

File No. 140293

Committee Item No. \_\_\_\_\_

Board Item No. 18

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date \_\_\_\_\_

Board of Supervisors Meeting

Date May 6, 2014

#### Cmte Board

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|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/> | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/> | <input type="checkbox"/>            | Introduction Form                            |
| <input type="checkbox"/> | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Budget                                 |
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| <input type="checkbox"/> | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
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| <input type="checkbox"/> | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Public Correspondence                        |

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

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|--------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>OCII Summary Memo 03/21/2014</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Air Rights Lease Draft</u>       |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>33433 Report</u>                 |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>OCII Reso 29-2014</u>            |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Hearing Notice</u>               |

Completed by: John Carroll Date May 1, 2014

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Air Rights Lease - Mercy Housing California 62, LP - 280 Beale Street - Transbay Block 6  
2 Affordable Housing]

3 **Resolution approving and authorizing the Successor Agency to the Redevelopment**  
4 **Agency of the City and County of San Francisco to execute an Air Rights Lease of a**  
5 **parcel at 280 Beale Street, with Mercy Housing California 62, LP, a California limited**  
6 **partnership, for a term of 75 years commencing on Board approval, for the purpose of**  
7 **developing housing for very low-income households.**

8  
9 WHEREAS, The Successor Agency to the Redevelopment Agency of the City and  
10 County of San Francisco (the "Successor Agency," also commonly known as the Office of  
11 Investment and Infrastructure (OCII) and the City desire to increase the City's supply of  
12 affordable housing and encourage affordable housing development through financial and  
13 other forms of assistance; and

14 WHEREAS, The Board of Supervisors of the City adopted the Transbay  
15 Redevelopment Project Area (the "Project Area") in order to undertake a variety of projects  
16 and activities to alleviate blighting conditions; and

17 WHEREAS, The air rights parcel located at 280 Beale Street, San Francisco,  
18 California, in the Project Area ("Site" or "Property"), was part of an underutilized and  
19 unimproved lot; and

20 WHEREAS, The California Legislature in 2003 enacted Assembly Bill 812 ("AB 812")  
21 authorizing the demolition of the historic Transbay Terminal building and the construction of  
22 the new Transbay Transit Center (TTC) (Stat. 2003, Chapter 99, codified at Cal. Public  
23 Resources Code, Section 5027.1). AB 812 also mandated that 25% of the residential units  
24 developed in the area around the Center "shall be available to" low income households, and  
25 an additional 10% "shall be available to" moderate income households if the City and County

1 of San Francisco ("City") adopted a redevelopment plan providing for the financing of the  
2 Center; and

3 WHEREAS, In 2003, in an agreement with the Transbay Joint Powers Authority (TJPA)  
4 and the City, the State agreed to transfer approximately 10 acres of State-owned property  
5 ("State-owned parcels") in and around the then-existing Transbay Terminal to the City and the  
6 TJPA, which would then sell the State-owned parcels and use the revenues from the sales to  
7 finance the Center ("Cooperative Agreement"). The City agreed, among other things, to  
8 commit the property tax revenue from the State-owned parcels through its Redevelopment  
9 Agency to the Center. Under the Cooperative Agreement, the State relied on tax increment  
10 financing under a redevelopment plan to improve and sell the parcels; and

11 WHEREAS, The Redevelopment Plan provided for the financing of the TTC and  
12 established a program for the Former Agency to redevelop and revitalize the blighted Project  
13 Area; and

14 WHEREAS, In 2006, the TJPA and the Former Agency executed an agreement  
15 ("Implementation Agreement"), which required the Former Agency to take the lead role in  
16 facilitating the development of the State-owned parcels. Specifically, the Implementation  
17 Agreement required the Former Agency to: (1) prepare and sell the State-owned parcels to  
18 third parties, (2) deposit the sale proceeds into a trust account to help the TJPA pay the cost  
19 of constructing the TTC, (3) implement the Redevelopment Plan to enhance the financial  
20 feasibility of the Project, and (4) fund the state-mandated affordable housing program; and

21 WHEREAS, In 2008, the City, the Former Agency and the TJPA entered into an  
22 agreement that granted options to the Former Agency to acquire the State-owned parcels,  
23 arrange for development of the parcels, and distribute the net tax increment to the TJPA to  
24 use for the Center ("Option Agreement"). The Option Agreement provided the means by  
25 which the Former Agency could fulfill its obligations under the Implementation Agreement to

1 prepare and sell the State-owned parcels, including Blocks 2-12 and Parcel F (Section 2.1 of  
2 the Option Agreement at p. 4); and

3 WHEREAS, On July 6, 2011, pursuant to the Implementation Agreement, the Former  
4 Agency issued a Request for Proposals ("RFP") from development teams to design and  
5 develop a high-density, mixed-income residential project on Blocks 6/7 in the Project Area.  
6 On December 6, 2011, after a competitive selection process, the Former Agency Commission  
7 authorized staff to enter into negotiations for the development of Blocks 6/7 with the  
8 development team lead by Golub Real Estate Corp. ("Golub") and Mercy Housing California  
9 ("Mercy"); and

10 WHEREAS, On February 1, 2012, the Former Redevelopment Agency was dissolved  
11 pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of  
12 2011-12, First Extraordinary Session) ("AB 26"), codified in relevant part in California's Health  
13 and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in  
14 California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27,  
15 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484  
16 (Chapter 26, Statutes of 2011-12) ("AB 1484"). (Together, AB 26 and AB 1484 are referred to  
17 as the "Redevelopment Dissolution Law."); and

18 WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former  
19 Redevelopment Agency's assets (other than certain housing assets) and obligations were  
20 transferred to the Office of Community Investment and Infrastructure ("OCII"), as Successor  
21 Agency to the Former Agency; and

22 WHEREAS, On April 15, 2013, the California Department of Finance ("DOF")  
23 determined "finally and conclusively," under Cal. Health & Safety Code § 34177.5 (i), that the  
24 Implementation Agreement, AB 812, and the Transbay Redevelopment Project Tax Increment  
25 Allocation and Sales Proceeds Pledge Agreement ("Pledge Agreement") are enforceable

1 obligations. The Implementation Agreement and several other Transbay obligations require  
2 OCII to take the actions proposed by this Resolution; and

3 WHEREAS, Golub/Mercy has agreed that its acquisition and development of Blocks  
4 6/7 shall provide a purchase price of \$30,000,000 to be paid by Golub), construction of 556  
5 residential units (409 market-rate units and 147 stand-alone affordable family units at 50  
6 percent of area median income), and payment of a \$24.3 million affordable housing fee by  
7 Golub to fund all of the affordable housing units on Block 6 and a portion of the affordable  
8 housing units on Block 7. The OCII-approved disposition and development agreement  
9 (“DDA”) with Golub/Mercy provides for the sale and development of Block 6 with 409 market-  
10 rate units, 70 affordable units, shared open space, and a shared underground parking garage.  
11 The DDA, however, does not cover the development of Block 7, which includes 77 affordable  
12 units, a child care facility and shared open space, because it will be constructed at a future  
13 date by Mercy, when additional affordable housing funding becomes available; and

14 WHEREAS, On April 16, 2013, the Commission on Community Investment and  
15 Infrastructure approved the DDA and the exercise of OCII’s option to acquire Blocks 6/7 from  
16 the TJPA pursuant to the Option Agreement; and

17 WHEREAS, Block 6, a TJPA-owned parcel, was transferred to OCII, located at 280  
18 Beale Street, the northeast corner of Folsom and First Streets, San Francisco, California, in  
19 the Project Area, is an underutilized lot currently improved by a surface parking lot; and

20 WHEREAS, By Resolution No 330-13 the Board of Supervisors of the City and County  
21 of San Francisco determined that the sale of the Property from OCII to Golub Real Estate  
22 Corporation, an Illinois Corporation: 1) includes consideration to be received by OCII that is  
23 not less than the fair reuse value at the use and with the covenants and conditions and  
24 developments costs authorized by the DDA; 2) includes a purchase price of \$30,000,000,  
25 which was the highest price achieved through a competitive request for proposals process

1 based on the development permitted on the site and the affordable housing requirements of  
2 the Redevelopment Plan, and which will be deposited into a Trust Account maintained by the  
3 TJPA for use to help pay the cost of constructing the new Transbay Transit Center; 3) will  
4 provide 70 units affordable family housing for households with incomes at or below 50 percent  
5 of area median income; 4) will provide \$24.3 million in funding for affordable housing, of which  
6 approximately \$14 million will be used to subsidize the 70 affordable family units to be  
7 developed on the Property and \$10.3 million will be used to help subsidize the 77 affordable  
8 family units proposed for development on Block 7; and 5) will assist in the elimination of blight  
9 by converting a underutilized parking lot into a high-density, mixed-use, mixed-income  
10 residential development; and

11 WHEREAS, Block 6, was transferred to Golub per the terms of the DDA; and

12 WHEREAS, Golub is required pursuant to the terms of the DDA to transfer the air  
13 rights parcel (the "Air Rights Parcel") that the affordable component of Block 6 will be built  
14 within to OCII allowing sufficient time for OCII to lease the Air Rights Parcel to Mercy through  
15 a long term air rights lease ("Air Rights Lease") prior to start of construction of the Affordable  
16 Project; and

17 WHEREAS, Notice of the public hearing has been published consistent with Health and  
18 Safety Code Section 33433; and

19 WHEREAS, OCII prepared and submitted a report consistent with the requirements of  
20 Section 33433 of the Health and Safety Code, including a copy of the proposed Air Rights  
21 Lease, and a summary of the transaction describing the cost of the Air Rights Lease to OCII,  
22 the value of the property interest to be conveyed, the purchase price and other information,  
23 which was made available for public inspection; and

24 WHEREAS, OCII is providing the Mercy Housing 62, LP, a California limited  
25 partnership (the "Developer") with financial assistance from the affordable housing fee paid by

1 Golub to leverage equity from an allocation of low-income housing tax credits and other  
2 funding sources in order to construct approximately 70 (including one manager's unit) units of  
3 affordable housing, and ground floor retail (the "Project"); and

4 WHEREAS, The OCII Commission has approved the Air Rights Lease between OCII  
5 and the Developer pursuant to the terms of the DDA, in which OCII will lease the Property for  
6 Fifteen Thousand Dollars (\$15,000.00) per year, in exchange for the Developer's agreement,  
7 among other things, to operate the Project with rent levels affordable to Lower Income  
8 Households. A copy of final draft of the OCII Commission Resolution No. 29-2013, scheduled  
9 to be heard by the OCII Commission on April 15, 2014, is on file with the Clerk of the Board of  
10 Supervisors in File No. 140293, and incorporated by reference herein as though fully set forth;  
11 and

12 WHEREAS, OCII believes that the redevelopment of the Site, pursuant to the Air  
13 Rights Lease, and the fulfillment generally of the Air Rights Lease and the intentions set forth  
14 herein, are in the vital and best interests of the City and the health, safety, morals and welfare  
15 of its residents, and in accord with the public purposes and provisions of the applicable State  
16 and Federal laws, and

17 WHEREAS, Upon completion of the Project, OCII intends to transfer the affordable  
18 housing loan obligation, asset, and Air Rights Lease to the Mayor's Office of Housing and  
19 Community Development (MOHCD) as the designated Successor Housing Agency of the City  
20 and County of San Francisco under Board Resolution 11-12, as required by Dissolution Law,  
21 and

22 WHEREAS, Pursuant to the Redevelopment Plan, the Board of Supervisors shall  
23 approve the sale or lease of any property acquired by OCII pursuant to the Option Agreement  
24 in a manner consistent with the standards and procedures that govern the Agency's  
25 disposition of property acquired with tax increment moneys and that appear in Section 33433

1 of the California Community Redevelopment Law; and

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

4 WHEREAS, OCII prepared and submitted a report in accordance with the requirements  
5 of Section 33433 of the Health and Safety Code, including a copy of the proposed Air Rights  
6 Lease, and a summary of the transaction describing the cost of the Air Rights Lease to the  
7 Agency, the value of the property interest to be conveyed, the lease price and other  
8 information was made available for the public inspection; now, therefore, be it

9 RESOLVED, That the Board of Supervisors does hereby find and determine that the  
10 lease of the Property from OCII to the Developer (1) will provide housing for very low-income  
11 families; (2) is consistent with the former Redevelopment Agency's citywide Tax Increment  
12 Affordable Housing Program, pursuant to Community Redevelopment Law Section 33342.2;  
13 (3) the less than fair market value rent of approximately Fifteen Thousand Dollars  
14 (\$15,000.00) per year for a term of seventy-five (75) years is necessary to achieve  
15 affordability for Very Low Income Households; and (4) the consideration to be received by  
16 OCII is not less than the fair reuse value at the use and with the covenants and conditions and  
17 development costs authorized by the Air Rights Lease; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors hereby approves and  
19 authorizes OCII to execute the Air Rights Lease with the Developer, substantially in the form  
20 on file with the Clerk of the Board of Supervisors in File No. 140293 and lodged with the OCII,  
21 and to take any such further actions needed to execute such documents as is necessary to  
22 carry out the Air Rights Lease.

1 APPROVED AS TO FORM:

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3 DENNIS J. HERRERA

4 City Attorney

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8 By: 

9 HEIDI J. GEWERTZ

10 Deputy City Attorney

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**Office of Community  
Investment and Infrastructure**  
(Successor to the San Francisco  
Redevelopment Agency)

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EDWIN M. LEE, Mayor

Christine Johnson, Chair  
Mara Rosales, Vice-Chair  
Theodore Ellington  
Marily Mondejar  
Darshan Singh  
Tiffany Bohee, Executive Director

March 21, 2014

## SUMMARY OF TRANSBAY BLOCK 6 AFFORDABLE HOUSING

### **Action Requested:**

Approving the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (the "Successor Agency" also commonly known as the Office of Investment and Infrastructure ("OCII")) lease of air rights parcel at 280 Beale Street, to Mercy Housing California 62, LP, a California limited partnership ("Developer"), for 55 years for the purpose of creating a housing development for very low-income families ("Air Rights Lease").

### **Project Summary:**

The Transbay Block 6 Affordable Housing site ("Property" or "Site"), currently an air rights parcel above what was an unimproved lot, is located at 280 Beale Street, in San Francisco's Transbay neighborhood. On April 16, 2013, the Commission on Community Investment and Infrastructure ("CCII") approved a disposition and development agreement ("DDA") between OCII and the development team of Golub Real Estate Corporation ("Golub" or "Developer") and Mercy Housing California ("Mercy" or "Affordable Developer") for the development of 409 market-rate residential units and 70 affordable family rental residential units (at 50 percent of area median income), along with shared open space and a shared underground parking garage, on the parcel located at 280 Beale Street, commonly known as Block 6 in the Transbay Redevelopment Project Area ("Project Area"). The Golub/Mercy team was selected by the Former Agency after a competitive request for proposals ("RFP") was issued in July 2011 and proposals were received from a total of four development teams. Block 6 is the first phase of a larger development that includes an additional 77 affordable family rental residential units (also at 50 percent of area median income) and a child care facility that will be developed on Block 7, immediately adjacent to Block 6, by Mercy. The DDA, however, does not cover Block 7 because it will be constructed at a future date when additional affordable housing funds are available from OCII.

