIGNMENT, TRANSFER, SIGNIFICANT CHANGE AND SUBLEASING

19.01 Landlord's Consent Required for Transfer.

Tenant, its successors and permitted assigns shall not (i) suffer or permit any voluntary or involuntary sale, assignment, conveyance, lease, trust or power, or transfer in any other form with respect to this Lease or any portion of or interest in the Premises, or any contract or agreement to do any of the same (except for contracts and agreements referred to in this Lease) (collectively, a "**Significant Change**") to occur, (ii) assign any interest in this Lease either voluntarily or by operation of law, or (iii) sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, in each case, without the prior written consent of Landlord, which consent may be withheld in the sole discretion of Landlord.

19.02 Assignment Subject to Assumption of Performance Obligation.

No assignment of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, will be effective until there has been delivered to Landlord, within thirty (30) days after Tenant entered into such assignment, an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes performance of the obligations on the assignor's part to be performed under this Lease to the end of the Term.

19.03 Tenant and Transferee Obligations.

The consent by Landlord to an assignment hereunder is not in any way to be construed to (i) from and after the date of such assignment, relieve Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder or under this Lease prior to the date of such assignment, or (ii) relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Landlord to any further assignment or to any Significant Change.

19.04 Tenant Notice to Landlord of Any and All Significant Changes.

Tenant must promptly notify Landlord of any and all Significant Changes. At such time or times as Landlord may reasonably request, Tenant must furnish Landlord with a statement, certified as true and correct by an officer of Tenant, setting forth all of the members of the board of directors of Tenant. Such lists, data and information must in any event be furnished to Landlord annually at the end of each Lease Year.

19.05 Landlord's Review of Proposed Transfer.

At any time, Tenant may submit a request in writing to Landlord for the approval of the terms of an assignment, transfer, sublease or encumbrance of this Lease or of a Significant Change (all of the foregoing being collectively referred to herein as a "**proposed transfer**") or for a decision by Landlord as to whether in its opinion a proposed transfer requires Landlord consent under the provisions of this Article 19. Tenant's request for a proposed transfer must comply with the following:

(a) Any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Landlord, must expressly assume all of the obligations of Tenant under this Lease and agree to be subject to all of the conditions and restrictions to which Tenant is subject; provided, however, that the fact that any transferee of this Lease, or any other successor in interest whatsoever to this Lease, whatsoever the reason, does not assume such obligations will not relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit Landlord of or with respect to any rights or remedies or controls with respect to this Lease, the Premises or the construction of the Improvements unless and only to the extent otherwise specifically provided in this Lease or agreed to in writing by Landlord. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Landlord of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises that Landlord would have had, had there been no such transfer or change;

(b) All instruments and other legal documents involved in effecting transfer shall have been submitted to Landlord for review, and Landlord shall have approved such documents which approval shall not be unreasonably withheld or delayed; and Tenant shall have complied with the provisions of this Article 19.

19.06 Subletting by Tenant.

Subject to this Section 19.06, the conditions and provisions of which are hereby agreed to be reasonable as of the date hereof, Tenant has the right to sublet the Community Commercial Units by written Space Subleases, subject to advanced approval by Landlord, which approval will not be unreasonably withheld. Upon expiration of such Space Subleases, Tenant shall (in accordance with the Community Commercial Leasing Agreement, as applicable) use commercially reasonable efforts to cause available Community Commercial Units to be leased and re-leased on terms and conditions acceptable to Tenant and to new Space Subtenants, consistent with this Lease. In addition, Tenant shall perform all other obligations under the Community Commercial Leasing Agreement, including obligations concerning marketing and leasing and re-leasing commercial units in the Block 2 West Project, as an obligation of this Lease.

19.07 Assignment of Subtenant Rent.

Tenant hereby assigns to Landlord as security for Tenant's obligations under this Lease all Space Subtenant rent and other payments of any kind, including, without limitation, all present or future Space Subtenant, licensee, concessionaire or other occupants; provided, however, that the foregoing assignment shall be subject and subordinate to any assignment made to a mortgagee until such time as Landlord has terminated this Lease, at which time the rights of Landlord in all Space Subtenant rent and other payments assigned pursuant to this Section 19.07 shall become prior and superior in right (such subordination shall be self-operative; however, in confirmation thereof, Landlord shall, upon the request of each mortgagee, execute a subordination agreement in form and substance reasonably satisfactory to such mortgagee and to Landlord). Such assignment shall be subject to the right of Tenant to collect such rent until the date of the happening of any

Event of Default under the provisions of this Lease. Landlord shall apply any net amount collected by it from such Space Subtenants to the payment of Ground Rent, Additional Ground Rent or obligations due under this Lease.

19.08 Non-Disturbance of Space Subtenants, Attornment, Space Sublease Provisions.

(a) Landlord/Space Subtenant Non-Disturbance Agreements. From time to time upon the request of Tenant and provided no Event of Default shall have occurred and be continuing hereunder, Landlord shall enter into agreements ("Non-Disturbance Agreements") with Space Subtenants whose Space Subleases has been approved by Landlord.

(b) Form and Substance of Non-Disturbance Agreement. Each Non-Disturbance Agreement for each such Space Sublease shall be in form and substance satisfactory to Landlord. If Tenant submits to Landlord a nonconforming Non-Disturbance Agreement with changes requested by a Space Subtenant, such changes must be shown as specific interlineations or deletions. Landlord, in its sole discretion, may refer the review and negotiation of any such changes to outside counsel of its choosing and Tenant shall pay all reasonable costs and fees incurred by Landlord in doing so. Landlord shall approve or disapprove of the requested changes within twenty (20) days of receipt of such changes. Any such disapproval by Landlord shall set forth the reasons for Landlord's disapproval. Provided that the request for changes is submitted in accordance with Article 40, failure of Landlord to approve or disapprove of specific interlineations or deletions requested by a Space Subtenant within such twenty (20) days period shall be deemed to be approval of the requested changes.

19.09 Landlord's Sale or Assignment.

(a) Generally. Landlord has the right to sell and/or assign all or any portion of its interest in all or any portion of the Premises and/or this Lease, without the prior written consent of Tenant, provided, however, that no such transfer of the Premises may be effective until there is delivered to Tenant an agreement of the transferee reasonably satisfactory to Tenant expressly assuming all of Landlord's obligations hereunder with respect to those portions of the Premises so transferred, which obligations arise from and after the date of transfer. Upon delivery of such agreement, Landlord will be relieved of all obligations hereunder arising from and after the date of such transfer with respect to those portions of the Premises so transferred.

(b) To MOHCD as Housing Successor. Tenant acknowledges and agrees that OCII, effective upon the issuance of the Certificate of Completion or some later date as determined by OCII, intends to transfer all of its rights, interests and obligations under this Lease and the Loan Documents, together with conveyance of fee title to the Site, to MOHCD as the designated Housing Successor of the City and County of San Francisco under Board of Supervisors Resolution 11-12 (January 26, 2012), Redevelopment Dissolution Law, and OCII's approved Long-Term Property Management Plan (November 23, 2015). As a condition of the assignment of the Lease and Loan Documents to the City, the City may require standard City contracting provisions under San Francisco Administrative Code or other Laws, as described in Exhibit 5, be incorporated into the Lease and Loan Documents. Tenant shall have no right to object and shall attorn to such assignee, and shall execute such instruments and take such actions as may be reasonably required to carry out OCII's intent. Upon assignment to MOHCD, all references herein

to Landlord or OCII shall be deemed references to MOHCD. OCII and Tenant hereby agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Section 19.09(b).

ARTICLE 20 INDEMNIFICATION; DAMAGE TO PERSON OR PROPERTY; HAZARDOUS SUBSTANCES

20.01 Damage to Person or Property; General Indemnification.

Landlord will not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site, for any injury or damage to the Premises, or to any property of Tenant, or to any property of any other person, entity, or association on or about the Premises, unless (a) during construction of the Project, arising from the active negligence, sole negligence, or willful misconduct of an Indemnified Party (as defined below); or (b) after construction of the Project, arising from the gross negligence or willful misconduct of an Indemnified Party (as defined below). To the fullest extent of the law, Tenant will defend, hold harmless, and indemnify Landlord and the City and County of San Francisco, including but not limited to their boards, commissions, commissioners, departments, agencies, and other subdivisions, officers, agents, and employees (each, an "**Indemnified Party**" and collectively the "**Indemnified Parties**"), of and from all claims, loss, damage, injury, actions, causes of action, and liability of every kind, nature and description (collectively, "**Claims**") incurred in connection with or directly or indirectly arising from the Site, this Lease, Tenant's tenancy, its or their use of the Site, including adjoining sidewalks and streets, and any of Tenant's operations or activities on or connected to the Site, including without limitation, the Space Subleases; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that the indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further excepting only such Claims that are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing indemnity will include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and Landlord's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Landlord from any claim that actually or potentially falls within any indemnity provision set forth in this Lease even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter. Tenant's obligations under this Article will survive the termination or expiration of this Lease.

20.02 Hazardous Substances—Indemnification.

(a) Tenant will indemnify, defend, and hold the Indemnified Parties harmless from and against any and all Claims of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to violation of any Environmental Law, or any Release, threatened Release, and any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site or Block 2 caused by Tenant, its employees, agents, affiliates, or contractors; provided, however, that this Section 20.02(a) shall not be deemed or construed to, and shall not impose any

obligation on Tenant to indemnify and save harmless the Indemnified Parties from any Claim arising from or in any way related to or connected with any willful misconduct or gross negligence by any Indemnified Party occurring after the Effective Date. No Indemnified Party shall be entitled to indemnification under this Section for, and Tenant will have no liability for any Claims relating to a violation of, any Environmental Law, Release, or threatened Release, or arising out of any condition or action of pollution, contamination or Hazardous Substance- related nuisance on, under or from the Site or Block 2 occurring prior to the Effective Date except for those contributed to or exacerbated by Tenant.

(b) For purposes of this Section 20.02, the following definitions apply:

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

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

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

20.03 Exculpation and Waiver.

Tenant, as a material part of the consideration to be rendered to Landlord, hereby waives any and all Claims against the Indemnified Parties related to this Lease including their rights or obligations as landlord under this Lease, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct (including breach of this Lease) or active gross negligence. The Indemnified Parties will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims against the Indemnified Parties related to this Lease including their rights or obligations as landlord under this Lease for, any injury, loss, or damage to any person or property in or about the Premises by or from any cause whatsoever occurring on or after the Effective Date including, without limitation, (a) any act or omission of persons occupying adjoining premises or

any part of the Premises adjacent to or connected with the Premises, (b) theft, (c) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (d) stopped, leaking, or defective building systems, (d) construction or Site defects, (f) damages to goods, wares, goodwill, merchandise, equipment, or business opportunities, (g) Claims by persons in, upon or about the Premises or any other Landlord property for any cause arising at any time, (h) alleged facts or circumstances of the process or negotiations leading to this Lease before the Effective Date (other than with respect to any Environmental Law or Release); and (i) any other acts, omissions, or causes.

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

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

Tenant initials __

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

20.04 Insurance.

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

20.05 Survival.

The provisions of ARTICLE 20 will survive the expiration or earlier termination of this Lease.

ARTICLE 21 COMPLIANCE WITH SITE-RELATED AND LEGAL REQUIREMENTS

21.01 Compliance with Legal Requirements.

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

21.02 Regulatory Approvals.

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

Tenant understands that the construction of the Improvements on the Site and development of the Project will require approval, authorization, or permit by governmental agencies with jurisdiction. Tenant must use good faith efforts to obtain and will be solely responsible for obtaining any approvals required for the Project in the manner set forth in this Section. Throughout the permit process for any regulatory approvals, Tenant will consult and coordinate with Landlord in Tenant's efforts to obtain permits. Landlord will cooperate reasonably with Tenant in its efforts to obtain permits; provided, however, Tenant may not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency if Landlord is required to be a co-permittee under the permit or the conditions or restrictions could create any financial or other material obligations on the part of Landlord whether on or off of the Premises, unless in each instance Landlord has approved the conditions previously in writing and in Landlord's reasonable discretion. No approval by Landlord will limit Tenant's obligation to pay all the costs of complying with conditions under this Section. Tenant must bear all costs associated with applying for and obtaining any necessary regulatory approval, as well as any fines, penalties or corrective actions imposed as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval.