On August 29, 2013, the BOS approved the 33433 Report related to the 409-unit market rate component of Transbay Block 6. Currently, OCII is preparing to enter into a long term Air Rights Lease with Mercy for the 70-unit affordable component of Transbay Block 6 ("Project") pursuant to the DDA.

The Project will be an eight-story podium building on the east end of the block with 70 units (56 1-bedroom units and 14 2-bedroom units). It will also include the following features:

- 8-13 spaces within a shared underground parking garage with a total of approximately 133 spaces, entirely under Block 6, which will accommodate parking for the Project, the Market-Rate Project, and the Block 7 Affordable Project;
- A shared open space on Block 6, which will be used by both the Market-Rate Project and the Block 6 Affordable Project, and which will be open to the public during daytime hours; and
- Streetscape improvements pursuant to the Transbay Streetscape and Open Space Plan and the approved Schematic Designs for Folsom Street.

The Project will be built in an air rights parcel (“Air Rights Parcel”) to be owned by OCII, and subsequently MOHCD, and leased to Mercy via a long term air rights lease (“Air Rights Lease”). Golub currently owns all of Block 6. As required by the DDA, prior to the start of construction of the Project, Golub will transfer the Air Rights Parcel for the Project to OCII and OCII and Mercy will enter into the Air Rights Lease. OCII will own the Air Rights Parcel until completion of construction of the Project, at which time ownership will transfer to MOHCD as the housing successor agency, subject to compliance with the Redevelopment Dissolution Law requirements governing the transfer of non-affordable housing assets to the Housing Successor under Health & Safety Code § 34176 (f) and subject to issuance of a certificate of completion or other terms specified in the Air Rights Lease. Mercy will own the improvements and lease the air rights from OCII/MOHCD, consistent with the typical ground lease terms of MOHCD and the Former Agency. Golub will own the underground garage and the tower and townhomes which are above the garage. The garage spaces allocated to the Block 6 Affordable Project will be provided for in a reciprocal easement agreement which will govern the shared portions of the market rate and affordable projects and will be subject to OCII/MOHCD review and approval.

The approval by the Board of Supervisors is requested pursuant to the Redevelopment Plan for the Transbay Redevelopment Project Area (the “Plan”), which provides that the Board of Supervisors shall approve the sale or lease of any property acquired by the Agency pursuant to the Transbay Option Agreement in a manner consistent with the standards and procedures that govern the Agency’s disposition of property acquired with tax increment moneys and that appear in Section 33433 of the California Community Redevelopment Law. Specifically, Section 33433 states that before any property that was acquired, in whole or in part, with tax increment moneys is sold or leased for development, the sale or lease shall first be approved by the legislative body by resolution after public hearing. The Board of Supervisors is the legislative body for purposes of Section 33433. The property covered by this report was not acquired with tax increment moneys but pursuant to the Plan requirements the Board of Supervisor’s approval is requested.

Property:	Air Rights Parcel associated with Transbay Block 6 Affordable Housing at 280 Beale Street
Land Owner:	Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, a public body, organized and existing under the laws of the State of California
Proposed Developer/ Lessee:	Mercy Housing California 62, LP, a California limited partnership

Length of Lease: 75 years plus one option for 24 years  
Lease Payment: \$15,000 annual rent  
Use of Property: Affordable housing for very low-income families



**Office of Community  
Investment and Infrastructure**  
(Successor to the San Francisco  
Redevelopment Agency)

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EDWIN M. LEE, Mayor

Christine Johnson, Chair  
Mara Rosales, Vice-Chair  
Theodore Ellington  
Marilyn Mondejar  
Darshan Singh  
Tiffany Bohee, Executive Director

March 21, 2014

**33433 Report**

This report is submitted consistent with the requirements of Section 33433 of the California Health and Safety Code. Specifically, Section 33433 states that before any property that was acquired, in whole or in part, with tax increment funds is sold or leased for development, the sale or lease shall first be approved by the legislative body by resolution after a public hearing. The Board of Supervisors (the "BOS") is the legislative body for purposes of Section 33433. The property that is the subject of this report was not acquired with tax increment funds. However, the Redevelopment Plan for the Transbay Redevelopment Project Area ("Redevelopment Plan") requires that the Board of Supervisors shall approve the sale or lease of any property acquired by the Former San Francisco Redevelopment Agency ("Former Agency") or the Office of Community Investment and Infrastructure ("OCII"), as Successor to the Former Agency, pursuant to the Option Agreement for the Purchase and Sale of Real Property ("Option Agreement"), in a manner consistent with the standards and procedures that govern the disposition of property acquired with tax increment funds and that appear in Section 33433 of the California Health and Safety Code.

On April 16, 2013, the Commission on Community Investment and Infrastructure ("CCII") approved a disposition and development agreement ("DDA") between OCII and the development team or Golub Real Estate Corporation ("Golub" or "Developer") and Mercy Housing California ("Mercy" or "Affordable Developer") for the development of 409 market-rate residential units and 70 affordable family rental residential units (at 50 percent of area median income), along with shared open space and a shared underground parking garage, on the parcel located at 280 Beale Street, commonly known as Block 6 in the Transbay Redevelopment Project Area ("Project Area"). The Golub/Mercy team was selected by the Former Agency after a competitive request for proposals ("RFP") was issued in July 2011 and proposals were received from a total of four development teams. Block 6 is the first phase of a larger development that includes an additional 77 affordable family rental residential units (also at 50 percent of area median income) and a child care facility that will be developed on Block 7, immediately adjacent to Block 6, by Mercy. The DDA, however, does not cover Block 7 because it will be constructed at a future date when additional affordable housing funds are available from OCII.

On August 29, 2013, the BOS approved the 33433 Report related to the 409-unit market rate component of Transbay Block 6. Currently, OCII is preparing to enter into a long term Air Rights Lease with Mercy for the 70-unit affordable component of Transbay Block 6 ("Project") pursuant to the DDA.

The Project will be an eight-story podium building on the east end of the block with 70 units (56 1-bedroom units and 14 2-bedroom units). It will also include the following features:

- 8-13 spaces within a shared underground parking garage with a total of approximately 133 spaces, entirely under Block 6, which will accommodate parking for the Project, the Market-Rate Project, and the Block 7 Affordable Project;
- A shared open space on Block 6, which will be used by both the Market-Rate Project and the Block 6 Affordable Project, and which will be open to the public during daytime hours; and
- Streetscape improvements pursuant to the Transbay Streetscape and Open Space Plan and the approved Schematic Designs for Folsom Street.

The Project will be built in an air rights parcel (“Air Rights Parcel”) to be owned by OCII, and subsequently MOHCD, and leased to Mercy via a long term air rights lease (“Air Rights Lease”). Golub currently owns all of Block 6. As required by the DDA, prior to the start of construction of the Project, Golub will transfer the Air Rights Parcel for the Project to OCII and OCII and Mercy will enter into the Air Rights Lease. OCII will own the Air Rights Parcel until completion of construction of the Project, at which time ownership will transfer to MOHCD as the housing successor agency, subject to compliance with the Redevelopment Dissolution Law requirements governing the transfer of non-affordable housing assets to the Housing Successor under Health & Safety Code § 34176 (f) and subject to issuance of a certificate of completion or other terms specified in the Air Rights Lease. Mercy will own the improvements and lease the air rights from OCII/MOHCD, consistent with the typical ground lease terms of MOHCD and the Former Agency. Golub will own the underground garage and the tower and townhomes which are above the garage. The garage spaces allocated to the Block 6 Affordable Project will be provided for in a reciprocal easement agreement which will govern the shared portions of the market rate and affordable projects and will be subject to OCII/MOHCD review and approval.

Pursuant to Section 33433, a copy of the Air Rights Lease is included with this report as Attachment 1 and both the Air Rights Lease and this report have been submitted to the Clerk of the Board and made available for public inspection and copying on March 25, 2014, in advance of the April 6, 2014, date of the first publication of the notice of the public hearing on April 22, 2014. Below is a summary of the agreement, as required by Section 33433, Subsections (2)(B)(i-v):

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

- A. “A copy of the proposed sale or lease.” Please refer to the Air Rights Lease Agreement (Attachment 1).
- B. “A summary which describes and specifies all of the following:”
  - (i) “The cost of the agreement to OCII, including land acquisition costs, clearance costs, and relocation costs, the costs of any improvements to be provided by OCII, plus the expected interest on any loans or bonds to finance the agreements.”

The total cost of OCII’s acquisition of Air Rights Parcel was \$0. OCII will not incur clearance, relocation, or improvement costs. Furthermore, no interest will be generated on

loans or bonds used to finance the land acquisition or the subsequent lease to the Affordable Developer.

- (ii) “The estimated value of the interest to be conveyed or leased, determined at the highest and best uses permitted under the plan.”

The value of the Air Rights Parcel that is to be leased to the Developer, determined on April 16, 2013, at the highest and best use permitted under the plan is \$4,338,958.

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

The estimated value of the property to be conveyed, determined with the conditions, covenants, and development costs required by the sale, is \$4,338,958, if the units within the Project were not subject to affordability restrictions. With the affordability restrictions, the value of the property to be conveyed is \$0. The property is being leased to the developer for a period of 75 years. The annual air rights rent is \$433,896, but with only \$15,000 guaranteed. The balance of the annual rent is to be paid from residual receipts to the extent any surplus cash is available. The present value of the guaranteed lease payments is \$246,838, using a discount rate of 6% percent.

The present value of the fixed total rental amount, including the residual property interest at the end of the 55-year term, is substantially less than the fair market value of the interest to be leased, determined at the highest and best use. Only \$15,000 of the annual rent is guaranteed and the remainder is to be paid from “surplus cash” generated by the Project annually, i.e., operating income that is in excess of operating expenses. The less than fair market value rent is necessary to achieve affordability for very low income families and the consideration to be received by OCII is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Air Rights Lease. This lease structure is necessary to ensure the continued and successful operation of the Project, but creates a high level of uncertainty regarding the value of the residual rents (i.e., rent in addition to the \$15,000 guaranteed rent) that OCII will actually collect. Therefore, the residual rents are not considered in the calculation of the present value of the projected lease payments.

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

Block 6 was formerly occupied by a portion of the Embarcadero Freeway, which was demolished after the 1989 Loma Prieta Earthquake. After the freeway was demolished, Block 6 was a surface parking lot operated by the State of California, until it was acquired by the TJPA to be used for construction staging. Surface parking was identified as an

economic indicator of blight in the 2005 Report on the Redevelopment Plan for the Transbay Redevelopment Project, which was prepared as part of the plan adoption materials for the Board of Supervisors. The section of the Report on the Redevelopment Plan titled "Underutilized Areas and Vacant Lots" on Page V-8 states, "Given the Project Area's density and location in the Financial District, surface parking lots do not maximize the economic and development potential of the lot or area." Block 6 is identified as an "Underutilized Area" on Figure V-3 in the Report on the Redevelopment Plan. The Golub/Mercy project on Block 6 will assist in the elimination of blight by converting a surface parking lot/construction staging area into a dense, mixed-use residential development.

Additionally, the lease of the property will assist in the elimination of blight by providing housing opportunities for a population – very low income families – that is underserved by the market and therefore at serious risk of homelessness. Finally, the lease and development of this property will transform a vacant, underutilized parcel, bringing quality architecture, new homes, and neighborhood-serving commercial space to the community.

(v) This report has been made available to the public at the offices of OCII, 1 South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, California, no later than the time of publication of the first notice of hearing as mandated by California Health and Safety Code Section 33433.

**AIR RIGHTS LEASE**

**TRANSBAY BLOCK 6 AFFORDABLE HOUSING**

**by and between the**

**OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE AS SUCCESSOR  
AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY**

**as Landlord**

**and**

**MERCY HOUSING CALIFORNIA 62, L.P.**

**a California limited partnership**

**as Tenant**

**Dated as of \_\_\_\_\_, 2014**

IN WITNESS WHEREOF, the Tenant and OCII have executed this Air Rights  
Lease as of the day and year first above written.

**OCII:**

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: \_\_\_\_\_  
Tiffany Bohee  
Executive Director

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

**TENANT:**

Mercy Housing California 62, L.P., a California  
limited partnership

By: Mercy Housing Calwest, its general partner

By: \_\_\_\_\_  
Douglas Shoemaker,  
Its: Vice President

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## AIR RIGHTS LEASE

This AIR RIGHTS LEASE (this “Air Rights Lease” or “Lease”) is entered into as of \_\_\_\_\_, 2014, (“Agreement Date”) by and between THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California (“OCII” or the “Landlord”), and Mercy Housing California 62, L.P., a California limited partnership (the “Tenant”).

### RECITALS

- A. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq. the “CRL”), the former San Francisco Redevelopment Agency (“Former Agency”) would undertake programs for the reconstruction and construction of blighted areas in the City and County of San Francisco (the “City”).
- B. The Former Agency, acting through the Board of Supervisors of the City, approved a Redevelopment Plan for the Transbay Redevelopment Project Area by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 (the “Redevelopment Plan”). Said Redevelopment Plan was filed in the Office of the Recorder of the City and County of San Francisco (the “Official Records”).
- C. On December 13, 2006, and in furtherance of the Redevelopment Plan, the Former Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, in Book B-103 of Official Records at page 210, as Document No. P-30087 (the “Project Area Declaration of Restrictions”).
- D. Per the Redevelopment Plan and the Transbay Redevelopment Project Tax Increment and Sales Proceeds Pledge Agreement (the “Pledge Agreement”) between the Former Agency, the Transbay Joint Powers Authority (the “TJPA”), and the City and County of San Francisco (the “City”), land sale and net tax increment revenue generated by the parcels in the Project Area that are currently

or formerly owned by the State of California (the “State”) has been pledged to the TJPA to help pay the cost of building the Transbay Transit Center. The State-owned parcels include the development sites on Blocks 2 through 9, 11, and 12, and Parcels F, M and T.