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

ARTICLE 22 ENTRY

22.01 Entry.

Landlord (which, for the purposes of this Article 22, includes OCII and its authorized representatives including MOHCD and any public health or safety services or departments of the City) reserves the right to enter the Premises at all reasonable times during normal business hours upon not less than twenty-four (24) hours' written notice to Tenant (except in the event of an emergency), subject to the rights of the occupants, Space Subtenants, and others lawfully permitted on the Premises, for any of the following purposes:

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

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

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

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

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

22.02 Emergency Entry.

In the event of any emergency as reasonably determined by Landlord, at its sole option and without notice, Landlord may enter the Premises and alter or remove any Improvements or Tenant's personal property on or about the Premises as reasonably necessary, given the nature of the emergency, and will have the right to use any and all means Landlord deems appropriate to gain access to any portion of the Premises in an emergency, in which case, Landlord will not be responsible for any damage or injury to any property, or for the replacement of any property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a detainer of the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

22.03 No Liability.

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

22.04 No Abatement.

Tenant will not be entitled to any abatement in Ground Rent if the Landlord exercises any rights reserved in this Article, subject to Section 22.03 above.

22.05 Reasonable Conduct.

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

ARTICLE 23 MORTGAGE FINANCING; LENDER PROTECTIONS

23.01 No Encumbrances Except for Development Purposes.

Notwithstanding any other provision of this Lease and subject to the prior written consent of Landlord in the form attached hereto as Attachment 3, which consent will not be unreasonably withheld, conditioned, or delayed, Leasehold Mortgages (and encumbrances related to such Leasehold Mortgages) are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of funds to be used for financing the acquisition of the Project; refinancing of financing used to acquire or rehabilitate the Project; design, construction, renovation, or reconstruction of the Improvements; any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Improvements under this Lease and in connection with the operation of the Project; costs and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Lease; or otherwise as approved by Landlord. OCII, acting solely in its capacity as landlord under this Lease, hereby acknowledges and accepts Bank of America, N.A. as a Holder (as defined below) possessing a right to assume this Lease in accordance with Section 23.06 below, and consents to a deed of trust to be recorded against the Leasehold Estate securing these rights.

23.02 Holder Not Obligated to Construct.

The holder of any mortgage, deed of trust, or other security interest authorized by Section 23.01 ("**Holder**"), including the successors or assigns of the Holder, is not obligated to complete any construction of the Improvements or to guarantee such completion; and no covenant or any other provision of this Lease may be construed to obligate the Holder. However, if the Holder undertakes to complete or guarantee the completion of the construction of the Improvements, nothing in this Lease will be deemed or construed to permit or authorize the Holder or its successors or assigns to devote the Premises or any portion thereof to any uses, or to construct any Improvements on the Site, other than those uses or Improvements authorized in Article 9 and the Declaration of Restrictions and any reasonable modifications in plans proposed by the Holder or its successors in interest proposed for the viability of the Project approved by Landlord in its reasonable discretion under Section 6.11. To the extent any Holder or its successors in interest wish to change such uses or construct different improvements, Holder or its successors in interest must obtain the advance written consent of Landlord.

23.03 Failure of Holder to Complete Construction.

In any case where six (6) months after assumption of obligations under Section 23.02 above, a Holder, having first exercised its option to complete the construction, has not proceeded diligently towards completion of the construction, Landlord will have all the rights against the Holder it would otherwise have against Tenant under this Lease for events or failures occurring after such assumption; subject to any extensions of time granted under Section 6.11 of this Lease.

23.04 Default by Tenant and Landlord's Rights.

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

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

23.05 Cost of Mortgage Loans to be Paid by Tenant.

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

23.06 Right to Assume Lease Prior to Termination.

Landlord hereby establishes, and Tenant acknowledges and consents to, a right vested in Bank of America, N.A. ("**Bank**"), to assume (or cause a Designee of Bank to assume) this Lease and all of Tenant's rights and obligations hereunder to effectuate its rights under Section 26.09

prior to termination of the Lease by Landlord, exercisable, if at all, at any time prior to the issuance of a Temporary Certificate of Occupancy for the Improvements. For purpose of this Article the term "**Designee**" means an affiliate of Bank or other entity approved by Landlord in writing (which approval shall not be unreasonably withheld, conditioned or delayed). Upon the issuance of a Temporary Certificate of Occupancy, the rights established by this Section 23.06 shall automatically expire and be of no further force or effect, Bank shall no longer be considered a Holder under this Lease, and Bank shall execute any documentation confirming said expiration as reasonably requested by Landlord. Landlord acknowledges that for the period of effectiveness specified herein, Bank rights under this Section 23.06 shall be senior to OCII's security interest against the Leasehold Estate arising from the Loan Documents, and Bank may record a deed of trust or other lien securing its rights accordingly.

23.07 Notification to Landlord.

Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in this Article 23, Tenant will cause each Holder to give written notice to Landlord of the Holder's address and of the existence and nature of its Leasehold Mortgage. Execution of Attachment 3 will constitute Landlord's acknowledgement of Holder's having given such notice as is required to obtain the rights and protections of a Holder under this Lease. Landlord hereby acknowledges Bank's rights as a Holder pursuant to Section 23.06, above, and Attachment 3 is not required.

23.08 Holder's Rights to Prevent Termination.

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

23.09 Holder's Rights When Tenant Defaults.

Upon the occurrence of an Event of Default under this Lease, Landlord will not terminate this Lease or exercise any other remedy unless it first gives written notice of the event of default to Holders, and:

(a) If the Event of Default is a failure to pay a monetary obligation of Tenant (not including any of Tenant's indemnification obligations under this Lease (the "**Indemnification Obligations**")), Holder fails to cure such default within sixty (60) days from the date of written notice from Landlord to Holder to cure the default; or

(b) If the Event of Default is not a failure to pay a monetary obligation of Tenant, Holder fails, within sixty (60) days of receipt of the written notice, to either (a) remedy such default; or (b) obtain title to the Leasehold Estate and Improvements in lieu of foreclosure or pursuant to its rights under Section 23.06; or (c) commence foreclosure or other appropriate

proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in which case such Event of Default will be remedied or deemed remedied in accordance with Section 23.10 below.

(c) All rights of Landlord to terminate this Lease as the result of the occurrence of any uncured Event of Default is subject to, and conditioned upon, Landlord having first given Holder written notice of the Event of Default and Holder having failed to remedy such default or assume Tenant's Leasehold Estate or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Section 23.09, and upon Permitted Limited Partner(s) having failed to proceed as permitted under Section 23.12(d).

23.10 Default That Cannot be Remedied by Holder.

Any Event of Default under this Lease that in the nature thereof cannot be remedied by Holder will be deemed to be remedied as it pertains to Holder or any Subsequent Owner if (a) within sixty (60) days (and as may be extended in the OCII Executive Director's discretion) after receiving notice from Landlord setting forth the nature of such Event of Default, Holder has acquired the Leasehold Estate and Improvements or has commenced foreclosure or other appropriate proceedings in the nature of foreclosure, (b) Holder is diligently prosecuting any such proceedings to completion, (c) Holder has fully cured any event of default arising from failure to pay or perform any monetary obligation (other than the Indemnification Obligations) in accordance with Section 23.09, and (d) after gaining possession of the Improvements, Holder diligently proceeds to perform all other obligations of Tenant as and when due in accordance with the terms of this Lease. Notwithstanding anything to the contrary contained elsewhere herein, in no event shall any Holder have the obligation, or be required, as a condition to preventing the termination of this Lease, as a condition to obtaining a new lease or otherwise, to cure any breach by Tenant of its obligation, under Section 23.04(a) of this Lease, to reimburse Landlord for all costs, expenses, advances and disbursements made or incurred by Landlord in connection with its cure of any breach of default under any Leasehold Mortgage (and all such breaches shall automatically be deemed cured upon a foreclosure under any Leasehold Mortgage (or acceptance of a deed in lieu thereof or otherwise exercising rights to assume this Lease under Section 23.06)).

23.11 Court Action Preventing Foreclosure.

If Holder is prohibited by any process or injunction issued by any court or because of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure, the times specified in Sections 23.09 and 23.10 above for commencing or prosecuting such foreclosure or other proceedings will be extended for the period of such prohibition. If this Lease is terminated for any reason or rejected by Tenant in bankruptcy, then Landlord agrees to enter into a new ground lease with the Holder on the same terms set forth in this Lease and said new lease shall be afforded a priority equal to the recording priority of this Lease. For purpose of this Article, if there is more than one Holder, Landlord will offer the new lease to each Holder in the order of priority until accepted.

23.12 Holder's Rights to Record, Foreclose, and Assign.

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

(a) the Holder (including the Bank) may cause its Leasehold Mortgage to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate to an assignee from whom it may accept a purchase price; provided however that: (a) except with respect to affiliates of a Holder, Holder obtains prior written approval from Landlord with respect to the selection of the assignee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) the proposed assignee maintains the use restrictions of Article 9. Holder, furthermore, may acquire title to the Leasehold Estate in any lawful way, and if the Holder, or an affiliate, shall become the assignee, then Holder (or affiliate) may sell and assign said Leasehold Estate subject to Landlord approval as to assignee or purchaser, which shall not be unreasonably withheld, conditioned or delayed and to Landlord's cure rights under Section 23.04. The foreclosure of the Leasehold Mortgage shall not constitute an Event of Default hereunder.

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

(c) Landlord will mail or deliver to any Holder that has an outstanding Leasehold Mortgage a duplicate copy of all notices that Landlord may give to Tenant under this Lease; and

(d) any Permitted Limited Partner(s) of Tenant will have the same rights as Bank under Sections 23.08, 23.09, and 23.12(c), and any reference to a Holder in those sections will be deemed to include the Permitted Limited Partners; provided, however, that the rights of the Permitted Limited Partners are subordinate to the rights of Bank.

23.13 Intentionally Omitted

23.14 Permitted Uses After Holder Foreclosure.

Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Premises must be operated in accordance with the Declaration of Restrictions, Article 9 of this Lease, and in accordance with those uses specified in the schematic designs and final construction documents approved by OCII and the building permit, with all addenda, as approved by the City's Department of Building Inspection, and any reasonable modifications in plans proposed by the Subsequent Owner or its successors in interest for the viability of the Project approved by Landlord in its reasonable discretion under Section 6.11.

23.15 Preservation of Leasehold Benefits.

Until such time as a Holder notifies Landlord in writing that the obligations of the Tenant under its loan documents have been satisfied, Landlord agrees:

(a) Landlord will not voluntarily cancel or surrender this Lease, or accept a voluntary cancellation or surrender of this Lease by Tenant, or amend this Lease to materially

increase the obligations of the Tenant or the rights of Landlord under this Lease or alter the rights and protections of Holder, without the prior written consent of the Holder (which may not be unreasonably withheld or delayed);

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

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

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

23.16 No Merger.

The Leasehold Estate will not merge with the fee interest in the Site, notwithstanding ownership of the leasehold and the fee by the same person, without the prior written consent of each Holder.

23.17 Landlord Bankruptcy.

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

(b) Landlord acknowledges that: (i) the Tenant seeks to construct improvements on the Leasehold Estate that are a component of a larger mixed-use development program developed in part using proceeds of the loans provided by the Bank, and (ii) it would be unfair to both the Tenant and the Bank to sell the Site free and clear of the Leasehold Estate. Therefore, Landlord waives its right, under section 363(f) of the Bankruptcy Code, to sell Landlord’s fee interest in the Site free and clear of the Leasehold Estate at any time prior to issuance of a Temporary Certificate of Occupancy for the Improvements.

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

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

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

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

23.18 Encumbrance of Landlord's Interest.

Landlord shall not voluntarily encumber Landlord's interest in the Site with a foreclosable mortgage or similar interest without the prior written consent of Tenant and all Holders (including, prior to the issuance of a Temporary Certificate of Occupancy for the Improvements, the Bank).

ARTICLE 24 QUIET ENJOYMENT

Subject to the Permitted Exceptions, Landlord covenants and agrees that Tenant, upon observing and keeping all of the covenants, agreements and conditions of this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy said Premises during the Term without hindrance or molestation of anyone claiming by, through or under Landlord.

Notwithstanding the foregoing, Landlord shall have no liability to Tenant in the event of any defect in the title of Landlord whether or not such defect affects Tenant's rights of quiet enjoyment and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant and Tenant's sole remedy shall be to obtain compensation for such event by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

ARTICLE 25 EVENTS OF DEFAULT

25.01 Events of Default.

The occurrence of any one or more of the following events, which event shall not have been cured as provided in this Lease (which cure period shall be 60 days after provision of notice thereof by Landlord to Tenant unless otherwise specified herein), shall constitute an "**Event of Default**" under the terms of this Lease (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which has or might have the effect of preventing Tenant from complying with the terms of this Lease).