- E. In 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation (“Caltrans”), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-owned parcels to the City and the TJPA (the “Cooperative Agreement”). In 2006, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (the “Implementation Agreement”) which requires the Successor Agency to the Former Agency (the “Successor Agency”) to prepare and sell the formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and affordable housing obligations. Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property (the “Option Agreement”), which sets forth the process for the transfer of certain of these parcels to the Former Agency to facilitate the sale of the parcels to private developers.
- F. On July 6, 2011, the Former Agency complied with its obligations under the Implementation Agreement by issuing a Request for Proposals (the “RFP”) from development teams to design and develop a high-density, mixed-income residential project on Blocks 6 and 7 in the Project Area. Blocks 6 and 7 comprise two adjacent development sites connected by a proposed extension of Clementina Alley. Block 6 is a 42,625-square-foot parcel on Folsom Street between Fremont and Beale Streets, two blocks south of the future Transbay Transit Center. Block 7 is a 27,728-square-foot parcel located between Fremont and Beale Streets, immediately north of Block 6.
- G. The original development program for Blocks 6 and 7 conformed to the goals and requirements of the Redevelopment Plan, the Development Controls and Design Guidelines for the Transbay Redevelopment Project (the “Development Controls”), and the Transbay Redevelopment Project Area Streetscape and Open

Space Concept Plan (the “Streetscape Plan”). It includes (1) a market-rate residential project, consisting of approximately 350 market-rate units and inclusionary housing units in a 300-foot tower and a 50-foot townhouse development on Block 6 and (2) an affordable residential project consisting of approximately 100-150 subsidized affordable housing units in multiple buildings on Blocks 6 and 7. The development program also includes an open space parcel in the center of each block; a single, shared underground parking facility; a child care facility on Block 7; streetscape improvements, including the extension of Clementina Alley between Fremont and Beale Streets; ground-floor retail spaces along the Folsom Boulevard frontage; and a minimum LEED Silver level of certification.

- H. Four proposals were received and deemed to meet the minimum threshold requirements defined in the RFP. Based on evaluation of the written proposals, as well as interviews with each team, the proposal from Golub Real Estate Corp (“Golub”) with Mercy Housing California (“Mercy”), Solomon Cordwell Buenz, and Santos Prescott (collectively, “Developer”) was scored the highest by a selection panel comprised of Former Agency staff, City staff, and a community representative. This proposal included a purchase price of \$30,000,000 payable at the transfer of title; 545 residential units (409 market rate units, including 61 inclusionary units, and 136 Redevelopment Agency-sponsored affordable units); and a requested subsidy from the Former Agency of \$186,000 per affordable unit.
- I. On December 6, 2012, the Former Agency’s Commission unanimously authorized the Former Agency, under its obligations in the Implementation Agreement, to begin drafting an exclusive negotiations agreement with the Developer.
- J. On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“AB 26”), codified in relevant part in California’s Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently

amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“AB 1484”). (Together, AB 26 and AB 1484 are referred to as the “Dissolution Law.”)

- K. Pursuant to the Redevelopment Dissolution Law, all of the Former Agency’s assets (other than housing assets) and obligations were transferred to the Successor Agency. Some of the Former Agency’s housing assets were transferred to the City, acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD”). The Redevelopment Plan, Development Controls, and other relevant Project Area documents remain in effect.
- L. Under the Redevelopment Dissolution Law, with approval from a successor agency’s oversight board and the State of California’s Department of Finance, a successor agency may continue to implement “enforceable obligations”—existing contracts, bonds, leases, etc.—which were in place prior to the suspension of redevelopment agencies’ activities on June 28, 2011, the date that AB 26 was approved. Redevelopment Dissolution Law defines “enforceable obligations” to include bonds, loans, judgments or settlements, and any “legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy,” (Cal. Health & Safety Code Section 34171(d)(1)(E)) as well as certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. The Implementation Agreement, Pledge Agreement and Option Agreement meet the definition of “enforceable obligations” under the Redevelopment Dissolution Law.
- M. AB 1484 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). Under this limited authority, a successor agency may enter into contracts, such as this Lease, if a pre-existing enforceable obligation requires that action. See also Cal. Health & Safety Code § 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with an agency’s authority under enforceable obligations to “enforce existing covenants and obligations, or . . . perform its obligation.”). This Lease, providing

a site for the development of affordable housing, is part of the Successor Agency's compliance with the pre-existing enforceable obligations under the Implementation Agreement and Option Agreement.

- N. Due to the dissolution of the Former Agency, the subsidy required to construct the affordable residential projects on Blocks 6 and 7 was not immediately available. As a result of this change, the parties revised the development plan to consist of the following components on Block 6: (1) a market-rate project consisting of 409 residential units on the Block 6 Tower, Podium 1, and Townhouse parcels (the "Market-Rate Project"); (2) an affordable project with approximately 70 residential units on the Block 6 Podium 2 parcel (the "Block 6 Affordable Project"); (3) streetscape improvements, including the construction of Clementina Alley; (4) ground-floor retail spaces of approximately 6,955 square feet in the Market-Rate Project and approximately 2,210 square feet in the Block 6 Affordable Project on Folsom Street; (5) shared mid-block open space; and (6) off-street parking in an underground garage, which may include parking spaces for Block 7. Instead of providing inclusionary units in the market-rate component of the project, Golub will pay an affordable housing fee ("Affordable Housing Fee") of \$24,300,000 to OCII to provide funding for all of the anticipated Former Agency subsidy for the affordable component on Block 6 and a portion of the Former Agency subsidy for Block 7.
- O. The Block 6 and 7 project will be phased to allow for Block 6 construction staging on Block 7 and until such time as OCII has funds available to provide the necessary gap subsidy for Block 7. Given these revised terms, Block 7 is currently anticipated to start construction in late 2015.
- P. A Disposition and Development Agreement ("DDA") among OCII, Golub and Mercy reflecting the revised development plan was approved by the Commission on Community Infrastructure and Investment ("Commission") and executed on April 16, 2013. Mercy, working in conjunction with Golub, is obligated under the terms of the DDA to develop the Block 6 Affordable Project (or the "Project"). The Project will consist of 70 residential units comprised of 69 units affordable to households earning no more than fifty percent of Median Income plus 1 two

bedroom manager's unit. The affordable units include 55 one bedroom units and 14 two bedroom units. The Project will include a shared podium, between 8 and 38 parking spaces, shared open space and approximately 2,210 square feet of commercial space.

- Q. On September 23, 2013 the Oversight Board of the City and County of San Francisco approved an expenditure of up to \$18,300,000 for funding for the affordable housing projects on Blocks 6 and 7 through Item No. 239 of the Recognized Obligation Payment Schedule for the period of January 1, 2013 through July 31, 2013 ("ROPS 13-14B"). The California Department of Finance provided final approval of the expenditure for Item No. 239 through its letter dated December 17, 2013.
- R. On October 10, 2013 Golub completed the purchase of Block 6 and paid the Affordable Housing Fee. In accordance with the terms of the DDA, Golub agreed to transfer the air rights parcel ("Air Rights Parcel") for the Block 6 Affordable Project back to OCII once it has been created, and OCII will transfer that parcel to the Borrower via a long term Air Rights Lease.
- S. On November 15, 2013, the Citywide Affordable Housing Loan Committee approved a loan to the Tenant for the development of the Block 6 Affordable Project for an amount not to exceed FOURTEEN MILLION AND 00/100 DOLLARS (\$14,000,000)(the "OCII Loan"). The Loan will include \$XXXXXX of predevelopment expenses (the "Predevelopment Amount") paid by Golub and approved by MOHCD and OCII staff as the previously disbursed portion of the loan amount.
- T. On \_\_\_\_\_, 2014, the OCII Commission approved the Loan through Resolution No. XX-2014.
- U. On \_\_\_\_\_, 2014 the Air Rights Parcel was created and on \_\_\_\_\_, 2014 Golub transferred the Air Rights Parcel to OCII.
- V. OCII now intends to lease the Air Rights Parcel to Tenant in accordance with the terms of this Lease.
- W. For purposes of implementation and to ensure consistency with the City's overall affordable housing goals and priorities, MOHCD is providing project

management, loan underwriting, and construction monitoring, including approving and processing loan disbursements in cooperation with OCII. Upon completion of the Project, OCII intends to transfer the affordable housing loan obligation, asset, and Air Rights Lease to MOHCD as the designated Successor Housing Agency of the City and County of San Francisco under Board Resolution 11-12, as required by Dissolution Law.

**NOW THEREFORE**, in consideration of the mutual obligations of the parties hereto, OCII hereby leases to Tenant, and Tenant hereby leases from OCII, the Site, for the term, and subject to the terms, covenants, agreements and conditions hereinafter set forth, to each and all of which OCII and Tenant hereby mutually agree.

**ARTICLE 1: DEFINITIONS**

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

**1.01** “Agency” has the meaning set forth in Recital A.

**1.02** “Agreement Date” means the date that this Air Rights Lease Air Rights Lease is deemed to be entered into, as set forth on the cover page.

**1.03** “Air Rights Lease” means this Air Rights Lease of the Site to the Tenant from OCII, as amended from time to time.

**1.04** “Area Median Income” (or “AMI”) means the area median income as determined by the United States Department of Housing and Urban Development for the San Francisco Primary Metropolitan Statistical Area, adjusted solely for actual household size, and as published annually by MOHCD.

**1.05** “Construction Documents” has the meaning given in Section 10.01.

**1.06** “Conversion Date” the date that the construction financing on the property converts to permanent financing.

**1.07** “Critical Activity(ies)” means an activity or item of Work which, if delayed or extended, will delay Substantial Completion or the Final Completion Date.

**1.08** “Effective Date” means the date upon which the Air Rights Lease Air

Rights Lease shall commence, as further set forth in Section 2.1(a):

1.09 **“First Mortgage Lender”** means a bank or other entity holding the first deed of trust on the Leasehold Estate, and in the event of the bond financing, the bond trustee (if any) and the entity purchasing the bonds shall both be First Mortgage Lender.

1.10 **“First Lease Payment Year”** means the year in which the project receives a Certificate of Occupancy for all residential units.

1.11 **“General Partners”** means Tenant’s general partners.

1.12 **“Improvements”** means all physical construction, including all structures, fixtures and other improvements to be constructed on the Site.

1.13 **“Lease Year”** means each calendar year during the term hereof, beginning on January 1 and ending on December 31.

1.14 **“Leasehold Estate”** means the estate held by the Tenant pursuant to and created by this Air Rights Lease.

1.15 **“Leasehold Mortgage”** means any mortgage, deed of trust, trust indenture, letter of credit or other security instrument, including but not limited to the deeds of trust securing any Lender, and any assignment of the rents, issues and profits from the Site, or any portion thereof, which constitute a lien on the Leasehold Estate created by this Air Rights Lease and have been approved in writing by the Landlord.

1.16 **“Lender”** means any entity holding a Leasehold Mortgage.

1.17 **“Loan Documents”** means that certain **Tax Increment Loan Agreement, Note, Deed of Trust, Declaration of Restrictions, and any other documents executed or delivered in connection with the OCII Loan, all dated September 3, 2013, as amended.**

1.18 **“MOHCD”** shall have the meaning given in Recital K.

1.21 **“Non-Residential Space”** means the approximately 2,100 square feet of commercial space located on the ground floor of the Project.

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

1.24 **“OCII Loan”** has the meaning set forth in Recital S .

1.25 **“Premises”** means the Site together with any Improvements thereon.

1.26 **“Project”** has the meaning given in Recital P. If indicated by context,

“**Project**” means the leasehold interest in the Site and the fee interest in the Improvements on the Site.

1.27 “**Residential Units**” has the meaning given in Section 9.02.

1.28 “**Site**” means the real property shown in the Site Legal Description, Attachment 1.

1.29 “**Subsequent Owner**” means any successor (including a Lender or an affiliate or assignee of a Lender as applicable) to the Tenant’s interest in the Leasehold Estate and the Improvements following a foreclosure, deed in lieu of foreclosure, or transfer to a Lender, its affiliate, and any successors to any such person or entity.

1.30 “**Tenant**” means Mercy Housing California 62, L.P., a California limited partnership or its permitted successors as holder of the leasehold estate in the Site and fee ownership of the Improvements, including, a Subsequent Owner, where appropriate.

1.31 “**Very Low-Income Households**” means (a) households earning no more than fifty percent (50%) of Area Median Income, as determined by HUD for the San Francisco area, adjusted solely for actual household size, but not high housing cost area.

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

## **ARTICLE 2: TERM**

(a) **Initial Term.** The term of this Air Rights Lease shall commence upon the Effective Date (and Tenant shall be entitled to possession of the Site as of such date) and shall end seventy-five (75) years from that date (the “Initial Term”), unless extended pursuant to subsection (b) below.

(b) **Option for Extension.** Provided that the Tenant is not in default of the terms of its obligations to the City either at the time of giving of an Extension Notice, as described in subparagraph (c) below, or on the last day of the Initial Term (the “**Termination Date**”), the term of this Air Rights Lease may be extended at the option of the Tenant for one twenty-four (24) year period as provided below.

(c) **Notice of Extension.** Not later than one hundred eighty (180) days prior to the Termination Date, the Tenant may notify the Landlord in writing that it wishes to

exercise its option to extend the term of this Air Rights Lease (an “**Extension Notice**”). The extended term shall be for forty-four (44) years from the Termination Date, which option the Tenant may exercise only once, for a total Air Rights Lease term of not to exceed ninety-nine (99) years.

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

### **ARTICLE 3: FINANCING**

Tenant shall submit to the City in accordance with the dates specified in the Schedule of Performance, Attachment 3, for approval by OCII, evidence satisfactory to OCII 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 Air Rights Lease, as is acceptable to the Executive Director of OCII.

### **ARTICLE 4: RENT**

#### **4.01 Annual Rent**

(a) Tenant shall pay OCII Four Hundred Thirty Three Thousand and Eight Hundred Ninety Six Dollars (\$433,896.00) per year for lease of the Site, consisting of Base Rent and Residual Rent, as defined in Sections 4.02 and 4.03 below and subject to the provisions thereof, without offset of any kind and without necessity of demand, notice or invoice from the Landlord (together, “**Annual Rent**”). OCII has determined that this rent accurately reflects [ten percent (10%)] of the appraised value of the Site, Annual Rent shall be redetermined on the fifteenth (15<sup>th</sup>) anniversary of the expiration of the First Lease Payment Year and every fifteen (15) years thereafter, [and shall be equal to ten percent (10%) of the appraised value of the Site] as determined by an MAI appraiser selected by and at the sole cost of Tenant. Based on the appraised value, the Annual Rent shall be adjusted based on actual value.

(b) If the Tenant elects to extend the term of this Air Rights Lease beyond the Initial Term, Annual Rent during any such extended term shall be set by mutual agreement of the parties, taking into account the affordable housing restrictions contained in Section 9.02, project debt and the annual income expected to be generated by the Project. If the parties cannot agree on Annual Rent for the extended term, either party

may invoke a neutral third-party process to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco taking into account the affordable housing restrictions contained in Section 9.02 or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. Provided, however, that after the neutral third party process, Tenant, in its sole discretion may rescind its extension notice if it does not wish to extend the term of this Air Rights Lease.