(a) Permitted Uses; Prohibited Uses. Tenant or a Space Subtenant fails to comply with permitted and prohibited use provisions of Article 9.

(b) Failure to Pay Taxes. From and after the Effective Date, Tenant or its successor in interest fails to pay Impositions or Carrying Costs in accordance with Articles 3 or 11, or places or allows to be placed on the Leasehold Estate, Site, the Premises, or any portion thereof, any encumbrance or lien not authorized by this Lease, or suffers any levy or attachment, or any material supplier's or mechanic's lien or the attachment of any other unauthorized encumbrance or lien, and the taxes or assessments have not been paid, or the encumbrance or lien removed or discharged within the time period provided in Article 18; provided, however, that Tenant has the right to contest any tax or assessment or encumbrance or lien as provided in Article 12 and Article 18.

(c) Failure to Pay Ground Rent Within Certain Time Period. Tenant fails to pay any Ground Rent, in the manner prescribed in Article 2 of the Lease, when due to Landlord within five (5) days after notice thereof from Landlord.

(d) Failure to Operate, Maintain or Repair. Failure to perform any operation, maintenance or repair obligation concerning the Premises, and such failure continues for thirty (30) days after the date of notice from Landlord to Tenant concerning such failure.

(e) Failure to Terminate Certain Proceedings Within Certain Time Period. Subject to the provisions of Sections 40.02 and 40.03, the filing by or against Tenant of any proceedings under any state or federal insolvency or bankruptcy law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;

(f) Failure to Stop Certain Order for Relief Under Certain Conditions. Subject to the provisions of Sections 40.02 and 40.03, the entry of an order for relief against Tenant under any bankruptcy or reorganization case which order has not been stayed or dismissed within sixty (60) days;

(g) Final Appointment of a Receiver Under Certain Conditions. Subject to the provisions of Sections 40.02 and 40.03, the appointment of a receiver, trustee or custodian of all or any part of the property of Tenant which appointment with respect to Tenant is not dismissed or stayed within sixty (60) days; provided that Tenant shall have an additional thirty (30) days to achieve such dismissal or stay if Tenant commences to pursue such relief within the first sixty (60) days; and further provided, however, that the appointment of a receiver pursuant to the exercise by a Mortgagee of its rights under a Leasehold Mortgage shall not be an Event of Default hereunder;

(h) Unauthorized Assignment. The assignment of all or any part of the Premises by Tenant;

(i) Tenant's Failure to Notify Landlord Within Certain Time Period in Filing Certain Proceedings. The failure of Tenant to give written notice to Landlord of Tenant's intention to commence proceedings under any state or federal insolvency, bankruptcy or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, at least thirty (30) days prior to the commencement of such proceedings;

(j) Failure to Release Attachment Within Certain Time Period. A writ of attachment or execution is levied on this Lease which is not released within sixty (60) days;

(k) Abandonment of Premises Under Certain Conditions. Except as permitted by Article 17, the Premises are abandoned or cease to be used for the uses permitted hereunder, which abandonment or cessation is not cured within thirty (30) days after notice thereof from Landlord;

(l) Unauthorized Assignment of, or Changes to, this Lease Under Certain Conditions. Tenant suffers or permits an assignment of this Lease or any interest therein to occur in violation of this Lease, suffers or permits a Significant Change to occur in violation of this Lease or sublets all or any portion of the Premises in violation of this Lease, which violation is not remedied within thirty (30) days after notice thereof from Landlord;

(m) Failure to Comply with Lease Terms Under Certain Conditions. Tenant shall fail to perform or comply with any other term hereof, and such failure shall continue beyond the applicable cure period, if any, or, if none, for more than thirty (30) days after notice thereof from Landlord, or if such default cannot reasonably be cured within such thirty (30)-day period, Tenant shall not within such period commence with due diligence and dispatch the curing of such default, or having so commenced, shall thereafter cease, fail or neglect to prosecute or complete with diligence and dispatch the curing of such default.

25.02 Force Majeure.

For the purposes of any of the provisions of this Lease, and notwithstanding anything to the contrary, neither Landlord nor Tenant, as the case may be, will be considered in breach or default of its obligations, and there will not be deemed a failure to satisfy any obligations or conditions of this Lease, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions due to occurrence(s) of "**Force Majeure**," meaning unforeseeable causes beyond obligated or conditioned party's control and without its fault or negligence, including, but not limited to, acts of God, acts of the public enemy, terrorism, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials, unusually severe weather, or delays of subcontractors due to unusual scarcity of materials or unusually severe weather; it being the purposes and intent of this provision that the time or times for the satisfaction of conditions to this Lease including those with respect to construction of the Improvements, will be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph must have notified the other party of the delay and evidence of its causes in writing within thirty (30) days after the beginning of any such enforced delay and requested an extension for the reasonably estimated period of the enforced delay; and, provided further, that this paragraph does not apply to, and nothing contained in this paragraph will extend or will be construed to extend, the time of performance of any of Tenant's obligations to be performed before the commencement of construction, and the failure to timely perform pre-commencement of construction obligations will not extend or be construed to extend Tenant's obligations to commence, prosecute, and complete construction of the Improvements in the manner and at the times specified in this Lease.

ARTICLE 26 REMEDIES

The provisions of this Article 26 and the exercise of Landlord's remedies are subject to the limitations on recourse set forth in Article 43.

26.01 Landlord's Remedies Generally.

(a) Notification to Tenant, Holder. Upon the occurrence of any of the events described in Section 25.01 above, and before exercising any remedies, Landlord will notify Tenant, the Permitted Limited Partner(s), and each Holder in writing of Tenant's purported breach, failure, or act in accordance with the notice provisions of ARTICLE 40, and provide Tenant, any Holder, and Permitted Limited Partner(s) with an opportunity to cure such breach, failure, or act, commencing upon the date of giving notice and continuing for the applicable cure period set out in Section 25.01. If Tenant, Holder, or Permitted Limited Partner does not cure or, if the breach, failure, or act is not reasonably susceptible to cure within the applicable cure period, begin to cure within the applicable cure period and thereafter diligently prosecute such cure to completion, then, subject to the rights of any Holder and Permitted Limited Partner and subject to [Section 26.01(b) [and ARTICLE 26], Landlord will have all of its rights at law or in equity, including as specified in this Article 26 and Article 27.

(b) Landlord's Rights and Tenant's Obligations Under an Event of Default. Upon the occurrence of an Event of Default hereunder, Landlord may continue this Lease in full force and effect, and this Lease shall continue in effect and Landlord shall have the right to collect, Ground Rent, Additional Ground Rent and other sums when and as they become due. If Tenant abandons the Premises in violation of this Lease, Landlord may enter the Premises and relet the Premises, or any part thereof, to third parties for Tenant's account without notice to Tenant, Tenant's rights, if any, to any such notice under any applicable law being hereby waived, and alter or install or modify the Improvements at the Premises, or any portion thereof, and Tenant shall be liable immediately to Landlord for all costs Landlord incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, the reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, facsimile expenses, brokers' fees or commissions, the costs of removing and storing the property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of restoration and of repairing and maintaining the Premises or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease.

(c) Lease May Not Terminate Without Landlord's Consent. No act by Landlord allowed by this Section 26.01 shall terminate the Lease unless Landlord notifies Tenant that Landlord elects to terminate the Lease.

(d) Lease Termination Requires Landlord to Notify Tenant. Landlord may terminate Tenant's right to possession of the Premises or this Lease or both at any time after the occurrence of an Event of a Default by giving written notice of such termination, and such termination shall then occur on the date set forth in such notice. Acts of maintenance and efforts to relet the Premises shall not constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice to Tenant shall terminate this Lease.

(e) Cessation of Tenant's Rights to Sublet or Assign. Upon the occurrence of an Event of Default, Tenant shall have no right to sublet or assign its interest in the Premises and/or this Lease without Landlord's written consent, which may be given or withheld in Landlord's sole and unfettered discretion.

(f) Landlord's Remedies Are Cumulative. The remedies given to Landlord in this Section shall be in addition and supplemental to all other rights or remedies which Landlord may have at law or in equity.

(g) Personal Property. At the termination of this Lease, if an Event of Default exists, title to all Personal Property, except any logos, trademarks, symbols, designs or Personal Property not owned by Tenant, will vest in Landlord without any further action of any parties.

26.02 Continuation of Subleases and Other Agreements.

Except as provided in Article 25, in case of default by Tenant in the performance of any of the terms, covenants or agreements herein contained on the part of Tenant to be done, observed, kept and performed and the continuance thereof for the period hereinbefore provided for, or if Landlord shall for any lawful reason or cause recover or come into possession of the Premises before the date hereinbefore fixed for the expiration of the Term hereof, Landlord shall have the right, at its sole option, to take over any and all Space Subleases of the Premises, if applicable, or any part thereof and all concessions and licenses and agreements by Tenant for the maintenance thereof or supplies thereof, and at Landlord's option to have and succeed to all the risks and privileges of said Space Subleases, or concessions, licenses or agreements, or such of them as it may elect to take over and assume, and Tenant upon any such default by Tenant or recovery of possession by Landlord hereby expressly assigns and transfers to Landlord such of the Space Subleases, or concessions, licenses and agreements as Landlord may elect to take over and assume as may exist and be in force and effect at the time of said default and recovery of possession and all deposits with Landlord pursuant thereto; and Tenant hereby further expressly covenants that, upon request of Landlord, Tenant will execute, acknowledge and deliver to Landlord such further instruments as may be necessary or desirable to vest in Landlord the then existing Space Subleases of said Premises or any part thereof and the licenses, concessions and agreements then in force, as above specified.

ARTICLE 27 LANDLORD'S EQUITABLE RELIEF

No expiration or termination of this Lease pursuant to the terms hereof or by operation of law or otherwise and no repossession of the Premises or any part thereof pursuant to the term hereof or by operation of law or otherwise, shall relieve Tenant of its liabilities and obligations hereunder arising prior to termination of this Lease, all of which shall survive such expiration, termination or repossession, including, without limitation, the rights of Landlord for indemnification for liability, personal injuries or property damage, nor shall anything in this Lease be deemed to affect the right of Landlord to equitable relief where such relief does not impose personal liability on Tenant which is inconsistent with the provisions of Article 43.

ARTICLE 28 NO WAIVER BY LANDLORD OR TENANT

No failure by Landlord or Tenant to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial Ground Rent during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

ARTICLE 29 DEFAULT BY LANDLORD; TENANT'S REMEDIES

29.01 Default by Landlord; Tenant's Remedies.

Landlord shall be deemed to be in default hereunder if Landlord shall fail to perform or comply with any term hereof and such failure shall continue for more than the time of any cure period provided herein, or, if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, if such default cannot reasonably be cured within such thirty (30)-day period, Landlord shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon such default by Landlord, Tenant may exercise any remedy available at law or at equity, including, but not limited to, specific performance.

29.02 Survival of Certain Obligations.

Subject to the provisions of Section 29.01, no expiration, termination or repossession of this Lease pursuant to the term hereof or by operation of law or otherwise, shall relieve Landlord of its liabilities and obligations hereunder arising prior to such expiration, termination or repossession of this Lease, all of which shall survive such expiration, termination or repossession, including, without limitation, the rights of Tenant for indemnification for liability, for personal injuries or property damage.

ARTICLE 30 ACCEPTANCE OF SURRENDER

No modification, termination or surrender of this Lease or surrender of the Premises or any part thereof or of any interest therein by Tenant shall be valid or effective unless agreed to and accepted in writing by Landlord and Mortgagee, and no act by any representative or agent of Landlord, other than such a written agreement and acceptance by Landlord, shall constitute an acceptance thereof.

ARTICLE 31 NO MERGER OF TITLE

There shall be no merger of the Leasehold Estate with the fee estate in the Site by reason of the fact that the same person may own or hold (a) the leasehold estate created by this Lease or any interest in such leasehold estate, and (b) any interest in such fee estate; and no such merger shall occur unless and until all persons having any interest in (i) the leasehold estate created by

this Lease and (ii) the fee estate in the Premises shall join in and record a written instrument effecting such merger.

ARTICLE 32 END OF LEASE; SURRENDER OF PREMISES; HOLDING OVER

32.01 Surrender.

Upon the expiration or other termination of the Term, Tenant shall quit and surrender to Landlord the Premises, all other leased property and renewals and replacements thereof, in good order, condition and repair, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in good order, condition and repair. Upon termination of this Lease, Landlord has the right to terminate all Space Subleases (if applicable). The Premises must be surrendered clean, free of debris, waste, and Hazardous Substances, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created or approved in writing by Landlord. At the request of Landlord, Tenant must surrender the Premises to Landlord free of all Personal Property and fixtures belonging to Tenant, and in any event, Tenant must repair any damage to the Premises caused by such removal. Improvements and Changes will remain in the Premises as Landlord property and title to the Improvements and any Changes will be conveyed to Landlord as provided in Article 11 above.

32.02 Execution of Documents.

Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence such termination of this Lease.

32.03 Holding Over.

Holding over is not permitted under this Lease. If Tenant fails to surrender the Premises at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Article 32, such failure shall not constitute renewal of this Lease or give Tenant any rights hereunder or in the Premises, except with the prior written consent of Landlord, and Tenant shall be a Tenant at sufferance hereunder. Tenant shall responsible for the payment of holdover rent constituting 100% of Surplus Cash (whether or not the Community Commercial Loan has been repaid) or [Twelve Thousand Dollars ($12,000) per month], whichever is greater, until the Premises is surrendered in accordance with this Article 32, and Tenant will indemnify, defend and hold harmless the Indemnified Parties from and against any and all Claims resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Landlord to obtain possession of the Project; any loss or liability resulting from any Claim against Landlord made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Landlord due to lost opportunities to lease any portion of the Project or the Site to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

ARTICLE 33 EQUAL OPPORTUNITY

Tenant agrees to comply with OCII's Equal Opportunity Program as described in Exhibit 7 and will submit all documents required pursuant to the policies included in Exhibit 7.

ARTICLE 34 OCII LABOR STANDARDS PROVISIONS

Tenant agrees to comply with requirements of the MOHCD Underwriting Guidelines concerning payment of prevailing wage for tenant improvements, including Subtenant Improvements. In addition, California Labor Code Section 1720 *et seq*. requires payment of prevailing wages for developments paid for in whole or in part out of public funds. Although the Parties acknowledge that the development of the Project is a private work of improvement, Tenant further acknowledges that the Project may be subject to Labor Code requirements. Tenant agrees to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in Attachment 7-3 and to comply with applicable provisions of the Labor Code.

ARTICLE 35 OCII MINIMUM COMPENSATION AND HEALTH CARE ACCOUNTABILITY POLICY

Landlord finds that it has a significant proprietary interest in the public parcel that is being leased to the Tenant pursuant to this Lease. Tenant agrees that the Tenant and its Space Subtenants, if any, will comply with the applicable provisions of OCII's Health Care Accountability Policy, Attachment 7-5, and Minimum Compensation Policy, Attachment 7-6, and, adopted by Agency Resolution No. 168-2001 on September 25, 2001, as these policies may be amended from time to time (jointly in this Article, the "Policies"). Notwithstanding this requirement, the Parties recognize that the leasing and operations of all Community Commercial Units is subject to the Policies.

ARTICLE 36 CONFLICT OF INTEREST

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

ARTICLE 37 ENERGY CONSERVATION

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

ARTICLE 38 PROVISIONS SUBJECT TO APPLICABLE LAW

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law.

ARTICLE 39 CUMULATIVE REMEDIES; NO WAIVER

Subject to the provisions of Article 43, the specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled. The failure of Landlord to insist in anyone or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. A receipt by Landlord for Ground Rent with knowledge of the breach of any covenant hereto' shall not be deemed a waiver of such breach, and no waiver, change, modification or discharge by either party hereto of any provision in this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by both Landlord and Tenant. Subject to the provisions of Articles 43 and 44, in addition to the other remedies in this Lease provided, Landlord and Tenant shall be entitled to the restraint by injunction of the violation, or threatened violation, of any of the covenants, conditions, or provisions of this Lease, or to a decree compelling performance of any of such covenants, conditions or provisions.

ARTICLE 40 NOTICES

40.01 Notices.

All notices, demands, consents, and requests which may or are to be given by any party to the other shall be in writing. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given on the date sent if served personally on a day that is a Business Day, or, if mailed, on the date that is three days after the date when sent in the United States registered or certified mail, return receipt requested, postage prepaid, in either case, addressed as follows:

If to Tenant: [.......]

If to Landlord: [.......]

With copy to:

MOHCD
[.......]

City Attorney
[.......]

or at such other place or places in the United States as each such party may from time to time designate by written notice to the other.

40.02 Form and Effect of Notice.

Every notice given to a party or other person under this Section must state (or must be accompanied by a cover letter that states):

(a) the Section of this Lease 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; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) did not fully comply with the requirements of Subsection 40.02(a) and (b). The effectiveness of notices sent by Landlord to Tenant shall not be invalidated or impaired by a failure of Landlord to send copies of notices to any person or entity other than Tenant.

40.03 Time of Performance.

Except as provided herein, all performance (including cure) dates expire at 5:00 p.m. Pacific Standard/Daylight Savings Time on the performance or cure date. Provisions in this Lease 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 Lease.

ARTICLE 41 SEVERABILITY

If any term or provision of this Lease or application thereof to any party, parties, person or circumstances is found to be invalid or unenforceable to any extent, the remainder of this Lease and its application to parties, persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected, and each term and provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

ARTICLE 42 SUCCESSORS AND ASSIGNS BOUND; GOVERNING LAW; THIRD PARTIES

42.01 Successors and Assigns Bound.

This Lease shall be binding upon and inure to the benefit of the successors and assigns of OCII and Tenant and where the term “Tenant,” “Landlord” or “OCII” is used in this Lease, it shall mean and include the respective successors and assigns or each party; provided, however, that

Landlord shall have no obligation under this Lease to, nor shall any benefit of this Lease accrue to, any unapproved successor or assign of Tenant where Landlord approval of a successor or assign is required by this Lease.

42.02 Governing Law.

This Lease shall be construed and enforced in accordance with the laws of the State of California, and applicable provisions of the City's Charter and Municipal Codes.

42.03 No Third-Party Beneficiary.

This Lease is entered into solely among, between, and for the benefit of, and may be enforced only by, the parties hereto and does not create rights in any other third party.

ARTICLE 43 LANDLORD'S RECOURSE AGAINST TENANT

Landlord may recover from Tenant, but not from any officer, member, director, employee, representative or attorney, past, present or future of Tenant only those damages that arise out of or in connection with (i) any Impositions or Carrying Costs not paid by Tenant; (ii) the amount of any insurance premiums paid for by Landlord pursuant to this Lease; (iii) the application of any insurance or Condemnation proceeds in a manner inconsistent with or contrary to the provisions of this Lease, except as applied as required by any Leasehold Mortgage; (iv) the cost of razing any Improvements Tenant fails to raze in accordance with the terms of this Lease; (v) any damages suffered by Landlord as the result of the breach by Tenant of the covenants contained in this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, and facsimile expenses; (vi) any expenses in enforcing the limited recourse provisions of this Article 43, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, and facsimile expenses; (vii) the portion of any amounts paid to Tenant for the period ending on the date of termination of this Lease which Tenant is required to pay Landlord as Ground Rent under this Lease; and (viii) waste committed or permitted by Tenant.

ARTICLE 44 RECOURSE AGAINST LANDLORD

44.01 No Recourse to Other Persons.

Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any claim based upon this Lease or otherwise, against any officer, director, employee, Supervisors, representative or attorney, past, present or future, of Landlord, or against any person other than Landlord, or against Landlord except to the extent of the value of Landlord's interest in the Premises, whether by virtue of any constitution, statute, rule of law, rule of equity,

enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Lease, or otherwise. By Tenant's execution and delivery hereof and as part of the consideration for Landlord's obligations hereunder all such liability is expressly waived.

44.02 Limitation on Landlord's Liability.

In the event of any transfer of Landlord's interest in and to the Premises, Landlord, subject to the provisions hereof, (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations on the part of Landlord (or such transferor, as the case may be) contained in this Lease thereafter to be performed, but not from liability incurred by Landlord (or such transferor, as the case may be) on account of covenants or obligations to be performed by Landlord (or such transferor, as the case may be) hereunder prior to the date of such transfer; provided, however, that (a) any funds in Landlord's possession (or in the possession of the then transferor at the time of such transfer) in which Tenant has an interest must be turned over to the transferee, in trust, for application pursuant to the provisions hereof and such transferee shall assume all liability for all such funds so received by such transferee from Landlord and (b) any amount then due and payable to Tenant by Landlord or the then transferor under any provisions of this Lease must be paid to Tenant.

ARTICLE 45 TENANT TO FURNISH AND EQUIP THE IMPROVEMENTS

47.01 Tenant to Furnish and Equip the Improvements.

Tenant covenants and agrees to furnish and equip the Improvements with all fixtures, furniture, furnishings, equipment, machinery, supplies and other personalty of a quantity and quality necessary to operate the Premises in accordance with the provisions of this Lease, including any Subtenant Improvements.

47.02 Landlord's Lien.

If Landlord elects such lien, Tenant hereby grants to Landlord a lien in all of its Personal Property, and all products and proceeds thereof, as security for the payment and performance of Tenant's obligations hereunder, and agrees to execute a financing statement evidencing such lien to secure the performance by Tenant of all of its (or their) obligations under this Lease. Landlord hereby agrees to subordinate its lien in all Personal Property to any purchase money lien in any Personal Property (such subordination shall be self-operative; however, in confirmation thereof, upon the request of each such lienor in Tenant's Personal Property, Landlord shall execute a subordination agreement in form and substance reasonably satisfactory to such lienor and to Landlord). If any of such Personal Property is leased from third parties, Tenant agrees to collaterally assign its leasehold interest to Landlord upon terms and conditions and pursuant to an assignment acceptable in form and substance to Landlord to secure the performance by Tenant of all of its obligations under this Lease. Tenant shall execute from time to time such additional documents as may be necessary to effectuate and evidence such assignments if requested to do so by Landlord. Upon the occurrence of an Event of Default on the part of Tenant, Landlord shall have the immediate right of possession of all of the Personal Property and the right to assume the

leasehold interest of Tenant in such Personal Property, subject to the interest of the lien of any Mortgagee.

ARTICLE 46 NO JOINT VENTURE

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Tenant to be responsible in any way for the debts or obligations of Landlord, except as otherwise provided to the contrary herein, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other party.

ARTICLE 47 ATTORNEYS FEES

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

ARTICLE 48 TRANSFERS OF PARTNERSHIP INTEREST IN TENANT

Tenant may not cause or permit any voluntary transfer, assignment, or encumbrance of its interest in the Site or Project or of any ownership interests in Tenant, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases, or occupancy agreements to Space Subtenants consistent with this Lease; or (b) security interests for the benefit of Mortgagees securing loans for the Project as approved by Landlord on terms and in amounts as approved by Landlord in its reasonable discretion, (c) transfers of the general partnership or manager's interest in Tenant to a nonprofit public benefit corporation approved in advance by Landlord; or (d) any transfers by foreclosure or deed in lieu of foreclosure consistent with this Lease. Any other transfer, assignment, encumbrance, or lease without Landlord's prior written consent will be voidable and, at Landlord's election, constitute a default under this Lease. Landlord's consent to any specific assignment, encumbrance, lease, or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of Landlord's rights under this Lease.

ARTICLE 49 BROKERS

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

ARTICLE 50 NO RECORDATION OF LEASE; MEMORANDUM OF LEASE

This Lease shall not be recorded. Landlord and Tenant shall record on, or as of, the Effective Date a memorandum of this Lease for the Premises, substantially in the form and substance as set forth in Exhibit 4, in the Official Records. The parties will execute the memorandum in form and substance as required by a title insurance company insuring Tenant's leasehold estate or the interest of any Leasehold Mortgagee, and sufficient to give constructive notice of the Lease to subsequent purchasers and Mortgagees.

ARTICLE 51 GENERAL PROVISIONS

51.01 Complete Agreement.

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

51.02 Cooperative Drafting.

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

51.03 Amendments.

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

51.04 Authority.

If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations and warranties.

51.05 Time of the Essence.

Time is of the essence in the enforcement of the terms and conditions of this Lease. References to days, months and years mean calendar days, months and years unless otherwise specified.