#### **4.02 Base Rent**

(a) “Base Rent”, means, in any given Lease Year commencing with the First Lease Payment Year, Fifteen Thousand Dollars (\$15,000). Base Rent shall be due and payable in arrears on January 31st of each Lease Year; provided, however, Base Rent for the First Lease Payment Year shall be due on the January 31<sup>st</sup> of the following calendar year, and shall be equal to Fifteen Thousand Dollars (\$15,000) times the number of days in the First Lease Payment Year, divided by three hundred sixty-five (365); and provided, further, that in the event that the Tenant (other than a Subsequent Owner) fails to comply with the provisions of Section 9.02, Base Rent shall be increased to the full amount of Annual Rent until such time as the Project achieves compliance with the provisions of Section 9.02, and in the event that a Subsequent Owner elects pursuant to Section 26.06(ii) to operate the Project without being subject to Section 9.02 or any Subsequent Owner elects, pursuant to Section 26.06(ii), to operate the Project without compliance with such provisions, Annual Rent shall be adjusted as provided in Section 26.07.

(b) “Project Income” means all income and receipts in any form received by Tenant from the operation of the Project, including rents, fees, deposits (other than tenant security deposits), and accrued interest disbursed from any reserve account required under this Lease 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 other than the insurance proceeds. Project Income shall not include tenants' security deposits, loan proceeds, capital contributions or similar advances. Except as otherwise provided in Section 26.07(a), if the Project does not have sufficient Project Income to pay Base Rent in any given Lease Year after the payment of Project Expenses in items (a) through (e) in definition of Project Expenses, below, and OCII has received

written notice from Tenant regarding its inability to pay Base Rent from Project Income, the unpaid amount shall be deferred and all such deferred amounts shall accrue without interest until paid (“**Base Rent Accrual**”). The Base Rent Accrual shall be due and payable each year, to the extent available from Surplus Cash in accordance with Section 6.02(h).

(c) “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, real estate taxes and assessments and premiums for insurance required under this Lease or by any Lender; (b) salaries, wages and any other compensation due and payable to the employees or agents of Tenant employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) required payments of interest and principal, if any, on the senior financing secured by the Site and used to finance the Project that has been approved by OCII; (d) all other expenses actually incurred to cover operating costs of the Project, including maintenance and repairs and the fee of any managing agent; (e) required deposits to the Replacement Reserve Account, Operating Reserve Account and any other reserve account as required under the Loan Documents; (f) annual Base Rent payments; (g) the approved annual asset management fees indicated in the Annual Operating Budget (as such term is defined in the Loan Documents) and approved by the OCII, including, but not limited to, an annual partnership management fee in the amount of \$18,420, increasing by 3% annually, payable to the Tenant’s general partners; and (h) any extraordinary expenses approved in advance by the OCII (other than expenses paid from any reserve account). Project Fees are not Project Expenses.

(d) “Project Fees” means (i) an annual partnership management fee in the amount of \$19,100, increasing by 3% annually, payable to the Tenant’s general partners, (ii) an annual asset management fee in the amount of \$5,000, increasing annually by 3%, payable to Tenant’s limited partners, and (iii) deferred developer fees approved by the Lender pursuant to the Loan Documents.

(c) There shall be a late payment penalty of two percent (2%) for each month or any part thereof if Base Rent payment is delinquent. This penalty shall not apply to

Base Rent Accrual pursuant to Section 4.02(b). The Tenant may request in writing that OCII waive such penalties by describing the reasons for Tenant's failure to pay Base Rent and Tenant's proposed actions to insure that Base Rent will be paid in the future. OCII may, in its sole discretion, waive in writing all or a portion of such penalties if it finds that Tenant's failure to pay Base Rent was beyond Tenant's control and that Tenant is diligently pursuing reasonable solutions to such failure to pay.

#### **4.03 Residual Rent**

"Residual Rent" means, in any given Lease Year, Four Hundred Eighteen Thousand Eight Hundred Ninety Six Dollars (\$418,896.00). Residual Rent shall be due in arrears on or before June 1<sup>st</sup> of each Lease Year commencing with the First Lease Payment Year; provided however, Residual Rent for the First Lease Payment Year shall be due on the June 1<sup>st</sup> of the following calendar year, and shall be equal to Four Hundred Eighteen Thousand Eight Hundred Ninety Six Dollars (\$418,896.00) times the number of days in the First Lease payment Year divided by three hundred sixty five (365). Except as otherwise provided in Section 26.07(a)(2)(C), Residual Rent shall be payable only to the extent of Surplus Cash as provided in Section 6.02(h), and any unpaid Residual Rent shall not accrue. However, in the event that Surplus Cash is insufficient to pay the full amount of the Residual Rent, Tenant shall certify to the City in writing by April 15 that available Surplus Cash is insufficient to pay Residual Rent and Tenant shall provide to OCII any supporting documentation reasonably requested by OCII to allow OCII to verify the insufficiency.

#### **4.04 Surplus Cash**

"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. Distributions of Surplus Cash shall not exceed the amount of unrestricted cash at the end of Tenant's fiscal year. All permitted uses and distributions of Surplus Cash shall be governed by Section 6.02(h) of this Air Rights Lease.

#### **4.05 Triple Net Lease**

This Air Rights Lease is a triple net lease and the Tenant shall be responsible to pay all costs, charges, taxes, impositions and other obligations related thereto. If OCII

pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, OCII will be entitled to be reimbursed by Tenant the full amount of such payments as additional rent within thirty (30) days of written demand by OCII. Failure to timely pay the additional rent shall be an Event of Default, subject to applicable notice and cure periods.

**ARTICLE 5: OCII COVENANTS**

OCII covenants and warrants that the Tenant and its subtenants shall have, hold and enjoy, during the lease 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 Air Rights Lease. Landlord represents that it is lawfully acting as the successor public agency to the Agency and is the fee simple owner of the Site. All necessary actions by any board of directors, managers, or other applicable persons necessary for the due authorization, execution, delivery and performance of this Air Rights Lease by the Landlord have been duly taken.

**ARTICLE 6: TENANT COVENANTS**

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

**6.01 Limited Partnership/Authority**

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

**6.02 Use of Site and Rents**

During the term of this Air Rights Lease, Tenant and such successors and assigns shall comply with the following requirements:

**6.02(a) Permitted Uses**

Except as provided in Sections 26.06 and 26.07, devote the Site to, exclusively and in accordance with, the uses specified in this Air Rights Lease, as specified in Article 9 hereof, which are the only uses permitted by this Air Rights Lease.

**6.02(b) Non-Discrimination**

Tenant shall not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, ancestry, national origin, sex, gender identity, marital or domestic partner status, sexual orientation or disability (including

HIV or AIDS status) in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or the Improvements, or any part thereof, nor shall Tenant itself 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 Occupants, subtenants or vendees on the Site or Improvements, or any part thereof, except to the extent permitted by law or required by funding source. Tenant shall not discriminate against tenants with certificates or vouchers under the Section 8 program or any successor rent subsidy program.

**6.02(c) Non-Discriminatory Advertising**

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

**6.02(d) Access for Disabled Persons**

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

**6.02(e) Lead Based Paint**

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

**6.02(f) Permitted Uses of Surplus Cash**

All annual Project Income shall be used to pay Project Expenses, including, but not limited to Base Rent, and Project Fees. Any cash remaining after payment of each and all of the above-mentioned obligations shall be deemed Surplus Cash. Provided Tenant is not currently in default (subject to applicable notice and cure periods) under the terms of this Air Rights Lease, Tenant shall use Surplus Cash to make the following payments:

The lesser of one-third of remaining Surplus Cash or \$50,000 shall be paid to Tenant as an incentive management fee. The remaining Surplus Cash shall be paid to

Base Rent, then toward repayment of the outstanding OCII Loan until paid the remaining balance of OCII's Portion shall go toward Residual Rent .

Upon cure of any default under this Air Rights Lease, Tenant shall be permitted to make payments of Surplus Cash as provided in this Section 6.02(h).

### **6.03 OCII Deemed Beneficiary of Covenants**

In amplification, and not in restriction, of the provisions of the preceding subsections, it is intended and agreed that OCII shall be deemed beneficiary of the agreements and covenants provided in this Article 6. Such agreements and covenants shall run in favor of OCII for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether OCII has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. OCII shall have the right, in the event of any breach of any such agreements or covenants, in each case, after notice and the expiration of cure periods, to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenants, to which it may be entitled.

### **ARTICLE 7: ANNUAL INCOME COMPUTATION AND CERTIFICATION**

Forty-five (45) days after recordation of a Notice of Completion by the Tenant for the Project, and on May 31st of each year thereafter, Tenant will furnish to OCII a list of all of the names of the persons who are Occupants of the Improvements, the specific unit which each person occupies, the household income of the Occupants of each unit, the household size and the rent being charged to the Occupants of each unit, subject to all applicable local, state and federal laws limiting or restricting the disclosure of such information. If any state or federal agency requires an income certification for Occupants of the Improvements containing the above-referenced information, OCII agrees to accept such certification in lieu of Attachment 8 as meeting the requirements of this Air Rights Lease. In addition to such initial and annual list and certification, Tenant agrees to provide the same information and certification to OCII regarding each Occupant of the Improvements not later than ten (10) business days after such Occupant commences occupancy.

### **ARTICLE 8: CONDITION OF SITE - "AS IS"**

Neither OCII, nor any employee, agent or representative of OCII has made any representation, warranty or covenant, expressed or implied, with respect to the Site, its physical condition, the condition of any improvements, any environmental laws or regulations, or any other matter, affecting the use, value, occupancy or enjoyment of the Site other than as set forth explicitly in this Air Rights Lease, and the Tenant understands and agrees that OCII is making no such representation, warranty or covenant, expressed or implied; it being expressly understood that the Site is being leased in an "AS IS" condition with respect to all matters.

#### **ARTICLE 9: IMPROVEMENTS AND PERMITTED USES**

##### **9.01 Scope of Development and Schedule of Performance**

Tenant agrees to undertake and complete all physical construction on the Site as approved by the City, in accordance with the Schedule of Performance, Attachment 3, subject to force majeure.

##### **9.02 Permitted Uses and Occupancy Restrictions**

The permitted uses of the Project are limited to sixty-nine (69) residential dwelling units, plus one (1) manager's unit ("Residential Units"), ground floor common areas, and the Non-Residential Space. Upon the completion of construction, one hundred percent (100%) of the Residential Units, with the exception of the manager's unit, in the Project shall be occupied or held vacant and available for rental by Very Low Income-Households. Rent levels shall comply with Section 7.3 "Rent Restrictions" in the Loan Agreement.

#### **ARTICLE 10: CONSTRUCTION OF IMPROVEMENTS**

##### **10.01 General Requirements and Rights of City**

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

## **10.02 OCII Approvals and Limitation Thereof**

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

### **10.02(a) Compliance with Redevelopment Plan and Air Rights Lease**

OCII's approval with respect to the Construction Documents is limited to determination of their compliance with the Loan Documents and this Air Rights Lease, including, if applicable, the scope of development (these documents are for convenience sometimes called "Redevelopment Requirements"). The Construction Documents shall be subject to general architectural review and guidance by OCII as part of this review and approval process.

### **10.02(b) OCII Does Not Approve Compliance with Construction Requirements**

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

### **10.02(c) OCII Determination Final and Conclusive**

OCII's determination respecting the compliance of the Construction Documents with Redevelopment Requirements shall be final and conclusive (except that it makes no determination and has no responsibility for the matters set forth in Section 10.02(b), above).

## **10.03 Construction to be in Compliance with Construction Documents and Law**

### **10.03(a) Compliance with City Approved Documents**

The construction shall be in substantial compliance with the OCII-approved Construction Documents.

### **10.03(b) Compliance with Local, State and Federal Law**

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

## **10.04 Approval of Construction Documents by OCII**

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

#### **10.05 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 Air Rights Lease, Tenant shall submit new or corrected plans which are in compliance within thirty (30) days after written notification to it of disapproval, and the provision of this section relating to approval, disapproval and re-submission of corrected Construction Documents shall continue to apply until the Construction Documents have been approved by the City; provided, however, that in any event Tenant must submit satisfactory Construction Documents (i.e., approved by the City) no later than the date specified therefor in the Schedule of Performance.

#### **10.06 Closing Construction Documents To Be Approved by OCII**

The final Construction Documents, including all drawings, specifications and other related documents necessary for the construction of the Improvements in accordance with the requirements of this Air Rights Lease must be approved by OCII (the "Closing Construction Documents"). Notwithstanding anything to the contrary contained in this Article 10, OCII hereby acknowledges that the Construction Documents and the Closing Construction Documents were approved by OCII prior to the date of this Air Rights Lease.

#### **10.07 Issuance of Building Permits**

(a) Tenant shall have the sole responsibility for obtaining all necessary building permits and shall make application for such permits directly to the City's Department of Building Inspection. Tenant shall report permit status every thirty (30) days to the City. Failure to timely file and to diligently pursue issuance of permits shall be a breach of this Air Rights 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. Since the City's review of Construction Documents is limited (see Section 10.02a, above), its approval of compliance with Redevelopment Requirements is similarly limited and does not include Section 10.02b matters. City 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.

#### **10.08 Performance and Payment Bonds**

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

#### **10.09 OCII Approval of Changes after Commencement of Construction**

Once construction has commenced, Tenant may not approve or permit any change orders to the plans and specifications approved by OCII without OCII's prior written approval unless waived by OCII. Unless otherwise specified by OCII in writing, permission to make such changes shall be requested by Tenant in writing directed to OCII, with a copy to the OCII Architecture Division Manager (or to such other person as may be designated from time to time by OCII), and the MOHCD Construction Manager. OCII will provide written approval or disapproval of each change order within ten (10) calendar days of receipt of request therefor for items that do not impact the critical path of the construction schedule and within three (3) calendar days of receipt of request therefor for items that do impact the critical path of the construction schedule. If the request is disapproved, the reply must specify the reasons for the disapproval.

#### **10.10 Times for Construction**

Tenant agrees for itself, and its successors and assigns to or of the Leasehold Estate or any part thereof, that Tenant and such successors and assigns shall promptly begin and diligently prosecute to completion the redevelopment of the Site through the construction of the Improvements thereon, and that such construction shall in any event commence and thereafter diligently continue and shall be completed no later than the

dates specified in the Schedule of Performance, unless such dates are extended by OCII, force majeure or Landlord's default.

#### **10.11 Force Majeure**

For the purposes of any of the provisions of this Air Rights Lease, neither OCII nor Tenant, as the case may be, shall be considered in breach or default of its obligations, nor shall there be deemed a failure to satisfy any conditions with respect to the beginning and completion of construction of the Improvements, or progress in respect thereto, in the event of enforced delay in the performance of such obligations or satisfaction of such conditions, due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government (excluding OCII, MOHCD and the City), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, general scarcity of materials and unusually severe weather or delays of subcontractors due to such causes; it being the purposes and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for the satisfaction of conditions to this Air Rights Lease including those with respect to construction of the Improvements, shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph shall have notified the other party thereof in writing of the cause or causes thereof within thirty (30) days after the beginning of any such enforced delay and requested an extension for the period of the enforced delay; and, provided further, that this paragraph shall not apply to, and nothing contained in this paragraph shall extend or shall be construed to extend, the time of performance of any of Tenant's obligations to be performed prior to the commencement of construction, nor shall the failure to timely perform pre-commencement of construction obligations extend or be construed to extend Tenant's obligations to commence, prosecute and complete construction of the Improvements in the manner and at the times specified in this Air Rights Lease.

#### **10.12 Reports**

Subsequent to commencement of construction of the Improvements and until completion, Tenant shall make a report in writing to OCII every three (3) months, in such detail as may reasonably be required by OCII, as to the actual progress of the Tenant with

respect to such construction. During such period, the work of the Tenant shall be subject to inspection by representatives of OCII, at reasonable times and upon reasonable advance notice.

#### **10.13 Access to Site**

Tenant shall permit access to the Site to OCII whenever and to the extent necessary to carry out the purposes of the provisions of this Air Rights Lease, at reasonable times and upon reasonable advance notice of no less than twenty four (24) hours and subject to the rights of tenants under any applicable leases or subleases.

#### **10.14 Notice of Completion**

Promptly upon completion of the construction of the Improvements in accordance with the provisions of this Air Rights Lease, Tenant shall submit to OCII for approval a Notice of Completion (“NOC”), and record such approved NOC in the San Francisco Recorder’s Office. Tenant shall provide OCII with a copy of the recorded NOC.

### **ARTICLE 11: COMPLETION OF IMPROVEMENTS**

#### **11.01 Certificate of Completion – Issuance**

Promptly after completion of the construction of the Improvements in accordance with the provisions of this Air Rights Lease, within fifteen (15) days following the request of Tenant, OCII will furnish Tenant with an appropriate instrument so certifying. Such certification by OCII shall be a conclusive determination of satisfaction and termination of the agreements and covenants of this Air Rights Lease with respect to the obligation of Tenant, and its successors and assigns, to construct the Improvements in accordance with approved Closing Construction Documents and the dates for the beginning and completion thereof; provided, however, that such certification and such determination shall not constitute evidence of compliance with, or satisfaction of, any obligation of Tenant to any Lender, or any insurer of a mortgage, securing money loaned to finance the construction or any part thereof; provided further, that OCII issuance of any Certificate of Completion does not relieve Tenant or any other person or entity from any and all OCII requirements or conditions to occupancy of the Improvements, which requirements or conditions must be complied with separately.

#### **11.02 Certifications to be Recordable**

All certifications provided for in this section shall be in such form as will enable

them to be recorded with the Recorder of the City.

### **11.03 Certification of Completion - Non-Issuance Reasons**

If OCII shall refuse or fail to provide any certification in accordance with the provisions of Section 11.01, OCII shall provide Tenant with a written statement, within fifteen (15) days after receipt of the original written request by Tenant, indicating in adequate detail in what respects Tenant has failed to complete the construction of the Improvements in accordance with the provisions of this Air Rights 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 such certification.

## **ARTICLE 12: CHANGES TO THE IMPROVEMENTS**

**12.01 Post Completion Changes** OCII has a particular interest in the Site and in the nature and extent of the permitted changes to the Improvements. Accordingly, it desires to and does hereby impose the following particular controls on the Site and on the Improvements: during the term of this Air Rights 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 OCII and obtained, and, if obtained, upon such terms and conditions as OCII may reasonably require. OCII agrees not to withhold or delay its response to such a request unreasonably.

### **12.02 Definition of Change**

“**Change**” as used in this Article means any material alteration, modification, addition and/or substitution of or to the Site, the Improvements, and/or the density of development which differs materially from that which existed upon the completion of construction of the Improvements in accordance with this Air Rights Lease, 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. Notwithstanding the foregoing, nothing in this Section 12.02 shall be construed to restrict the Tenant’s and its subtenants right to (i) make non-material interior modifications, including, without limitation, modifications to and substitutions of interior décor, or repairs to or replacements of fixtures, appliances and other equipment relating

to the Site or Improvements in the normal course of operation and maintenance of the Premises as long as such replacements are of similar quality and provide the same level of service, or (ii) make or perform any repairs or modifications in an emergency situation in which a delay in such repairs or modifications could pose a safety hazard to tenants, the public, or adjoining property owners.

### **12.03 Enforcement**

OCII 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 12, including without limitation any threatened breach thereof or any actual breach or violation thereof.

## **ARTICLE 13: TITLE TO IMPROVEMENTS**

Fee title to any Improvements shall be vested in Tenant and shall remain vested in Tenant during the term of this Air Rights Lease, subject to Section 14.01 below. Subject to the rights of any Lenders and as further consideration for OCII entering into this Air Rights Lease, at the expiration or earlier termination of this Air Rights Lease, fee title to all the Improvements shall vest in OCII without further action of any party, without any obligation by OCII to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to OCII.

## **ARTICLE 14: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE**

### **14.01 Assignment, Sublease or Other Conveyance by Tenant**

Subject to Article 26, Tenant may not (i) sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its interest in this Air Rights Lease or in the Improvements or any portion thereof, other than to Lender(s) or the Non-Residential Tenant; or allow any person or entity to occupy or use all or any part of the Site, other than leases to residential tenants in the ordinary course of business and, as applicable, use of the Non-Residential Space, or (ii) contract or agree to do any of the same, without the prior written approval of OCII, which approval shall not be unreasonably withheld or delayed. Tenant may sell, assign, convey, sublease or transfer its interests in this Air Rights Lease and in the Improvements to an affiliate of Mercy Housing California 62, L.P., or its successor in interest with thirty (30) days' prior written notice to OCII.

OCII reserves the right to review and approve the form of any leases or subleases

for the Non-Residential Space, which approval shall not be unreasonably withheld, conditioned or delayed. The parties agree that if the uses in the NonResidential Space changes the parties will meet and confer to determine if the City's Policy of Commercial Space in City/OCII Funded Housing Developments would apply and if so the provisions of the policy will be applied.

#### **14.02 Assignment, Sublease or Other Conveyance by Landlord**

The parties acknowledge that any sale, assignment, transfer or conveyance of all or any part of OCII's interest in the Site, the Improvements, or this Air Rights Lease, is subject to this Air Rights Lease. OCII will not encumber its fee interest in the Site. OCII will require that any purchaser, assignee or transferee expressly assume all of the obligations of OCII under this Air Rights Lease by a written instrument recordable in the Official Records of the City. This Air Rights Lease shall not be affected by any such sale, and Tenant shall attorn to any such purchaser or assignee. In the event that OCII intends to sell all or any part of the Site, OCII shall notify Tenant of the proposed terms of such sale not later than ninety (90) days before the anticipated close of escrow. Tenant shall have sixty (60) days from the giving of such notice to exercise a right of first refusal to purchase the Site on the same terms and conditions of such proposed sale.

#### **ARTICLE 15: TAXES**

Tenant agrees to pay, or cause to be paid, prior to delinquency to the proper authority, any and all valid taxes, assessments and similar charges imposed on the Site during the term of this Air Rights Lease, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Site, which shall be paid by Landlord. Tenant shall not be required to pay or discharge any taxes that are based on net or gross income (including any capital gain) or any value added, franchise, estate, inheritance, capital, doing business or similar taxes of the Landlord. Tenant shall not permit any such taxes, charges or other assessments to become a defaulted lien on the Site or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and, provided further, that Tenant may contest the legal validity or the amount of any tax, assessment or similar charge, through such proceedings as Tenant considers necessary or appropriate, and Tenant may

defer the payment thereof so long as the validity or amount thereof shall be contested by Tenant in good faith and without expense to OCII. In the event of any such contest, Tenant shall protect, defend and indemnify OCII against all loss, cost, expense or damage resulting therefrom, and should Tenant be unsuccessful in any such contest, Tenant shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment or other similar charge. OCII shall furnish such information as Tenant shall reasonably request in connection with any such contest provided that such information is otherwise available to the public. The City hereby consents to Tenant applying for and obtaining any applicable exemptions from taxes or assessments levied on the Site or on Tenant's interest in the Site.

Tenant shall have no obligation under this Section prior to the Effective Date, including but not limited to any taxes, assessments or other charges levied against the Property which are incurred prior to the Effective Date.

**ARTICLE 16: UTILITIES**

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

**ARTICLE 17: MAINTENANCE**

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

**ARTICLE 18: LIENS**

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

#### **ARTICLE 19: GENERAL REMEDIES**

##### **19.01 Application of Remedies**

The provisions of this Article 19 shall govern the parties' remedies for breach of this Air Rights Lease.

##### **19.02 Notice and Cure Rights for Tenant Limited Partner**

(a) OCII may not exercise its remedies under this Air Rights Lease for a default by the Tenant unless and until (i) OCII has given written notice of any such default, in accordance with the notice provisions of Article 39, to Tenant and the "Permitted Limited Partner" identified in Article 39, and any other limited partners who have requested notice as set forth below (collectively, the "Permitted Limited Partners"), and (ii) such default has not been cured within sixty (60) days following the giving of such notice or, if such default cannot be cured within such sixty (60) day period, such longer period as is reasonably necessary to cure such default, provided that such cure has been commenced within such sixty (60) day period and is being prosecuted diligently to completion. If a Permitted Limited Partner cannot cure a default due to an automatic stay

in bankruptcy court because a general partner of the Tenant is in bankruptcy, any cure period will be tolled during the pendency of such automatic stay.

(b) OCII will not exercise its remedy to terminate this Air Rights Lease if a Permitted Limited Partner is attempting to cure the default and such cure requires removal of a General Partner, so long as the Permitted Limited Partner is proceeding diligently to remove the defaulting General Partner in order to effect a cure of such default.

(c) Any limited partner, other than the limited partner identified in Article 39, wishing to become a Permitted Limited Partner must provide five (5) days written notice to OCII in accordance with the notice provisions of this Air Rights Lease, setting forth a notice address and providing a copy of such notice to the Tenant and all of the Tenant's general partners. Such limited partner will become a Permitted Limited Partner upon the expiration of the five (5) day period. A limited partner will not be afforded the protections of this section with respect to any default occurring prior to the time such limited partner becomes a Permitted Limited Partner.

### **19.03 Breach by OCII**

If Tenant believes a material breach of this Air Rights Lease has occurred, Tenant shall first notify OCII in writing of the purported breach, giving OCII sixty (60) days from receipt of such notice to cure such breach. In the event OCII does not then cure or, if the breach is not reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure to completion, then Tenant shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this entire Air Rights Lease with the written consent of each Lender; (ii) prosecuting an action for damages; (iii) seeking specific performance of this Air Rights Lease; or (iv) any other remedy available at law or equity.

### **19.04 Breach by Tenant**

#### **19.04(a) Default by Tenant**

The following events, if not cured in the time periods set forth in Section 19.04(b) or this subparagraph (a) shall each constitute an "Event of Default" hereunder:

- (1) Tenant fails to comply with the Permitted Uses and Occupancy

Restrictions set forth in Section 9.02;

- (2) Tenant voluntarily or involuntarily assigns, transfers or attempts to transfer or assign this Air Rights Lease or any rights in this Air Rights Lease, or in the Improvements, except as permitted by this Air Rights Lease;
- (3) Tenant, or its successor in interest, shall fail to pay taxes or assessments in accordance with Article 15, or shall place on the Site any encumbrance or lien in violation of this Air Rights Lease, or shall suffer any levy or attachment to be made, or any material supplier's or mechanic's lien or any other encumbrance or lien to attach in violation of the terms of this Lease, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged in accordance with the terms of this Lease; provided, however, that Tenant shall have the right to contest any tax or assessment pursuant to Article 15 and Article 18 and, upon the posting of an adequate bond or other security, to contest any such lien or encumbrance. In the event of any such contest, Tenant shall protect, indemnify and hold OCII harmless against all losses and damages, including reasonable attorneys' fees and costs resulting therefrom;
- (4) Tenant shall be adjudicated bankrupt or insolvent or shall make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceeding of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not dismissed from the same within ninety (90) days thereafter; or, a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within ninety (90) days;
- (5) Tenant breaches any other material provision of this Air Rights

Lease;

- (6) Tenant fails to pay any portion of Annual Rent when due in accordance with the terms and provisions of this Air Rights Lease.

**19.04(b) Notification and OCII Remedies**

Except for the Cure periods provided in subparagraph (a), upon the occurrence of any Event of Default, OCII shall notify Tenant, the Permitted Limited Partners, and each Lender in writing of the Tenant's purported breach, failure or act, giving Tenant sixty (60) days from receipt of such notice to cure such breach, failure or act. In the event Tenant, the Permitted Limited Partners or any Lender does not cure or, if the breach, failure or act is not reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure to completion, then, subject to the rights of any Lender and subject to Section 19.02 and Article 26, and except as otherwise provided in Article 49, OCII thereafter shall be afforded all of its rights at law or in equity, including any or all of the following remedies: (1) terminating in writing this Air Rights Lease; (2) prosecuting an action for damages; or (3) seeking specific performance of this Air Rights Lease; or (4) in the case of an Event of Default under Section 19.04(a)(1), increasing the Base Rent to the full amount of the Annual Rent.

**19.04(c) Limitation on OCII Remedies**

Notwithstanding the various remedies of OCII pursuant to this Section 19.04 or any other provision of this Air Rights Lease, OCII shall not have the right to terminate the Air Rights Lease during the "compliance period" (as defined in Section 42 of the Internal Revenue Code, as amended) of the Project.