51.06 Headings.

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

51.07 Survival of Indemnities.

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

51.08 Counterparts.

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

ARTICLE 52 LIST OF EXHIBITS

The following Exhibits are attached and by this reference incorporated into this Lease as if fully set forth above:

Exhibit 1 Legal Description of Site

Exhibit 2 Schedule of Performance

Exhibit 3 Consent to Leasehold Mortgage

Exhibit 4 Form of Memorandum of Lease

Exhibit 5 City Contract Provisions Applicable Upon Assignment

Exhibit 6 Insurance Requirements

Exhibit 7 Contract Compliance Policies

7-1. Small Business Enterprise Agreement

7-2. Construction Workforce Agreement

7-3. Prevailing Wage Policy

7-4. Nondiscrimination in Contracts and Benefits

7-5. Health Care Accountability Policy Declaration

7-6. Minimum Compensation Policy Declaration

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

TENANT:

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its sole member/manager

By: ____________________
Ramie Dare
Vice President

[Signatures continue on following page]

LANDLORD:

Office of Community Investment and
Infrastructure, Successor Agency to the
Redevelopment Agency of the City and
County of San Francisco, a public body
organized and existing under the laws of the
State of California

By: __________________________
Thor Kaslofsky
Executive Director

APPROVED AS TO FORM:
James B. Morales
OCII General Counsel

By: __________________________

Authorized by OCII Resolution No. XX-2024, dated __________, 2024

EXHIBIT 1

Legal Description of Site

EXHIBIT 2

Schedule of Performance

No.	Performance Milestone	Estimated or Actual Date	Contractual Deadline
1.	Commercial Space		
a.	Commercial Space Plan submission (preliminary)	May 2023	Complete
b.	Commercial Space Plan submission (updated)	January 2024	March 2024
c.	LOIs executed (target)	[May 2024]	N/A
d.	2 out of 3 Commercial Spaces Occupied	October 2027	October 2028
2.	Closing		
a.	Construction Loan Closing	May 2024	July 2024
b.	Conversion of Construction Loan to Permanent Financing	December 2026	April 2027
3.	Construction		
a.	Notice to Proceed	May 2024	July 2024
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	May 2026	October 2026
4.	Cost Certification/8609	December 2027	March 2028
5.	Close Out MOH/OCII Loan(s)	December 2027	March 2028

EXHIBIT 3

Consent to Leasehold Mortgage

Date:

Office of Community Investment and Infrastructure
Successor to the San Francisco Redevelopment Agency
Attn: Executive Director
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

RE: ________________________________, San Francisco (LEASEHOLD MORTGAGE)

To Whom It May Concern:

Under Section 23.01 of the ___________ Ground Lease, dated _________, 20_, between the Office of Community Investment and Infrastructure ("OCII") and _________________________, a California ____________________, we are formally requesting the OCII's consent to our placing a leasehold mortgage upon the leasehold estate of the above referenced development. The following information is provided in order for OCII to provide its consent:

Holder:

Principal Amount:

Interest:

Term:

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

Sincerely,

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest a California nonprofit public benefit corporation, its sole member/manager

By: __________________________
Name: Ramie Dare
Title: Vice President
Enc.

By signing this letter, OCII consents to the leasehold mortgage, under the terms and conditions of Section 23.01 of the _________ Ground Lease, dated ______, 2024.

Office of Community Investment and Infrastructure

____

Thurston Kaslofsky
Executive Director

EXHIBIT 4

Form of Memorandum of Lease

FREE RECORDING PURSUANT TO
GOVERNMENT CODE §§27383 & 27388.1 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

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

Assessor's Block ____, Lot ___ SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into as of _____, 2024, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California ("Landlord"), and TRANSBAY 2 FAMILY COMMERCIAL, LLC, a California limited liability company ("Tenant"), with respect to that certain Ground Lease (the "Lease") dated for reference purposes as, 2024, between Landlord and Tenant.

Under the Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord the real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Lease will become effective on the date of recordation of this Memorandum and will end on the date that is 75 years from said date, subject to a 24-year option to extend, unless terminated earlier or extended pursuant to the terms of the Lease.

It is the intent of the parties to the Lease that the Lease creates a constructive notice of severance of the Improvements from the Property (as defined in the Lease), without the necessity of a deed from Lessor to Lessee, which Improvements together with the Leasehold Interest in the Property created by the Lease are and will remain real property.

This Memorandum incorporates herein all of the terms and provisions of the Lease as though fully set forth herein.

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

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

Executed as of _______, 2024 in San Francisco, California.

TENANT:

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its sole member/manager

By: ________________________
Ramie Dare
Vice President

[Signatures continue on following page]

LANDLORD:
SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO,
a public body organized and existing under the
laws of the State of California

By: ______________________________
Thurston Kaslofsky
Executive Director

APPROVED AS TO FORM:
James B. Morales
General Counsel

By: ______________________________
Aaron J. Foxworthy
Deputy General Counsel

Exhibit A

Legal Description

EXHIBIT 5

City Contract Provisions Applicable Upon Assignment

In accordance with Article 19 of the Lease, upon transfer of the Site and assignment of the rights and obligations of this Lease to the City in accordance with Section 14.02 therein, the following provisions shall be applicable to Tenant and in that event, any conflict between these provisions and those of the Lease shall be resolved in favor of the provisions set out below.

1. Nondiscrimination; Penalties.

   (a) *Nondiscrimination in Contracts.* The Tenant shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. The Tenant shall incorporate by reference in any subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require any subcontractors to comply with such provisions. The Tenant is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

   (b) *Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2.* The Tenant does not as of the date of this Lease, and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

2. MacBride Principles—Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Lease. By entering into this Lease, the Tenant confirms that it has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

3. Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges the Tenant not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

4. Alcohol and Drug-Free Workplace. The City reserves the right to deny access to, or require the Tenant to remove from, City facilities personnel of the Tenant who the City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. The City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

5. Compliance with Americans with Disabilities Act. The Tenant shall provide the services specified in this Lease in a manner that complies with the Americans with Disabilities Act

(ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

6. Sunshine Ordinance. The Tenant acknowledges that this Lease and all records related to its formation, the Tenant's performance under this Lease, and the City's payment are subject to the California Public Records Act (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

7. Limitations on Contributions. By executing this Lease, the Tenant acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of the Tenant's board of directors; the Tenant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Tenant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Tenant. The Tenant certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

8. Requiring Minimum Compensation for Covered Employees. If Administrative Code Chapter 12P applies to this Lease, the Tenant shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. The Tenant is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of Chapter 12P is available on the web at http://sfgov.org/olse/mco. The Tenant is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Lease, the Tenant certifies that it complies with Chapter 12P.

9. Requiring Health Benefits for Covered Employees. If Administrative Code Chapter 12Q applies to this Lease, the Tenant shall comply with the requirements of Chapter 12Q. For each Covered Employee, the Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at http://sfgov.org/olse/hcao. The Tenant is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by the Tenant shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10. Prohibition on Political Activity with City Funds. In performing under this Lease, the Tenant shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds

appropriated by the City for this Lease from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The Tenant is subject to the enforcement and penalty provisions in Chapter 12G.

11. Nondisclosure of Private, Proprietary or Confidential Information. If this Lease requires the City to disclose "Private Information" to the Tenant within the meaning of San Francisco Administrative Code Chapter 12M, the Tenant shall use such information consistent with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services provided under this Agreement. The Tenant is subject to the enforcement and penalty provisions in Chapter 12M.

    In the performance of services provided under this Lease, the Tenant may have access to the City's proprietary or confidential information, the disclosure of which to third parties may damage the City. If the City discloses proprietary or confidential information to the Tenant, such information must be held by the Tenant in confidence and used only in performing this Lease. The Tenant shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

12. Consideration of Criminal History in Hiring and Employment Decisions. The Tenant agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Lease. The text of Chapter 12T is available on the web at http://sfgov.org/olse/fco. A partial listing of some of the Tenant's obligations under Chapter 12T is set forth in this Section. The Tenant is required to comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12T.

    The requirements of Chapter 12T shall only apply to the Tenant's operations to the extent those operations are in furtherance of the performance of this Lease, shall apply only to applicants and employees who would be or are performing work in furtherance of this Lease, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13. Reserved

14. Submitting False Claims; Monetary Penalties. The full text of San Francisco Administrative Code § 21.35, including the enforcement and penalty provisions, is incorporated into this Lease. Under San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an

inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

15. Conflict of Interest. By entering into this Lease, the Tenant certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Lease.

16. Food Service Waste Reduction Requirements. The Tenant shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

17. Distribution of Beverages and Water. The Tenant agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Lease. The Tenant agrees that it shall not sell, provide or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Lease.

18. Consideration of Salary History. The Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." The Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Lease or in furtherance of this Lease, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at https://sfgov.org/olse/consideration-salary-history. Tenant is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

19. Laws Incorporated by Reference. The full text of the laws listed in this Exhibit G, including enforcement and penalty provisions, are incorporated into this Lease by reference. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Exhibit G are available at http://www.amlegal.com/codes/client/san-francisco_ca/

20. First Source Hiring Program. The Tenant must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Lease, and the Tenant is subject to the enforcement and penalty provisions in Chapter 83.

21. Prevailing Wages. Services to be performed by the Tenant under this Lease may involve the performance of trade work covered by the provisions of Section 6.22(e) or Section 21C of the Administrative Code (collectively, "Covered Services"). The provisions of Section 6.22(e) and Section 21C of the Administrative Code are incorporated as provisions of this Lease as if fully set forth herein and will apply to any Covered Services performed by the Tenant.

22. Contractor Vaccination Policy.
(a) Tenant acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"),

dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("Contractor Vaccination Policy"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors.

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

(c) In accordance with the Contractor Vaccination Policy, Tenant agrees that:

(i) Where applicable, Tenant shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Tenant an exemption based on medical or religious grounds; and

(ii) If Tenant grants Covered Employees an exemption based on medical or religious grounds, Tenant will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("Exemptions Form"), which can be found at https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors (navigate to "Exemptions" to download the form).

EXHIBIT 6

Insurance Requirements

Subject to approval by the OCII Risk Manager of the insurers and policy forms, Tenant must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth in this Attachment 8 throughout the Compliance Term of this Agreement, or in accordance with the timeframes stated herein, at no expense to OCII.

A. Overview of Coverage Requirements. The following table summarizes required insurance policies and documentation. Please see Section B of this Attachment 8 for more detailed descriptions of policy requirements.

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Commercial General Liability (see Section B.1)	$1,000,000 per occurrence/ $2,000,000 aggregate*	Tenant's design and professional contractors; and Tenant (prior to start of construction)	Additional insured (see Section G) Completed Operations Coverage endorsement (on construction stage policy) (see Section G)
	$10,000,000 per occurrence/ $10,000,000 aggregate*	Tenant (upon construction start), general contractor, and subcontractors to the general contractor	
Automobile Liability (see Section B.2)	$1,000,000 per accident*	Tenant and Tenant's contractors	Additional insured (see Section G)
	$10,000,000 per accident*	Upon construction start - general contractor and subcontractors to the general contractor	
Worker's Compensation and Employer's Liability (see Section B.3)	As per statute for Workers Comp; $1,000,000 per accident; $1,000,000 per employee; and in aggregate for bodily injury by disease as respects Employers Liability*	Tenant and Tenant's contractors	Waiver of subrogation
Professional Liability (see Section B.4)	$2,000,000 per claim/ $2,000,000 aggregate	Tenant if engaged in any eligible design-related activities; and Tenant's design and professional contractors	None
Crime/Dishonesty (see Section B.5)	$1,000,000 per loss	Tenant	Loss payee endorsement

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Pollution Liability/Asbestos (see Section B.6)	$1,000,000 per claim/ $2,000,000 aggregate	Tenant or Tenant's construction contractor(s)	Additional insured (see Section G)
Builder's Risk – During Construction (see Section B.7a)	100% of replacement value	Tenant	Loss payee endorsement
Property Insurance – After Construction Completion (see Section B.7b)	100% of replacement value	Tenant or Tenant's property manager	Loss payee endorsement
Performance and Payment Bonds (see Section B.8)	100% of contract value	Tenant's construction contractors	OCII and Tenant named as dual obligees

** Umbrella, excess liability policy, [contractor controlled insurance program (CCIP)—OCII confirming] or owner controlled insurance program (OCIP) may be used to meet limits (see Section D)*

B. Minimum Scope and Limits of Insurance. Tenant and/or Tenant's Contractors must maintain insurance with limits no less than:

1) Commercial General Liability coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by OCII, with additional insured endorsement (form CG 20 10 or equivalent) (see Section G). Limits set forth below. Coverage must be included for contractual liability; explosion, collapse and underground (XCU); products and completed operations. Umbrella, Excess Liability, [Contractor Controlled Insurance Policy,] or an Owner Controlled Insurance Policy may be used to meet the terms of this section.

a. Before the start of demolition/construction if the Site is unoccupied, Tenant and Tenant's Contractors will maintain coverage of not less than One Million Dollars ($1,000,000) combined single limit per occurrence and Two Million Dollars ($2,000,000) annual aggregate limit. These limit requirements apply to Tenant's design and professional contractors throughout the required coverage period;

b. During demolition/construction and occupancy of the Site and ongoing operations of the Project, Tenant and its Construction Contractors and/or Property Manager will maintain coverage of not less than Ten Million Dollars ($10,000,000) combined single limit per occurrence and Ten Million Dollars ($10,000,000) annual aggregate limit. For subcontractors to the Construction General Contractor and the Property Manager, the Tenant, in consultation with the Construction General Contractor and the Property Manager, as appropriate, is required to assess the risks associated with such contractors and determine, authorize, and verify the appropriate level of coverage provided by the subcontractor or consultant;

c. The construction period general liability policy must include completed operations coverage for a minimum of ten (10) years. Tenant must provide a

completed operations coverage endorsement (form CG 20 37 or equivalent) and OCII must be named as an additional insured pursuant to Section G below.

2) Automobile Liability coverage for all owned, non-owned, scheduled, and hired automobiles under Insurance Services Office form number CA 00 01 or other form approved by OCII, with additional insured endorsement (see Section G). If Tenant does not own any automobiles, Tenant must provide OCII a written statement confirming that no automobiles are owned, and OCII will accept an Automobile Insurance policy providing coverage for Symbol 8 (hired autos) and Symbol 9 (non- owned autos), with additional insured endorsement. One Million Dollars ($1,000,000) per accident for bodily injury and property damage, combined single limit.

   For construction operations, Tenant's Contractor will maintain coverage of not less than Ten Million Dollars ($10,000,000) per accident for bodily injury and property damage, combined single limit. For subcontractors to the Construction General Contractor and the Tenant, the Construction General Contractor, is required to assess the risks associated with such contractors and, with the authorization of the Tenant, determine and verify the appropriate level of automobile liability coverage provided by the subcontractor or consultant.

3) Worker's Compensation and Employer's Liability as required by the State of California. A waiver of subrogation naming OCII is required (also known as "transfer of rights of recovery against others to us"). Employer's Liability coverage must provide limits of One Million Dollars ($1,000,000) for bodily injury each accident; and not less than One Million Dollars ($1,000,000) per employee; and One Million Dollars ($1,000,000) in the annual aggregate for bodily injury by disease. If the Tenant does not have any employees, then evidence of Workers' Compensation and Employers Liability coverage required herein must be provided by either the Project Sponsor(s) or the General Partner of the Partnership, in lieu of such coverage being provided by the Tenant. Additionally, the Tenant must provide a written statement confirming that the Tenant does not have employees.

4) Professional Liability (Errors and Omissions) insurance, applicable to the Tenant's licensed design and professional contractors (architects, engineers, surveyors and other eligible consultants) and to the Tenant only if the Tenant or Sponsor has any employees providing design or engineering services. Two Million Dollars ($2,000,000) for each claim and in the annual aggregate limit covering negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. If the Professional Liability insurance is "claims made" coverage, these minimum limits shall be maintained for no less than five (5) years beyond completion of the scope of services performed. Any deductible over One Hundred Thousand Dollars ($100,000) each claim must be reviewed by OCII Risk Management.

Design professionals who utilize the services of subcontractors or consultants to complete work in connection with this project are required to assess the risks associated with such contractors and, with the authorization of the Tenant, determine and verify the appropriate level of coverage provided by the subcontractor or consultant. The design professional and the Tenant shall assume costs and expenses that may be incurred in fulfilling any indemnity obligations as to itself or any subcontractors or consultants for whom the design professional and/or the Tenant are legally liable in the absence of adequate subcontractor or consultant coverage.

5) Crime Policy or Fidelity Bond covering Tenant's officers and employees against employee dishonesty, forgery and alteration, theft of money and securities, and theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees with respect to the Funding Amount. One Million Dollars ($1,000,000) each loss, with any deductible not to exceed Fifty Thousand Dollars ($50,000). Tenant must provide an endorsement naming OCII as an additional obligee or loss payee.

   Application of Crime Insurance Proceeds. Tenant shall promptly notify OCII of any claim under the required Crime Insurance Policy. OCII may retain from the proceeds of the required Crime Insurance Policy, a sufficient amount of the proceeds to pay the Funding Amount, if any, and shall pay the balance to Tenant. For the avoidance of doubt, OCII shall have no right or claim to the proceeds of the required Crime Insurance Policy in excess of the Funding Amount.

6) Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than One Million Dollars ($1,000,000) per claim or occurrence and Two Million Dollars ($2,000,000) aggregate per policy, this coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Tenant's construction contractor to maintain these minimum limits for no less than three (3) years beyond completion of the Project.

7) Property Insurance

   a. Builder's Risk Insurance during the course of any construction, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and OCII property in the care, custody and control of Tenant or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed Fifty Thousand Dollars ($50,000) each loss, including OCII as loss payee. Builder's Risk must be maintained by the Tenant or the Tenant must cause its general contractor to maintain this insurance.

   b. Property Insurance after completion of construction, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, and including boiler and machinery insurance, for one hundred percent (100%) of the replacement value of all furnishings, fixtures,

equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Twenty Five Thousand Dollars ($25,000) each loss, including OCII as a loss payee. A waiver of subrogation naming OCII is required (also known as "transfer of rights of recovery against others to us").

8) Performance and Payment Bonds for eligible construction contractors during construction and/or rehabilitation, each in the amount of one hundred percent (100%) of contract amounts, naming OCII and Tenant as dual obligees, or other completion security approved by OCII in its sole discretion. OCII has approved issuance of a Completion Guaranty by an affiliate of Tenant to Tenant's institutional lender as completion security.

9) Performance Insurance. Tenant shall require its general contractor to obtain performance insurance that insures against delay in delivery of modules, up to the amount of Tenant's or Tenant's general contractor's contract amount for the delivery of modules for the construction of the Project. Tenant shall limit general contractor's use of proceeds from the performance insurance policy to be used to solely to reduce cost overruns in the construction of the Project related to or caused by delay in the delivery of modules, and Tenant shall, and shall require general contractor, to obtain OCII's approval prior to expending such proceeds.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of those required for policies stated herein must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Tenant shall provide a financial guarantee satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Umbrella, Excess Liability, and Owner Controlled Insurance Policies (OCIP). An Umbrella and/or Excess Liability policy(ies) or an OCIP may be used to reach the Commercial General Liability, Workers' Compensation, and/or Automobile Liability coverage limits required herein. The Umbrella/Excess Liability/OCIP policy(ies) must appropriately schedule any such underlying policy(ies).

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise approved by OCII's Risk Manager.

F. General Requirements.

1) If the Tenant maintains additional coverages and/or higher limits than the minimums shown in this Attachment 8, OCII requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Tenant.

2) The policies required herein, with the exception of Professional Liability and Workers Compensation, shall be primary insurance and non-contributory as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Tenant's insurance and shall not contribute with it.

3) Each insurance policy required herein must be endorsed (if endorsement is available) to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by mail has been given to OCII. Should the insurance carrier not be able to provide such notice, then the responsibility to provide the notice to OCII shall be borne by the policyholder.

4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.

5) Approval of Tenant's insurance by OCII will not relieve or decrease the liability of Tenant under this Agreement.

6) OCII and its officers, agents and employees will not be liable for any required premium under any policy maintained by Tenant.

7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

G. Verification of Coverage. Tenant must furnish OCII with certificates of insurance and original endorsements evidencing coverage required by this clause. The certificates and applicable 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 OCII before work commences. OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time. Tenant shall require and verify that its contractors and consultants maintain the required policies as stated herein. Tenant must furnish OCII with copies of certificates and endorsements upon request. All certificates shall include the following:

1) Identify the following as the certificate holder:
   Successor Agency to the Redevelopment Agency of the
   City and County of San Francisco
   Office of Community Investment and Infrastructure
   One South Van Ness Avenue, 5th Floor

San Francisco, CA 94103

2) Identify the name of the insurance policy holder (Tenant or Contractor), the Project name, and the Project address.

3) For policies in which OCII is required to be named as an additional insured, loss payee, dual obligee, or named on a waiver of subrogation, the policy shall name "Office of Community Investment and Infrastructure/ Successor Agency to the Redevelopment Agency of the City and County of San Francisco, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees" on the certificate and on the attached endorsement or certificate.

H. Review. OCII reserves the right to modify the insurance coverage under this Section, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances consistent with OCII's Risk Management Policy. The insurance coverage required under this Section shall be evaluated by OCII for adequacy from time to time. OCII may require Tenant to increase the insurance limits and/or forms of coverage in its reasonable discretion provided that such limits and/or coverage is generally available at commercially reasonable rates.

EXHIBIT 7

Contract Compliance Policies

1. Equal Opportunity Policies. Tenant shall comply with OCII's Equal Opportunity Policies:

(i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 7-2022, March 15, 2022

(ii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985);

(iii) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997);

(iv) Health Care Accountability Policy (adopted by Resolution No. 168-2001); and

(v) Minimum Compensation Policy (adopted by Resolution No. 168-2001).

Copies of the aforementioned policies are available on the OCII website at http://sfocii.org/policies-and-procedures

2. Environmental Review. The Project must meet the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 et seq.) and implementing regulations. and any other environmental reviews as required by any federal funding sources obtained, including the National Environmental Policy Act ("NEPA").

3. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Tenant or OCII who exercises or has exercised any function or responsibilities with respect to activities assisted by Funds, in whole or in part, 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 financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, Tenant must incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. Tenant will be responsible for obtaining compliance with conflict of interest provisions by the parties with whom it contracts and, in the event of a breach, Tenant must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) Tenant represents that it is familiar with the provisions of Sections 1090 through 1097 and 87100 et seq. of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Tenant certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify OCII immediately if Tenant at any time obtains knowledge of facts constituting a violation.

(c) In the event of any violation of the conflict of interest prohibitions, Tenant agrees that OCII may refuse to consider any future application for funding from Tenant or any entity related to Tenant until the violation has been corrected to OCII's satisfaction, in OCII's sole discretion.

4. Disability Access. Tenant must comply with all applicable disability access Laws, including the Americans with Disabilities Act (42 U.S.C. §§ 1201 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 et seq.). Tenant is responsible for determining which disability access Laws apply to the Project, including those applicable due to the use of Funds. In addition, before occupancy of the Project, Tenant must provide to OCII a written reasonable accommodations policy that indicates how Tenant will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. Tenant must satisfy the requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 et seq.) and implementing regulations at 24 CFR part 35. Tenant must also comply with the provisions contained in 17 CCR 350000 et seq., and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.

6. Relocation. Tenant must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 et seq.) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code and similar Laws.

7. Non-Discrimination in OCII Contracts and Benefits Policy.

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

(b) Non-Discrimination in Benefits. Tenant does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San

Francisco or where the work is being performed for OCII or 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 Agency under state or local law authorizing such registration, subject to the conditions set forth in the Agency's Nondiscrimination in Contracts Policy, adopted by Agency Resolution 175-97, as amended from time to time.

8. Public Disclosure

(a) Tenant understands and agrees that under the State Public Records Law (Cal. Gov. Code §§ 6250 et seq.) and the Agency Public Records Policy, this Agreement and any and all records, information and materials submitted to OCII or the City hereunder are public records subject to public disclosure. Tenant hereby authorizes OCII and the City to disclose any records, information and materials submitted to OCII or the City in connection with this Agreement as required by Law.

9. Limitations on Contributions. Through execution of this Agreement, Tenant acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors; Tenant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Tenant agrees to provide to OCII the names of each member of Tenant's general partners' (or, if applicable, general partners' managing members) board of directors; Tenant's general partners' (or, if applicable, general partners' managing members) chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant's general partners (or, if applicable, general partners' managing members); any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Tenant.

EXHIBIT 7-1

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 Successor Agency to 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 San Francisco-based SBEs before looking outside of San Francisco.