**ARTICLE 20: DAMAGE AND DESTRUCTION**

**20.01 Casualty**

If the Improvements or any part thereof are damaged or destroyed by any cause covered by any policy of insurance required to be maintained by Tenant hereunder, Tenant shall promptly commence and diligently complete the restoration of the Improvements as nearly as possible to the condition thereof prior to such damage or destruction; provided, however, that if more than twenty five percent (25%) of the Improvements are destroyed or are so damaged by fire or other casualty and if the

insurance proceeds do not provide at least ninety percent (90%) of the funds necessary to accomplish the restoration, Tenant, subject to any consent rights of Lender, if any, may terminate this Air Rights Lease within thirty (30) days after the later of (i) the date of such damage or destruction, or (ii) the date on which Tenant is notified of the amount of insurance proceeds available for restoration. In the event Tenant is required, or elects, to restore the Improvements, all proceeds of any policy of insurance required to be maintained by Tenant under this Air Rights Lease shall, subject to the rights of Lenders, be used by Tenant for that purpose and Tenant shall make up from its own funds or obtain additional financing as reasonably approved by OCII 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 Air Rights Lease pursuant to its right to do so under this Section 20.01, or elects not to restore the Improvements, the insurance proceeds shall be divided among OCII, Tenant and any Lender in accordance with the provisions of Section 20.03. In the event Tenant is required or elects to restore the Improvements, the Tenant is hereby authorized and may enter into a settlement or consent to an adjustment of an insurance award, in its name and/or in the name of the Landlord, relating to such casualty, subject to any Lender's consent rights, if any.

#### **20.02 Distribution of the Insurance Proceeds**

In the event of an election by Tenant to terminate and surrender as provided in Section 20.01, the priority and manner for distribution of the proceeds of any insurance policy required to be maintained by Tenant hereunder shall be as follows:

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

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

(c) The remainder to Tenant.

### **20.03 Clean Up of Housing Site**

In the event the Tenant terminates this Air Rights Lease pursuant to the provisions of Sections 20.01 and the proceeds of any insurance policy are insufficient to pay the clean-up and other costs described in Section 20.02(b), Tenant shall have the obligation to pay the portion of such costs not covered by the insurance proceeds.

## **ARTICLE 21: DAMAGE TO PERSON OR PROPERTY; HAZARDOUS SUBSTANCES; INDEMNIFICATION**

### **21.01 Damage to Person or Property -General Indemnification**

OCII shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site, for any injury or damage to the Premises, or to any property of Tenant, or to any property of any other person, entity or association on or about the Site during the term of this Air Rights Lease. Tenant shall defend, hold harmless and indemnify the OCII, the City and their respective commissioners, officers, agents, and employees, of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising from its tenancy, its use of the Site, and any of its operations activities thereon or connected thereto; provided, however, that this Article 21 shall not be deemed or construed to and shall not impose an obligation to indemnify and save harmless OCII, the City or any of their commissioners, officers, agents or employees from any claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or gross negligence by the person or entity seeking such indemnity.

### **21.02 Hazardous Substances -Indemnification**

(a) Tenant shall indemnify, defend, and hold OCII, the City and their respective commissioners, officers, agents and employees (individually, an “Indemnified Party” and collectively, the “Indemnified Parties”) harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (a) a violation of any Environmental Law occurring during the term of this Air Rights Lease caused by Tenant, its employees, agents, affiliates or contractors, or (b) any Tenant Environmental

Condition (as defined herein below); provided, however, that this Section 21.02(a) shall not be deemed or construed to, and shall not impose an obligation on Tenant to indemnify and save harmless the Indemnified Parties from, any claim, loss, damage, liability or expense, of any nature whatsoever, arising from or in any way related to or connected with any willful misconduct or gross negligence by any Indemnified Party.

(b) Landlord shall indemnify, defend, and hold the Tenant and its successors, employees, affiliates, agents, representatives and contractors (individually, a "Tenant Indemnified Party" and collectively, the "Tenant Indemnified Parties") harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Tenant Indemnified Party in connection with, arising out of, in response to, or in any manner relating to a violation of any Environmental Law or Release of Hazardous Substances at the Site first existing or occurring prior to the Effective Date.

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

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

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

requirements related to construction of the Improvements.

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

(iv) "Tenant Environmental Condition" shall mean the Release or threatened Release of Hazardous Substance and any condition of pollution, contamination or Hazardous-Substance-related nuisance at, on, under or from the Site which first exists or first occurs after the Effective Date and is caused by Tenant, or Tenant's employees, agents, affiliates or contractors.

## **ARTICLE 22: INSURANCE**

### **22.01 Insurance**

Subject to approval by the City's 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 below throughout the Compliance Term of this Agreement at no expense to the OCII:

1. Tenant, Contractors.

(a) to the extent Tenant or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident;

(b) commercial general liability insurance, with limits set forth below, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; broad form property damage; explosion, collapse and underground (XCU); products and completed operations, as follows:

(i) not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit before the start of demolition/construction if the Site is unoccupied;

(ii) not less than Five Million Dollars (\$5,000,000) combined single limit per occurrence and Ten Million Dollars (\$10,000,000) annual aggregate limit during demolition/construction and occupancy of the Site/ongoing operations of the Project;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance for all architects employed in connection with the Project, with limits not less than Two Million Dollars (\$2,000,000) (or, in the case of any other professionals, \$1,000,000) each claim and Four Million Dollars (\$4,000,000) annual aggregate limit for architects and Two Million (\$2,000,000) annual aggregate for any other professionals with respect to negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) crime policy or fidelity bond covering Tenant's officers and employees against dishonesty with respect to the Funds, in the amount of Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss, including the OCII as additional obligee or loss payee.

(f) Pollution Liability and/or Asbestos Pollution Liability: Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year, this coverage shall be endorsed to include Non-Owned Disposal Site coverage.

2. **Property Insurance.** Tenant must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) during the course of any construction, builders' risk insurance, 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 Borrower or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including OCII and all subcontractors as loss payees;

(b) property insurance, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, 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 named insured;

(c) boiler and machinery insurance, comprehensive form, in the amount of replacement value of all insurable objects, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including OCII as a named insured; and

(d) during construction and/or rehabilitation, performance and payment bonds of contractors, 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.

3. Non-Residential/Commercial Space. Tenant must require that all nonresidential tenants' liability insurance policies include Tenant and OCII as additional insureds, as their respective interests may appear. Throughout the term of any lease of Commercial Space in the Project, Tenant must require commercial tenants to maintain insurance as follows:

(a) to the extent the tenant has "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident;

(b) commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; advertisers' liability; including coverage for loss of income due to an insured peril for twelve (12) months; owners' and contractors' protective; broadform property damage; explosion, collapse and underground (XCU); products and completed operations coverage;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) with respect to any tenant who has (or is required by Law to have) a liquor license and who is selling or distributing alcoholic beverages and/or food products on the leased premises, to maintain liquor and/or food products liability coverage with limits not less than One Million Dollars (\$1,000,000), as appropriate;

(e) special form coverage insurance, including vandalism and malicious mischief, in the amount of 100% of the full replacement cost thereof, covering all furnishings, fixtures, equipment, leasehold improvements, alterations and property of every kind of the tenant and of persons claiming through the tenant; and

(f) full coverage plate glass insurance covering any plate glass on the commercial space.

#### 4. General Requirements.

(a) General and automobile liability policies of Tenant, contractors, commercial tenants and property managers must include OCII, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to OCII.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to OCII before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Tenant hereby waives all rights of subrogation against OCII to the extent of any loss covered by Borrower's insurance, except to the extent subrogation would affect the scope or validity of insurance.

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

(e) Any and all insurance policies called for herein must contain a clause providing that OCII and its officers, agents and employees will not be liable for any required premium.

(f) OCII reserves the right to require an increase in insurance coverage in the event OCII determines that conditions show cause for an increase, unless Tenant demonstrates to OCII's satisfaction that the increased coverage is commercially unreasonable or unavailable to Tenant.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) 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 three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Tenant must provide OCII with copies of insurance certificates and

endorsements for each required insurance policy.

**ARTICLE 23: COMPLIANCE WITH LEGAL REQUIREMENTS**

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

**ARTICLE 24: ENTRY**

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

**ARTICLE 25: MORTGAGE FINANCING**

**25.01 No Encumbrances Except for Development or Refinancing Purposes**

Notwithstanding any other provision of this Air Rights Lease and subject to the prior written consent of OCII, which consent shall not be unreasonably withheld or delayed, Leasehold Mortgages (and encumbrances related to such Leasehold Mortgages or required by Project lenders, equity investors or HUD, including, but not limited to use agreements and regulatory agreements) are permitted to be placed upon the Leasehold Estate only for the purpose of securing loans of funds to be used for: (i) financing the acquisition, design, renovation, reconstruction, or construction of the Improvements; (ii) refinancing; and (iii) any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Improvements under this Air Rights Lease and in connection with the operation of the Improvements, and costs

and expenses incurred or to be incurred by Tenant in furtherance of the purposes of this Air Rights Lease. Landlord approves \_\_\_\_\_ as trustee for Silicon Valley Bank, as a lender and the loan secured by Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date herewith, is deemed an approved Leasehold Mortgage.

#### **25.02 Holder Not Obligated to Construct**

The holder of any mortgage, deed of trust or other security interest authorized by Section 25.01 ("Holder" or "Lender"), including the successors or assigns of such Holder, is not obligated to complete any construction of the Improvements or to guarantee such completion; nor shall any covenant or any other provision of this Air Rights Lease be construed so to obligate such Holder. However, in the event the Holder does undertake to complete or guarantee the completion of the construction of the Improvements, subject to Section 26.06(ii), nothing in this Air Rights Lease shall be deemed or construed to permit or authorize any such Holder or its successors or assigns to devote the Site or any portion thereof to any uses, or to construct any Improvements thereon, other than those uses or Improvements authorized under Section 9.02. To the extent any Holder or its successors in interest wish to change such uses or construct different improvements, subject to Section 26.06(ii), that Holder or its successors in interest must obtain the written consent of the City; provided, however, in such event Holder or any Subsequent Owner shall negotiate in good faith revisions to the approved plans, specifications and Schedule of Performance to the extent necessary or desirable to preserve the economic and practical feasibility of the Project.

#### **25.03 Failure of Holder to Complete Construction**

In any case where six (6) months after assumption of obligations pursuant to Section 25.02 above, a Lender, having first exercised its option to complete the construction, has not proceeded diligently with the resumption or preparatory activities in order to complete construction, OCII shall be afforded the rights against such Holder it would otherwise have against Tenant under this Air Rights Lease for events or failures occurring after such assumption.

#### **25.04 Default by Tenant and OCII's Rights**

##### **25.04(a) Right of OCII to Cure a Default or Breach by Tenant**

**under a Leasehold Mortgage**

In the event of an Event of Default or breach by Tenant in or of its obligations under any Leasehold Mortgage, and Tenant's failure to timely commence or diligently prosecute cure of such default or breach in accordance with Section 19.04, Landlord may, at its option, cure such breach or default at any time prior to one hundred nineteen (119) days after the date on which the Lender files a notice of default. In such event, OCII shall be entitled to reimbursement from Tenant of all costs and expenses reasonably incurred by OCII in curing the default or breach. OCII shall also be entitled to a lien upon the Leasehold Estate or any portion thereof to the extent of such costs and disbursements. Any such lien shall be subject to the lien of any then existing Leasehold Mortgage authorized by this Air Rights Lease, including any lien contemplated because of advances yet to be made. After ninety (90) days following the date of Lender filing a notice of default and expiration of all applicable cure periods of Tenant under the terms of the applicable loan documents, the City, if such default shall remain uncured, or if Tenant shall not have begun prosecution of such cure, OCII shall also have the right to assign Tenant's interest in the Air Rights Lease to another entity, subject to such Lender's and Permitted Limited Partner's written consent, but which may be conditioned, among other things, upon the assumption by such other entity of all obligations of the Tenant under the Leasehold Mortgage.

**25.04(b) Notice of Default to OCII**

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

**25.05 Cost of Mortgage Loans to be Paid by Tenant**

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

**ARTICLE 26: PROTECTION OF LENDER**

**26.01 Notification to City**

Promptly upon the creation of any Leasehold Mortgage and as a condition precedent to the existence of any of the rights set forth in this Article 26, each Lender shall give written notice to the City of the Lender's address and of the existence and nature of its Leasehold Mortgage. The address of the initial Lenders' address is set forth in Article 39 hereof. Execution of Attachment 5 shall constitute OCII's acknowledgement of Lender's having given such notice as is required to obtain the rights and protections of a Lender under this Air Rights Lease. OCII hereby acknowledges that the First Mortgage Lender and OCII are deemed to have given such written Notice.

**26.02 Lender's Rights to Prevent Termination**

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

**26.03 Lender's Rights When Tenant Defaults**

Should any Event of Default under this Air Rights Lease occur, and not be cured within the applicable cure period, OCII shall not terminate this Air Rights Lease nor exercise any other remedy hereunder unless it first gives written notice of such event of default to Lender and:

- (i) If such event of default is a failure to pay a monetary obligation of Tenant, Lender shall have failed to cure such default within sixty (60) days from the date of written notice from the City to Lender; or
- (ii) If such event of default is not a failure to pay a monetary obligation of Tenant, Lender shall have failed, within sixty (60) days of receipt of said written notice, either (a) to remedy such default; or (b) to obtain title to Tenant's interest in the Site in

lieu of foreclosure; or (c) to commence foreclosure or other appropriate proceedings in the nature thereof (including the appointment of a receiver) and thereafter diligently prosecute such proceedings to completion, in which case such event of default shall be remedied or deemed remedied in accordance with Article 26.04 below.

All rights of OCII to terminate this Air Rights Lease as the result of the occurrence of any such Event of Default shall be subject to, and conditioned upon, OCII having first given Lender written notice of such Event of Default and Lender having failed to remedy such default or acquire Tenant's Leasehold Estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in, and within the time specified by, this Section 26.03, and upon the Permitted Limited Partners having failed to proceed as permitted under Sections 19.02(b) or 26.06(iv).

#### **26.04 Default Which Cannot be Remedied by Lender**

Any Event of Default under this Air Rights Lease which in the nature thereof cannot be remedied by Lender (including all amounts due from Tenant to Landlord in respect to damages, indemnifications or other monetary amounts, other than Annual Rent, arising from the action or inactions of Tenant) shall be deemed to be remedied if (i) within sixty (60) days after receiving notice from the City setting forth the nature of such Event of Default, or prior thereto, Lender shall have acquired Tenant's Leasehold Estate created hereby or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) Lender shall diligently prosecute any such proceedings to completion, (iii) Lender shall have fully cured any Event of Default arising from failure to pay or perform any monetary obligation in accordance with the terms of this Air Rights Lease, and (iv) after gaining possession of the Improvements, Lender shall diligently proceed to perform all other obligations of Tenant as and when the same are due in accordance with the terms of this Air Rights Lease.