II. APPLICATION. The SBE Program 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**.**

III. GOALS. The Agency's SBE Participation Goals are:

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

IV. TRAINEE HIRING GOAL. In addition to the goals set forth above in Section III, there is a trainee hiring goal for all design professionals (architects, engineers, planners, and environmental consultants) on contracts or subcontracts over $100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional's contract as follows:

Trainees	Design Professional Fees
0	$ 0 – $99,000
1	$ 100,000 – $249,999
2	$ 250,000 – $499,999
3	$ 500,000 – $999,999
4	$1,000,000 – $1,499,999
5	$1,500,000 – $1,999,999
6	$2,000,000 - $4,999,999
7	$5,000,000 - $7,999,999
8	$8,000,000 – or more

A. Procedures For Trainee Hires

1. **Compliance with the Trainee Hiring Goal**

Design professionals will be deemed in compliance with this Agreement by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

2. **Execution and Incorporation of this Agreement to Sub-agreements**

The Agency-Assisted Contractor shall execute this Agreement and shall incorporate by reference or attach this Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of this Agreement. The Agency-Assisted Contractor and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

3. **Contact Educational Institutions**

Each design professional shall call the City and County of San Francisco Office of Economic and Workforce Development (OEWD) or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution or OEWD to make the referral. The minimum duration of assignment is part-time for one semester. However, design professionals are strongly encouraged to offer longer trainee employment periods to allow a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) or OEWD may require the design professionals to send a confirming letter or complete its form(s). Each design professional is required to timely provide all of the information requested by the OEWD or educational institution(s) in order to get the referrals.

4. **Response from Educational Institutions**

Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

5. **Action by Design Professionals When Referrals Available**

The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency strongly encourages the design professional to hire a qualified San Francisco resident referred by the educational institution(s). The design professional shall notify the educational institution in writing of the hiring decision.

6. **Action by Design Professionals When Referrals Unavailable**

If after contacting two or more educational institutions the design professional is informed that no San Francisco residents are currently available, then the design professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco residents are currently available for hire as trainees. If no qualified San Francisco residents are currently available after the second request, then the design professional has fulfilled its obligation under this Agreement, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with this Section IV and submit a copy of its file to the Agency Compliance Officer upon request.

7. **Action by Design Professional When No Response From Educational Institutions**

If a design professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals, then the design professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the design professional within five (5) business days of the Agency Compliance Officer being notified. If the design professional still has not received a response from the educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section IV, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with this Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

8. **Termination of Trainee for Cause**

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Agreement and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth above.

B. Reporting Requirements For Trainee Hires

1. **Reporting**

Upon completion of the Term of the Agreement or the term of the design professional's contract with the Agency-Assisted Contractor, whichever is less, the design professional (i.e. Employer) shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. **Report on Terminations**

In the event a San Francisco resident hired pursuant to this Agreement is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); and (4) whether the design professional replaced the trainee(s).

V. 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 unless another term is specified in the Agency-Assisted Contract or Contract.

VI. 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) San Francisco-based SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-San Francisco-based 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.

VII. ASSOCIATIONS AND JOINT VENTURES (JV). OCII will recognize JVs and Associations between non-SBE firms and SBE firms where the SBE partner performs at least 35% of the work defined in the JV or Association agreement, and receives at least 35% (or a proportionate share, whichever is higher) of the dollars to be earned by the JV or Association. Under this arrangement, OCII will deem the JV or Association to be an SBE for the purposes of meeting the SBE goal. Due to the technical nature of the disciplines and the various standards of each industry, OCII will not require a standardized agreement. However, each JV and Association agreement must be in writing and contain, at a minimum, the following terms:

- Define the management of the agreement between the parties;
- Define the technical and managerial responsibilities of each party;
- Define the scope of work to be performed by each party, and where possible identify the percentage and break-down of scope of work for each party;
- Identify any additional subcontractors or consultants that will perform the work under the agreement;
- Define the schedule, duration, and deliverable of the agreement;
- Detail the fee schedule, fee breakdown, or division of compensation;
- Specify insurance requirements and/or if each party shall maintain its own insurance;
- Specify how additional work or changes in scope shall be negotiated or determined and which party shall be responsible for notifying OCII of the changes;
- Specify how claims and disputes will be resolved.

A copy of the JV or Association agreement must be provided to OCII for approval in order for the JV or Association to be recognized.

VIII. CERTIFICATION. The Agency no longer certifies SBEs but instead relies on the information provided in other public entities' business certifications to establish eligibility for the Agency's program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency's SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the SBE Policy.

IX. 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.

X. DEFINITIONS. Capitalized terms not otherwise specifically defined in this SBE Agreement have the meaning set forth in the Agency's SBE Policy adopted on November 16, 2004 and amended on July 21, 2009 ("**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 SBE Policy shall govern over the Agency-Assisted Contract or Contract which in turn shall govern over this SBE Agreement.

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.

Agency-Assisted Contract means, as applicable, the Development and Disposition Agreement

("**DDA**"), Land Disposition Agreement ("**LDA**"), Lease, Loan and Grant Agreements, and other similar contracts, and 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.

Agency Contract means personal services contracts, purchase requisitions, 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. Typically, receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts. However, to the extent a public entity considers a five-year average in its certification program, OCII will accept the five-year average provided the remaining certification criteria of the public entity is consistent with OCII's criteria stipulated in this Policy. 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.

Arbitration Party means all persons and entities who attend the arbitration hearing pursuant to Section XIII, as well as those persons and entities who are subject to a default award provided that all of the requirements in Section XIII.L. have been met.

Association means an agreement between two parties established for the purpose of completing a specific task or project. The associate agreement shall provide the SBE associate a significant project management role and the SBE associate shall be recognized in marketing and collateral material. The Association shall be distinguished from traditional subcontracting arrangements via a written Association agreement that defines the management of the agreement, technical and managerial responsibilities of the parties, and defined scopes and percentages of work to be performed by each party with its own resources and labor force. Unlike the more formal Joint Venture, an Association does not require formation of a new business enterprise between the parties. The Associate agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

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.

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.

Joint Venture means an entity established between two parties for the purposes of completing a

venture or project. The Joint Venture agreement typically creates a separate business entity and requires acquisition of additional insurance for the newly created joint business entity. The Joint Venture agreement shall contain, at a minimum, provisions required by Section VII and be subject to OCII approval.

Non-San Francisco-based Small Business Enterprise means a SBE that has fixed offices located outside the geographical boundaries of the City.

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.

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), Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, and Transbay.

San Francisco-based 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.

Small Business Enterprise (SBE) means an economically disadvantaged business that is certified by another public entity (either municipal, State, or federal agency) that considers the certification criteria stipulated in this Policy. In general, such criteria shall include a determination by the public entity as to whether an economically disadvantaged business 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; and has average gross annual receipts in at least the three years (and no more than five years, if practiced by the public entity) immediately preceding its application for certification as a SBE that do not exceed the following limits:

Industry	OCII SBE Size Standard
Construction Contractors	$24,000,000
Specialty Construction Contractors	$14,000,000
Suppliers (goods/materials/ equipment and general services)	$12,000,000
Professional Services	$5,000,000
Trucking	$5,000,000

In addition, an economically disadvantaged business shall meet the other certification criteria described in Exhibit I of the SBE Policy in order to be considered an SBE by the Agency.
In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations) to calculate the firm's average annual gross receipts. In addition, the calculation of a firm's size shall include the receipts of all affiliates.
Once a business reaches the 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).

Specialty Construction Contractor means a contractor licensed by the Contractors State License Board under the "C" classification license pursuant to California Business and Professions Code Section 7058.

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 the Bayview Hunters Point Redevelopment Survey Area C.

XI. 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 all of 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 $5,000 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. (Note that the Agency has a Surety Bond Program that may assist SBEs in obtaining necessary bonding.) 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. Utilize SBEs as Lower Tier 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. Maximize Outreach 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 any subcontractor or supplier, the Agency's Contract Compliance Specialist should be notified prior to replacement due to the failure or inability of the subcontractor or supplier to perform the required services or timely delivery the required supplies, then First Consideration should be given to a certified SBE, if available, as a replacement.

XII. 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.

C. Compliance with Prompt Payment Statute. 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 seven (7) 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."

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.

D. Submission Of Electronic Certified Payrolls. For any Agency-Assisted Contract which requires the submission of certified payroll reports, the requirements of Section VII of the Agency's Small Business Enterprise Policy shall apply. Please see the Small Business Enterprise Policy for more details.

XIII. PROCEDURES

A. Notice to Agency. The Agency-Assisted Contractor or Contractor(s) shall provide the Agency with the following information within 10 days of awarding a contract or selecting subconsultant:

1. the nature of the contract, e.g. type and scope of work to be performed;
2. the dollar amount of the contract;
3. the name, address, license number, gender and ethnicity of the person to whom the contract was awarded; And
4. SBE status of each subcontractor or subconsultant.

B. Affidavit. If the Agency-Assisted Contractor or Contractor(s) contend that the contract has been awarded to a SBE, the Agency-Assisted Contractor or Contractor(s) shall, at the same time also submit to the Agency a SBE Application for Certification and its accompanying Affidavit completed by the SBE owner. However, a SBE that was previously certified by the Agency shall submit only the short SBE Eligibility Statement.

C. Good Faith Documentation. If the 50% SBE Participation Goals are not met in each category (Construction, Professional Services and Suppliers), the Agency-Assisted Contractor or

Contractor(s) shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Agency-Assisted Contractor's or Contractor's good faith efforts is not resolved at this meeting, the Agency-Assisted Contractor or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts ("**Submission**"):

1. A report showing the responses, rejections, proposals and bids (including the amount of the bid) received from SBEs, including the date each response, proposal or bid was received. This report shall indicate the action taken by the Agency-Assisted Contractor or Contractor(s) in response to each proposal or bid received from SBEs, including the reasons(s) for any rejections.

2. A report showing the date that the bid was received, the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the non-SBE contractor who was selected submitted more than one bid, the amount of each bid and the date that each bid was received shall be shown in the report. If the bidder asserts that there were reasons other than the respective amounts bid for not awarding the contract to an SBE, the report shall also contain an explanation of these reasons.

3. Documentation of advertising for and contacts with SBEs, contractor associations or development centers, or any other agency which disseminates bid and contract information to small business enterprises.

4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.

5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.

6. A description of the assistance provided to SBEs with respect to bonding, lines of credit, etc.

7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.

8. A description of any divisions of work undertaken to facilitate SBE participation.

9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.

10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.

11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

D. Presumption of Good Faith Efforts. If the Agency-Assisted Contractor or Contractor(s) achieves the Participation Goals, it will not be required to submit Good Faith Effort documentation.

E. Waiver. Any of the SBE requirements may be waived if the Agency determines that a

specific requirement is not relevant to the particular situation at issue, that SBEs were not available, or that SBEs were charging an unreasonable price.

F. SBE Determination. The Agency shall exercise its reasonable judgment in determining whether a business, whose name is submitted by the Agency-Assisted Contractor or Contractor(s) as a SBE, is owned and controlled by a SBE. A firm's appearance in any of the Agency's current directories will be considered by the Agency as prima facie evidence that the firm is a SBE. Where the Agency-Assisted Contractor or Contractor(s) makes a submission the Agency shall make a determination, as to whether or not a business which the Agency-Assisted Contractor or Contractor(s) claims is a SBE is in fact owned and controlled by San Francisco-based 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 XIII.

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 disagrees 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.

XIV. ARBITRATION OF DISPUTES.

A. Arbitration by AAA. Any dispute regarding this SBE Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of San Francisco.

B. Demand for Arbitration. Where the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Agency-Assisted Contractor or Contractor shall have seven (7) business days, in which to file a Demand for Arbitration,** unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying any entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Agency-Assisted Contractor and Contractor fail 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 XIII.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

XV. AGREEMENT EXECUTION

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.

TRANSBAY 2 FAMILY COMMERCIAL LLC
a California limited liability company

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its sole member/manager

By: ____________________________
Ramie Dare
Vice President

EXHIBIT 7-2

Construction Workforce Agreement

I. **PURPOSE.** This Agreement is entered into between the Office of Community Investment and Infrastructure ("OCII" or "Agency"), as successor agency to the San Francisco Redevelopment Agency, and Owner (who for this purposes of this Attachment 9-2 shall be the Tenant as defined under the Lease to which this document is an Attachment), for the purposes of ensuring participation of San Francisco residents and equal employment opportunities in the construction work force involved in constructing any of the phases upon the Site covered by the underlying agreement to which this Agreement is attached hereto.

II. **DEFINITIONS.**

The following definitions apply to this Agreement.