#### **26.05 Court Action Preventing Lender's Action**

If Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Sections 26.03 and 26.04 above for commencing or prosecuting such foreclosure or other proceedings shall

be extended for the period of such prohibition. If this Air Rights Lease is terminated or rejected by Tenant in bankruptcy, OCII agrees to enter into a new Air Rights Lease with the Lender on the same terms set forth in this Air Rights Lease. And specifically provided that in the event the Lease is terminated for any reason, including, without limitation, a termination or rejection through any bankruptcy proceeding or a foreclosure transferee becomes the legal owner of Tenant's interest in the Property, and upon written request by the most senior Lender or the Subsequent Owner thereof given within sixty (60) days after such termination or acquisition by Subsequent Owner of Tenant's interest in the Project, as applicable, Landlord shall enter into a new lease of the Project with such Lender or the Subsequent Owner for the remainder of the Lease term with the same agreements, covenants, reversionary interests and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as are contained in the Lease and with priority equal to the Lease.

**26.06 Lender's Rights to Record, Foreclose and Assign**

OCII hereby agrees with respect to any Leasehold Mortgage, that

(i) the Lender may cause same to be recorded and enforced, and upon foreclosure, sell and assign the Leasehold Estate created hereby to an assignee from whom it may accept a purchase price; provided however that: (a) except with respect to affiliates of a Lender, Lender obtains prior written approval from OCII with respect to the selection of the assignee, which approval shall not be unreasonably withheld; and (b) if the proposed assignee intends to elect to maintain the use restrictions of Article 9, said assignee must be controlled by a California nonprofit public benefit corporation exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that the Premises would, if leased by such entity, receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code. Lender, furthermore, may acquire title to the Leasehold Estate in any lawful way, and if the Lender, or an affiliate, shall become the assignee, may sell and assign said Leasehold Estate subject to City approval as to the assignee or purchaser, which shall not be unreasonably withheld, and to the City's rights under Article 25; and

(ii) each Subsequent Owner shall take the Leasehold Estate subject to all of the provisions of this Air Rights Lease, and shall, so long as and only so long as it shall

be the owner of such estate, except as provided elsewhere in this Air Rights Lease, assume all of the obligations of Tenant under this Air Rights Lease; provided, however, the Subsequent Owner may operate and maintain the seventy (70) Residential Units without any limitations on the rents charged or the income of the occupants thereof.

(iii) OCII shall mail or deliver to any Lender which has an outstanding Leasehold Mortgage a duplicate copy of all notices which OCII may from time to time give to Tenant pursuant to this Air Rights Lease.

(iv) any Permitted Limited Partners of Tenant shall have the same rights as any Lender under Sections 26.02, 26.03, 26.04 and 26.06 (iii), and any reference to a Lender in said section shall be deemed to include such limited partners; provided, however, that the rights of such limited partners shall be subordinate to the rights of any Lender.

#### **26.07 Air Rights Lease Rent after Lender Foreclosure or Assignment**

Upon foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure, (i) any accrued Annual Rent that remains unpaid at the time of such foreclosure or assignment in lieu of foreclosure shall be forgiven by OCII, and shall not be an obligation of the Lender or any other Subsequent Owner, and (ii) Annual Rent shall be set as follows:

(a) For so long as the Project is operated in accordance with the use and occupancy restrictions of Section 9.02, the following shall apply:

(1) The obligations of any Subsequent Owner other than a Lender for payment of Annual Rent shall be as set forth for other Tenants in Article 4;

(2) The obligations for payment of Annual Rent of a Lender (or the affiliate of a Lender) who acquires the Leasehold Estate as a result of foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure shall be as follows:

(A) For 180 days after foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure, the obligations for payment of Annual Rent of the Lender (or such affiliate) shall be as set forth for other Tenants in Article 4;

(B) If, within 180 days after foreclosure of a Leasehold Mortgage or assignment of the Leasehold Estate in lieu of such foreclosure: (1) the

Lender (or such affiliate) identifies as a potential assignee of the Leasehold Estate an entity that is controlled by, or includes a partner or member which is, a California nonprofit public benefit corporation that is exempt from tax under Section 501(c)(3) of the Internal Revenue Code such that would, if leased by such entity, receive an exemption from state property taxes as provided under Section 214 of the California Revenue and Taxation Code, (2) OCII has approved such entity (which approval shall not be unreasonably withheld), and (3) Lender (or its affiliate) is engaged, diligently and in good faith, in negotiations with such entity for assignment of the Leasehold Estate, then, if requested by Lender, the obligations for payment of Annual Rent of the Lender (or such affiliate) shall continue to be as set forth for other Tenants in Article 4 for an additional 60 days after the end of the 180-day period set forth in 26.07(a)(2)(A) above;

(C) From and after the date that Lender (or its affiliate) no longer qualifies under paragraph (A) or paragraph (B) of this Section 26.07(a)(2), but continues to operate the Project subject to the use and occupancy restrictions of Section 9.02, Base Rent shall accrue without regard to the amount of Surplus Cash and shall be payable by Lender (or such affiliate) in arrears on each April 15; provided, however, that payment of Base Rent thus accrued may, at the option of the Lender (or such affiliate), be deferred, with simple interest at six percent (6%) per annum until paid, until the first to occur of (x) assignment of the Leasehold Estate to a Subsequent Owner or (y) the date that is sixty days after cessation of operation of the Project in accordance with the use and occupancy restrictions of Section 9.02. If the Lender or Subsequent Owner exercises its rights under Section 26.06(ii) to operate the Project without being subject to Section 9.02, Annual Rent shall be set at the then fair market rental value of the Site, and the Base Rent shall be increased to the new fair market rent pursuant to this Section 26.07(b) and the provisions of Section 6.02(h) shall be suspended; provided, however, that the City shall be entitled to reduce Annual Rent by any dollar amount (but not below zero) in its sole discretion and, in such case, the Subsequent Owner will be required to reduce the aggregate rent charged to tenants on a dollar for dollar basis, with respect to such aggregate units occupied by Low Income Households as OCII and the Subsequent Owner shall agree. Lender or Subsequent Owner also has the option to voluntarily agree to affordability restrictions less strict than those set forth in Section 9.02. In such event, the

Base Rent shall not be increased but the Annual Rent shall be set at the fair market rental value of the Site based on the agreed upon affordability restrictions and the Base Rent and Residual Rent shall continue to be eligible for deferral pursuant to Article 4 hereof. The fair market rental value shall be determined by a jointly-commissioned appraisal (instructions prepared jointly by the Lender or Subsequent Owner and OCII, with each party paying one half of the appraiser's fee) that will include a market land valuation, as well as a market land lease rent level. Absent a market land lease rent determination, the Annual Rent will be set at an amount equal to ten percent (10%) of the then appraised market land value. If the parties cannot agree on the joint appraisal instructions, either party may invoke a neutral third-party process to set the Annual Rent at fair market rent in accordance with the then-prevailing practice for resolving similar rent determination disputes in San Francisco or, in the event that there is no then-prevailing practice, in accordance with the rules of the American Arbitration Association. Provided, however, that after the neutral third party process, the Lender or Subsequent Owner, in its sole discretion may rescind its written notification of intent to not comply with Section 9.02 of this Air Rights Lease.

#### **26.08 Permitted Uses after Lender Foreclosure**

Notwithstanding the above, in the event of a foreclosure and transfer to a Subsequent Owner, the Project shall be operated in accordance with the uses specified in the schematic design, preliminary construction documents, final construction documents, and the building permit with all addenda, as approved by the Landlord.

#### **26.09 Preservation of Leasehold Benefits**

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

(a) That the Landlord shall not voluntarily cancel or surrender this Air Rights Lease, or accept a voluntary cancellation or surrender of this Air Rights Lease by Tenant, or materially amend this Air Rights Lease to increase the obligations of the Tenant or the rights of OCII thereunder, without the prior written consent of the Permitted Limited Partner and each Lender (which will not be unreasonably withheld or delayed);

(b) That OCII shall not enforce against a Lender any waiver or election made by the Tenant under this Air Rights Lease which has a material adverse effect on the

value of the Leasehold Estate under this Air Rights Lease without the prior written consent of the Lender (which will not be unreasonably withheld or delayed);

(c) That, if a Lender makes written request for the same within 15 days after Lender receives written notice of termination of this Air Rights Lease, OCII will enter a new lease with such Lender commencing on the date of termination of the Air Rights Lease and ending on the normal expiration date of the Air Rights Lease, on substantially the same terms and conditions as the Air Rights 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; provided that such Lender cures all unpaid monetary defaults under the Air Rights Lease through the date of such termination;

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

#### **26.10 No Merger**

The Leasehold Estate in the Site pursuant to this Air Rights Lease shall not merge with the fee interest in the Improvements, notwithstanding ownership of the leasehold and the fee by the same person, without the prior written consent of each Lender.

#### **26.11 OCII Bankruptcy**

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

(b) OCII acknowledges that (i) the Tenant seeks to construct improvements on the Site using proceeds of the loans provided by the Lenders, and (ii) it would be unfair to both the Tenant and the Lenders to sell the Site free and clear of the leasehold. Therefore, OCII waives its right to sell the OCII's fee interest in the Site pursuant to section 363(f) of the Bankruptcy Code, free and clear of the leasehold interest under this Air Rights Lease.

(c) If a bankruptcy proceeding is filed by or on behalf of OCII, OCII agrees as follows: (i) the Tenant shall be presumed to have objected to any attempt by OCII to sell

the fee interest free and clear of the leasehold under this Air Rights Lease; (ii) if Tenant does not so object, each Lender shall have the right to so object on its own behalf or on behalf of the Tenant; and (iii) in connection with any such sale, the Tenant shall not be deemed to have received adequate protection under section 363(e) of the Bankruptcy Code, unless it shall have received and paid over to each Lender outstanding balance of the obligations under its respective loan.

(d) OCII recognizes that the Lenders are authorized on behalf of the Tenant to vote, participate in or consent to any bankruptcy, insolvency, receivership or court proceeding concerning the leasehold interest under this Air Rights Lease.

#### **ARTICLE 27: CONDEMNATION AND TAKINGS**

##### **27.01 Parties' Rights and Obligations to be Governed by Agreement**

If, during the term of this Air Rights Lease, there is any condemnation of all or any part of the Site or any interest in the Leasehold Estate is taken by condemnation, the rights and obligations of the parties shall be determined pursuant to this Article 27, subject to the rights of any Lender.

##### **27.02 Total Taking**

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

##### **27.03 Partial Taking**

If any portion of the Site is taken by condemnation, this Air Rights Lease shall remain in effect, except that Tenant may, with Lender's written consent, elect to terminate this Air Rights Lease if, in Tenant's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Tenant's continued use of the Site. If Tenant elects to terminate this Air Rights Lease, Tenant must exercise its right to terminate pursuant to this paragraph by giving notice to OCII within thirty (30) days after the City notifies Tenant of the nature and the extent of the taking. If Tenant elects to terminate this Air Rights Lease as provided in this Section 27.03, Tenant also shall notify OCII 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 OCII of its election to terminate; except that this Air Rights Lease shall terminate on the date the condemner has the right to possession of the Site if such date falls on a date before the date of termination as

designated by Tenant. If Tenant does not terminate this Air Rights Lease within such thirty (30) day notice period, this Air Rights Lease shall continue in full force and effect.

#### **27.04 Effect on Rent**

If any portion of the Improvements is taken by condemnation and this Air Rights Lease remains in full force and effect, then on the date of taking the rent shall be equitably abated.

#### **27.05 Restoration of Improvements**

If there is a partial taking of the Improvements and this Air Rights Lease remains in full force and effect pursuant to Section 27.03, Tenant may, subject to the terms of each Leasehold Mortgage, use the proceeds of the taking to accomplish all necessary restoration to the Improvements.

#### **27.06 Award and Distribution**

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

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

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

(c) Third, to the Landlord.

#### **27.07 Payment to Lenders**

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

### **ARTICLE 28: ESTOPPEL CERTIFICATE**

OCII or Tenant, as the case may be, shall execute, acknowledge and deliver to the other and/or to Lender or Permitted Limited Partner, promptly (but not more than ten days) upon request, its certificate certifying (a) that this Air Rights Lease is unmodified and in full force and effect (or, if there have been modifications, that this Air Rights Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which rent has been paid, (c) whether there are then existing any charges, offsets or defenses against the enforcement by OCII or Tenant to be performed or observed and, if so, specifying the same, and (d) whether there are then existing any defaults by Tenant or OCII in the performance or observance by Tenant or OCII of any agreement, covenant or condition hereof on the part of Tenant or OCII to be performed or observed and whether any notice has been given to Tenant or OCII of any default which has not been cured and, if so, specifying the same.

**ARTICLE 29: QUITCLAIM**

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

**ARTICLE 30: EQUAL OPPORTUNITY**

Tenant agrees to comply with all of the Equal Opportunity and related requirements attached hereto as Attachment 7.

**ARTICLE 31: OCII LABOR STANDARDS PROVISIONS**

31.01 OCII Employment and Contracting Policy

Tenant agrees to comply with the requirements of the OCII's Employment and Contracting Policy ("OCII ECP") as set forth on Attachment 8.

31.02 Prevailing Wages

The Parties acknowledge that the development of the Project is a private work of improvement. Tenant agrees to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in Attachment 7.

**ARTICLE 32: OCII MINIMUM COMPENSATION AND HEALTH CARE ACCOUNTABILITY POLICY**

Tenant agrees that the Tenant and its subtenants, if any, will comply with the

provisions of the OCII's Minimum Compensation Policy ("MCP") and Health Care Accountability Policy ("HCAP") (together, the "Policies") as set forth in Attachments 11 and 12 respectively. Notwithstanding this requirement, OCII recognizes that the residential housing component of the Improvements is subject to the Policies as is the leasing and operations of the Non-residential Space is subject to the Policies.

**ARTICLE 33: CONFLICT OF INTEREST**

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

**ARTICLE 34: NO PERSONAL LIABILITY**

No commissioner, official, or employee of OCII shall be personally liable to Tenant or any successor in interest in the event of any default or breach by OCII or for any amount which may become due to Tenant or its successors or on any obligations under the terms of this Air Rights Lease. Except to the extent required under any partnership agreement for the Project, no partner of Tenant shall be personally liable to Landlord or any successor in interest in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors or on any obligations under the terms of this Air Rights Lease.

**ARTICLE 35: ENERGY CONSERVATION**

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

**ARTICLE 36: WAIVER**

The waiver by OCII or Tenant of any term, covenant, agreement or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition herein contained, nor shall any custom or practice which may grow up between the parties in the administration of the terms hereof be construed to waive or to lessen the right of OCII or Tenant to insist upon the performance by the other in strict accordance with the said terms. The subsequent

acceptance of rent or any other sum of money hereunder by OCII shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, agreement or condition of this Air Rights Lease, other than the failure of Tenant to pay the particular rent or other sum so accepted, regardless of OCII's knowledge of such preceding breach at the time of acceptance of such rent or other sum.