A. "CityBuild" means the construction employment program of the Workforce Development Division of the San Francisco Office of Economic and Workforce Development (OEWD).

B. "Contract" means any agreement in excess of $10,000 between the Owner, its Contractors and a person to provide or procure labor, materials or services for the construction of the Improvements, including a purchase order that requires installation of materials.

C. "Contractor" means the Owner's general contractor, all prime contractors and all subcontractors (regardless of tier) having a Contract or subcontract in excess of $10,000 and who employ persons in a Trade for construction of the Improvements.

D. "Improvements" has the meaning set out in the Lease to which this Attachment 9-2 is attached.

E. "Project Area Resident" means a San Francisco Resident who resides in a redevelopment area under the management of OCII.

F. "San Francisco Resident" in the case of a new hire shall mean an individual who has lived in San Francisco for at least one week prior to submitting his/her initial application for employment to work on the Improvements. In the case of a person employed by the Owner or its Contractor or Consultant prior to assignment to the Improvements, this term shall mean a person who has lived in San Francisco for at least six months prior to the date he/she applied for a transfer to a position at the Improvements or the date he/she was assigned to work on the Improvements, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that he/she lived in San Francisco prior to applying for or being considered for a position with the Owner, Contractor or Consultant.

III. WORK FORCE GOALS.

The Owner agrees and will require each Contractor and all subcontractors to use good faith efforts to employ 50 percent of its construction workforce hires by trade and by hours from qualified San Francisco Residents with first consideration given to Project Area Residents. Owner and Contractors will be deemed in compliance with this Agreement and the Policy by meeting or exceeding the goal or by demonstrating good faith efforts toward compliance.

IV. GOOD FAITH EFFORTS.

A. Submission of Labor Force Projections and Other Data
The Contractor shall submit, to the extent available, labor force projections to the OCII Compliance Officer, or its agent, within two (2) weeks of contract award.

B. Submit Subcontractor Information Form
The Contractor shall submit to the Compliance Officer, or its agent, the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Compliance Officer upon request.

C. Preconstruction Meeting
The Contractor shall hold a preconstruction meeting which shall be attended by the Compliance Officer, CityBuild, all prime contractor(s) and all subcontractor(s). The preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this Agreement and to explore any anticipated problems in complying with the Agreement. All questions regarding how this Agreement applies to the Owner, Contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of the Policy and this Agreement that may result in the Agency ordering a suspension of work until the breach has been cured. Suspension under this provision is not subject to arbitration.

D. Submit Construction Worker Request Form
For the Term of the Agreement, each time the Owner or Contractor seeks to hire workers for the construction or rehabilitation of improvements, they must first submit, by fax, email or hand delivery, an executed construction worker request form to CityBuild. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The

construction worker request form is available from the Compliance Officer upon request.

E. Response from CityBuild

CityBuild shall respond, in writing, via fax, email or hand delivery to each request for construction workers. The response shall state that CityBuild was able to satisfy the request in full, in part or was unable to satisfy the request. CityBuild shall look to their own referral lists, as well as confer with CBOs in an attempt to find qualified Project Area Residents and San Francisco Residents. If CityBuild is able to satisfy the request in full or in part, it shall direct the qualified Project Area Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If CityBuild is unable to satisfy the request, then CityBuild shall send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

F. Action by Contractor When Referrals Available

The Owner or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the Project Area Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified Project Area Residents or San Francisco Residents referred by CityBuild. However, if the Contractor finds the Project Area Residents or San Francisco Residents are not qualified, then the Contractor shall send the Project Area Residents or San Francisco Residents back to CityBuild. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to CityBuild stating in detail the reason(s) the Project Area Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the Project Area Residents or San Francisco Residents. CityBuild shall, within one (1) business day of receipt of the fax or email, send new qualified Project Area Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

G. Action by Contractor When Referrals Unavailable

If a Contractor receives a response from CityBuild stating that no qualified Project Area Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request.

H. Action by Contractor When No Response From CityBuild

If a Contractor has not received a response to its construction worker request from CityBuild within two (2) business days, then the Contractor should immediately advise the Compliance Officer by phone, fax or email. The Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from CityBuild within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request. This Policy is intended to provide qualified Project Area and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

I. Action by Contractor When No Response From Union

The Contractor should immediately advise the Compliance Officer by phone, fax or email when the Contractor has sent a qualified Project Area Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified Project Area or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet its obligations under this Policy. Nothing in this Policy shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements.

J. Hiring Apprentices

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

K. Termination and Replacement of Referrals

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Policy, the Contractor shall notify CityBuild in writing via fax or email and submit a report of termination pursuant to Section (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Policy beginning at Section (A)(6).

V. REPORTING REQUIREMENTS.

A. Submission of Certified Payroll Reports

Each Contractor subject to this Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Owner is ultimately responsible for the submission of these reports by the Contractors. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses an online Project Reporting System (PRS) for submission of certified payroll reports. This system is available at no cost to the Contractor. Training and educational materials for PRS are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using PRS. However, a waiver may be granted to any Contractors who do not have a computer or online access.

B. Additional Information

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Policy and may be addressed as set forth in the arbitration provisions included in Agency contracts.

C. Report on Terminations

In the event a Project Area Resident or San Francisco Resident hired pursuant to this Policy is terminated for cause, the responsible Contractor shall within two (2) days fax or email a termination report to CityBuild with a copy to the Compliance Officer stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) were Project Area Resident(s) or San Francisco Resident(s).

D. Inspection of Records

The Owner and each Contractor shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency and its designated Compliance Officer, and shall permit such

representatives to interview construction workers and apprentices during working hours on the job.

E. Failure to Submit Reports

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Agreement and the Policy, and may be addressed under arbitration provisions pursuant to Article VII (Arbitration of Disputes) of this Agreement.

F. Submission of Good Faith Effort Documentation

If the Owner's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency or its designated Compliance Officer with the documentation of its efforts to comply with this Policy and the Agreement. The Owner or Contractor must maintain a current file of the names, addresses and telephone numbers of each Project Area Resident or San Francisco Resident applicant referral (whether a self-referral or a referral from a union, CBO or CityBuild referral) and what action was taken with respect to each such individual.

G. Coding Certified Payrolls

Each Contractor shall include, on the weekly payroll submissions, the proper job classification (as approved by the California Department of Industrial Relations), apprentice's craft (if applicable), skill level, protected class status, and domicile of each construction worker.

VI. RECORDKEEPING REQUIREMENTS.

Contractor shall comply with the requirements of California Labor Code Section 1776, as amended, 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.

In addition, each Contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of Improvements, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Improvements. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident or disadvantaged worker, and the referral source or method through which the Contractor hired or retained that worker for work on the Improvements (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method). Contractor may verify that a worker is a local resident through the worker's possession of a valid SF City ID Card or other government- issued identification. OCII may require additional records to be kept with regard to Contractor's compliance with this Agreement. All records described in this section shall at all times be open to

inspection and examination by the duly authorized officers and agents of OCII, including representatives of the OEWD.

VII. 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 VII.B. above.

D. **Agency Request to AAA**. Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.

E. **Selection of Arbitrator**. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

F. **Setting of Arbitration Hearing.** A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

G. **Discovery.** In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

H. **Burden of Proof**. The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.

I. **California Law Applies.** Except where expressly stated to the contrary in this Construction Work Force Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.

J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each

such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Construction Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

K. **Arbitrator's Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.

N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of

competent jurisdiction.

O. **Exculpatory Clause.** Owner expressly waives any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Construction Work Force Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.

P. **Severability**. The provisions of this Construction Work Force Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Construction Work Force Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Construction Work Force Agreement or the validity of their application to other persons or circumstances.

Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

____________________________ ________________________

Agency Owner

I, hereby certify that I have authority to execute this Construction Work Force Agreement on behalf of the Owner listed below and that Owner agrees to diligently exercise good faith efforts to comply with this Agreement to meet or exceed the 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.

TRANSBAY 2 FAMILY COMMERCIAL LLC,
a California limited liability company

By: Mercy Housing Calwest
a California nonprofit public benefit corporation,
its sole member/manager

By: ___________________________
Ramie Dare
Vice President

EXHIBIT 7-3
Prevailing Wage Policy

These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements and Subtenant Improvements as defined in the underlying agreement between the Tenant and OCII of which this Attachment and these Labor Standards are a part.

11.1 All Contracts and Subcontracts for construction and construction-related improvements shall contain the Labor Standards.

(a) All specifications relating to the construction of the Improvements shall contain these Labor Standards and the Tenant 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 Tenant 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 Agreement and as a condition to close of escrow, the Tenant 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.

11.2 Definitions. The following definitions shall apply for purposes of this Exhibit H:

(a) “Contractor” is the Tenant 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.

(a) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.

(b) "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 work week.

11.3 **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 §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.

(b) 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.

(c) 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.

(d) 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 Contractor 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 §8. The Executive Director of the Agency may require the Contractor 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 §4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

(e) 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.

11.4 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 case 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.

11.5 **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.

11.6 **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.

11.7 **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) 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 Contractor 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.

11.8 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.

(a) The Contractor shall make the records required under this §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 Agency's equal opportunity program set forth in Attachment 5 of this Lease Agreement.

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 §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 Contractor 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 §2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §8 ("Non- Complying Contractor"), the Executive Director of the Agency may, after written notice to the Contractor 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 Contractor, 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 Contractor 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 Contractor, 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 Contractor 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 Contractor shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §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 who 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 Tenant 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 Contractor, or as appropriate to one or the other if the Contractor 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 §4) and copies of all notices sent or received by the Agency pursuant to §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 Contractor 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 Contractor 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 Contractor, 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.

EXHIBIT 7-4

Nondiscrimination in Contracts and Benefits

	OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (OCII) **(SUCCESSOR TO THE SAN FRANCISCO REDEVELOPMENT AGENCY)** **DECLARATION FORM** **Nondiscrimination in Contracts and Benefits**

Section A

Is your company/organization currently certified by the City and County of San Francisco in compliance with Administrative Code 12B Equal Benefits Ordinance and will your company/organization ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts? If yes, please indicate below, skip Section B, and execute the Declaration in Section C. If no, please skip Section A and complete Sections B and C.

□ My company/organization is certified and compliant with the 12B Equal Benefits Ordinance of the City and County of San Francisco and there has been no change in our 12B Declaration since certification. My company/organization agrees to ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts. (Please check box to affirm, if applicable)

Section B

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 Office of Community Investment and Infrastructure (successor to 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.

Section C

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.

Name of Company/Organization: ____

Doing Business As (DBA):____

Also Known As (AKA):____

General Address:____

Remittance Address (if different from above): ______________________________________

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)

EXHIBIT 7-5

Health Care Accountability Policy Declaration

What the Policy does. The Office of Community Investment and Infrastructure ("OCII") (as Successor Agency to the Redevelopment Agency of the City and County of San Francisco) 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 OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to offer health plan benefits to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits established by the San Francisco Department of Public Health ("SFDPH"), as approved by the OCII Commission; (2) pay OCII an amount equivalent to the current fee established by the SFDPH for each hour the employee works on the covered contract or subcontract or on property covered by a lease and OCII 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 and offered by SFDPH. The minimum health plan standards and fees established by SFDPH are published at https://sfgov.org/olse/health-care-accountability-ordinance-hcao.

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

Effect on OCII 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, OCII can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII's contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII'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.

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

For more information, please see the complete text of the HCAP, available from the OCII's Contract Compliance Department at: (415) 749-2400 or http://sfocii.org/policies-and-procedures.

Routing. Return this form to: Contact Compliance Department, Office of Community Investment and Infrastructure, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

485.241/586066

Declaration

Effective with the first OCII 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 __________________

EXHIBIT 7-6

Minimum Compensation Policy Declaration

What the Policy does. The Office of Community Investment and Infrastructure ("OCII") (Successor Agency to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy ("MCP"), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to pay Covered Employees a minimum hourly wage and to provide 12 compensated and 10 uncompensated days off per year. The Minimum Compensation rate adjusts automatically to match the wage rate required by the City and County of San Francisco's Minimum Compensation Ordinance. Contractor is obligated to keep informed of the then-current requirements, which are published at https://sfgov.org/olse/minimum-compensation-ordinance-mco.

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

Effect on OCII 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, OCII 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 OCII.

What this form does. Your signed declaration will help OCII's contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII 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.

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

For more information, please see the complete text of the MCP, available from the OCII Contract Compliance Department at (415) 749-2400 or http://sfocii.org/policies-and-procedures.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII 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