**ARTICLE 37: TENANT RECORDS**

Upon reasonable notice during normal business hours, and as often as OCII may deem necessary, there shall be made available to the City and its authorized representatives for examination all records, reports, data and information made or kept by Tenant regarding its activities or operations on the Site. Nothing contained herein shall entitle OCII to inspect personal histories of residents or lists of donors or supporters. To the extent that it is permitted by law to do so, OCII will respect the confidentiality requirements of Tenant in regard to the lists furnished by Tenant pursuant to Article 7 hereof, of the names of occupants of the residential portion of the Site. OCII's rights pursuant to the preceding provisions of this Article 38 shall be subject in all respects to applicable local, state and federal laws restricting the disclosure of such information.

**ARTICLE 38: NOTICES AND CONSENTS**

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

To OCII:

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

With a copy to:

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

To Tenant:

Mercy Housing California 62, L.P.

1360 Mission Street, Suite 300

San Francisco, CA 94103

Attn: Vice President

With a copy to:

To Limited Partner:

NEF Assignment Corporation

c/o National Equity Funds, Inc.

120 South Riverside Plaza, 15<sup>th</sup> Floor

Chicago, IL 60606

Attn: General Counsel

With a copy to:

or to such other address with respect to either party as that party may from time to time designate by notice to the other given pursuant to the provisions of this Article 39. Any notice given pursuant to this Article 38 shall be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt.

**ARTICLE 39: COMPLETE AGREEMENT**

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

**ARTICLE 40: HEADINGS**

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

**ARTICLE 41: SUCCESSORS AND ASSIGNS**

This Air Rights Lease shall be binding upon and inure to the benefit of the successors and assigns of OCII and Tenant and where the term "Tenant" or "OCIP" is used in this Air Rights Lease, it shall mean and include their respective successors and assigns; provided, however, that OCII shall have no obligation under this Air Rights Lease to, nor shall any benefit of this Air Rights Lease accrue to, any unapproved successor or assign of Tenant where OCII approval of a successor or assign is required by this Air Rights Lease.

**ARTICLE 42: TIME OF THE ESSENCE.**

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

**ARTICLE 43: PARTIAL INVALIDITY**

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

**ARTICLE 44: APPLICABLE LAW**

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

**ARTICLE 45: ATTORNEYS' FEES**

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

**ARTICLE 46: EXECUTION IN COUNTERPARTS**

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

**ARTICLE 47: RECORDATION OF MEMORANDUM OF AIR RIGHTS LEASE**

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

Air Rights Lease to subsequent purchasers and mortgagees. The form of memorandum of Air Rights Lease is attached hereto as Attachment 2.

**ARTICLE 48: ASSIGNMENT**

OCII and Tenant hereby acknowledge and agree that, effective upon the date of issuance of the Certificate of Completion, or some later date as determined by OCII, all of OCII's rights, interests and obligations under this Air Rights Lease shall be assigned 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 Article 48. Upon assignment to MOHCD, all references herein to OCII shall be deemed references to MOHCD.

**ARTICLE 49: ATTACHMENTS**

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

1. Legal Description of Site
2. Memorandum of Air Rights Lease
3. Schedule of Performance
4. Operational Rules for Certificate Holder's Priority
5. Equal Opportunity Program
6. Prevailing Wage Provisions
7. Income Computation and Certification
8. City's Policy on the Inclusion and Funding of Commercial Space in MOH/SFRA-Funded Housing Developments
9. OCII's Minimum Compensation Policy
10. OCII's Health Care Accountability Policy

IN WITNESS WHEREOF, the Tenant and OCII have executed this Air Rights  
Lease as of the day and year first above written.

**OCII:**  
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: \_\_\_\_\_  
Tiffany Bohee  
Executive Director

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

**TENANT:**  
Mercy Housing California 62, L.P., a California  
limited partnership

By: Mercy Housing Calwest, its general partner

By: \_\_\_\_\_  
Douglas Shoemaker,  
Its: Vice President

**AIR RIGHTS LEASE**

**TRANSBAY BLOCK 6 AFFORDABLE HOUSING**

**by and between the**

**OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE AS SUCCESSOR  
AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY**

**as Landlord**

**and**

**MERCY HOUSING CALIFORNIA 62, L.P.**

**a California limited partnership**

**as Tenant**

**Dated as of \_\_\_\_\_, 2014**

ATTACHMENT 1

Legal Description of the Site

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

APN:

**ATTACHMENT 2**

**Memorandum of Air Rights Lease**

RECORDING REQUESTED BY:

THE MAYOR'S OFFICE OF HOUSING  
AND COMMUNITY DEVELOPMENT  
OF THE CITY AND COUNTY OF  
SAN FRANCISCO

WHEN RECORDED RETURN TO:

Free Recording Requested Pursuant to Government Code Section 27383  
280 Beale Street  
San Francisco, CA 94105

**MEMORANDUM OF AIR RIGHTS LEASE**

This Memorandum of Air Rights Lease ("Memorandum") is entered into as of this \_\_\_ day of \_\_\_\_\_ 2014, by and between the Office of Community Investment and Infrastructure, organized and existing under the laws of the State of California (the "Lessor") and Mercy Housing California 62, L.P. a California limited partnership (the "Lessee") with respect to that certain unrecorded Air Rights Lease dated as of \_\_\_\_\_, 2014 (the "Lease"), between Lessor and Lessee.

Pursuant to the Lease, Lessor hereby leases to Lessee and Lessee leases from Lessor the real property described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"). The Initial Term of the Lease shall commence on \_\_\_\_\_, and shall end on the date seventy five (75) years thereafter, with an Option for Extension for an additional twenty-four (24) year term to begin at the end of the Initial Term. Lessee is granted a right of first refusal to purchase a fee interest in the Property from Lessor under certain conditions more specifically described in Section 14.02 of the Lease.

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

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

Executed this \_\_\_ day of \_\_\_\_\_ 2014, at San Francisco, California.

LESSOR:

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

By: \_\_\_\_\_  
Tiffany Bohee

Its: Director

LESSEE:

Mercy Housing California 62, L.P., a California limited partnership

By: Mercy Housing Calwest, its general partner

By: \_\_\_\_\_  
Douglas Shoemaker,

Its: Vice President

**ALL SIGNATURES MUST BE NOTARIZED**

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

APN:

**ATTACHMENT 3**

Schedule of Performance

<b>No.</b>	<b>Performance Milestone</b>	<b>Estimated or Actual Date</b>	<b>Contractual Deadline</b>
1.	Acquisition/Predev Financing Commitment	<u>N/A</u>	
2.	Site Acquisition	<u>4/1/13</u>	<u>10/1/13</u>
3.	Development Team Selection		
a.	Architect	<u>N/A</u>	
b.	General Contractor	<u>2/15/13</u>	
c.	Owner's Representative	<u>N/A</u>	
d.	Property Manager	<u>N/A</u>	
e.	Service Provider	<u>N/A</u>	
4.	Design		
a.	Submittal of Schematic Design & Cost Estimate	<u>1/7/13</u>	
b.	Submittal of Design Development & Cost Estimate	<u>7/11/13</u>	
c.	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	<u>8/31/13</u>	<u>12/31/13</u>
5.	Environ Review/Land-Use Entitlements		
a.	CEQA Environ Review Submission	<u>N/A</u>	
b.	NEPA Environ Review Submission	<u>N/A</u>	
c.	CUP/PUD/Variances Submission	<u>N/A</u>	
6.	Permits		
a.	Building / Site Permit Application Submitted	<u>4/4/13</u>	
b.	Addendum #1 Submitted	<u>8/6/13</u>	
c.	Addendum #2 Submitted	<u>9/11/13</u>	
7.	Request for Bids Issued	<u>On going</u>	
8.	Service Plan Submission		
a.	Preliminary	<u>N/A</u>	
b.	Interim		
c.	Update		

9.	Other Financing		
a.	Construction Financing RFP	<u>11/13</u>	<u>3/13</u>
b.	AHP Application	<u>4/13</u>	<u>4/14</u>
c.	CDLAC Application	<u>1/14</u>	<u>3/14</u>
d.	TCAC Application	<u>1/14</u>	<u>3/14</u>
10.	Closing		
a.	Construction Closing/Execution of Air Rights Lease	<u>5/14</u>	<u>9/14</u>
b.	Permanent Financing Closing	<u>4/16</u>	<u>10/16</u>
11.	Construction		
a.	Notice to Proceed	<u>5/14</u>	<u>10/14</u>
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	<u>7/15</u>	<u>1/16</u>
12.	Marketing/Rent-up		
a.	Marketing Plan Submission	<u>10/14</u>	<u>12/14</u>
b.	Commence Marketing	<u>4/15</u>	<u>5/15</u>
c.	95% Occupancy	<u>10/15</u>	<u>3/16</u>
13.	Cost Certification/8609	<u>12/31/15</u>	<u>6/16</u>
14.	Close Out MOH/SFRA Loan(s)	<u>6/30/16</u>	<u>1/17</u>

**ATTACHMENT 4**  
**Intentionally Omitted**

**ATTACHMENT 5**  
**OPERATIONAL RULES FOR**  
**CERTIFICATE HOLDERS' PRIORITY**

The Owner hereby agrees that priority for units designated for Low Income Households will be given to persons displaced or to be displaced from their homes by former San Francisco Redevelopment Agency ("SFRA") activities and who have been issued a form described as the "Certificate of Preference" ("Certificate Holder"), establishing a priority right to claim units outlined in the descending order of priority in paragraph D of this document. Final acceptance or rejection of Certificate Holders lies with the Owner. The Owner shall notify the City and applicant in writing of the reason for rejection. In order to implement this process:

- A. The City agrees to furnish the following:
  - 1. Written and/or printed notices to Certificate Holders advising them that such units will soon be available;
  - 2. Assistance to Certificate Holders in filing applications; and
  - 3. Verification to the Owner that applicant has been displaced.
  
- B. The Owner agrees to the following:
  - 1. To supply the City ninety (90) days prior to accepting lease applications with the information listed below. This information shall not be changed without providing the City with ten (10) days written notice.
    - a. A master unit list with the following information:
      - (1) Number of bedrooms and baths;
      - (2) Square footage; and
      - (3) Initial rent to be charged.
    - b. Estimated itemized cost of utilities and services to be paid by tenant by unit size.
    - c. Detailed description of Owner's rules for tenants, which must include:
      - (1) Maximum income
      - (2) Pet policy
      - (3) Selection process: To insure no discrimination against Low Income Households and Certificate Holders all criteria and the relative weight to be given to each criterion indicated. The City shall approve or disapprove the selection process criteria within ten (10) working days after submission thereof to the Agency.
      - (4) Amount of security deposit and all other fees, as well as refund policy regarding same.
      - (5) Occupancy requirements must be described in full and found reasonable by the City
      - (6) Duration of rental agreement or lease.
      - (7) Copy of rental agreement or lease.
    - d. Amount of charge for processing applications, if any.
    - e. Description of application process and length of time needed by Owner.

- f. Copy of rental application and copy of all forms to be used for income verification.
  - g. Periodic notification to Owner's office hours for accepting applications and showing model unit(s).
2. That all Certificate Holders found acceptable by the Owner shall have the opportunity to inspect a model or other available completed unit, and be assigned an appropriate unit for future occupancy.
  3. The Owner further agrees that some applicants who apply directly to the Owner may be entitled to priority because of previous displacement. The Owner will, therefore, ask the following questions on all applications for occupancy:

“Have you been displaced between 1966-1975 by the San Francisco Redevelopment Agency?”

If the applicant answers affirmatively, the address from which displacement occurred is required. Copies of all applications indicating that such displacement either has taken place or will take place must be forwarded to the City within five (5) working days of receipt of such application by the Owner. It is agreed that information received on the application will be considered confidential. The City will, in turn, determine within ten (10) working days which such applicants are then qualified or will qualify as Certificate Holders, and will establish current Certificate of Preference priority.

- C. 1. Complete Certificate of Preference Applicant status updates form.
2. Applicants who are Certificate Holders who have been accepted and notified by the Owner will have five (5) working days thereafter to accept or reject a unit. If the Certificate Holder fails to affirmatively respond, the application may be closed. Rejection of the unit by a Certificate holder must be shown on current status report.
4. Prior to Initial Occupancy, the Owner will deliver at least monthly, or more frequently if available to the Owner from its leasing agent, a rent-up report for all Development units listing the following:
  1. Unit number rented;
  2. Tenant name;
  3. Date of move-in; and
  4. Rent rate.
5. If material supplied in any application by a Certificate Holder indicates ineligibility on its face because of the Owner's rules and regulations, such applicant will be notified within one week, with a copy of the Agency. Any fee charged for processing such application will be refunded in full, notwithstanding, however, that such applicant shall be listed on status report showing application is closed and fee has been returned. If ineligibility can be determined only after a follow-up investigation, the applicant will be notified within one week after such determination is made, with a copy to the Agency. Any fee charged for processing such applications may be retained by the Owner. These applications will also appear on the status report.

6. Within ten (10) working days after execution of a lease, the Owner will supply the Agency with a signed copy of the following for all Certificate Holder tenants:

- (1) signed copy of lease;
- (2) copy of complete application; and
- (3) copies of all verification forms used to ascertain income eligibility.

D. Units may be offered to non-Certificate Holders at any time as long as the current status report shows that there are sufficient units available to satisfy applications from Certificate Holders for units of appropriate size in any stage of processing.

E. The Owner agrees that any contract entered into for the management of the residential portions of the Development, both before and after Initial Occupancy, shall be furnished to the Agency, shall incorporate the provisions of this Attachment "T", and shall bind the management agent to comply with its requirements.

## ATTACHMENT 6

1. Equal Opportunity Policies. Borrower shall comply with OCII's Equal Opportunity Policies attached hereto as part of this Exhibit E which includes: Small Business Enterprise Agreement, Construction Workforce Agreement, and Prevailing Wage Provisions (Labor Standards):

(i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 82-2009, July 27, 2009) attached as Exhibit E-1;

(ii) Construction Workforce, attached as set forth in Exhibit E-2; and

(iii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985) attached as Exhibit E-3.

(iv) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997) attached as Exhibit E-4.

(v) Health Care Accountability Policy (adopted by Resolution No. 168-2001) attached as Exhibit E-5.

(vi) Minimum Compensation Policy (adopted by Resolution No. 168-2001) attached as Exhibit E-6.

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.

3. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Borrower 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, Borrower 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. Borrower 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, Borrower must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) Borrower 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. Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify OCII immediately if Borrower at any time obtains knowledge of facts constituting a violation.

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

4. Disability Access. Borrower 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.*).

Borrower 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, Borrower must provide to OCII a written reasonable accommodations policy that indicates how Borrower will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. Borrower 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. Borrower 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. Borrower 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) Borrower May Not Discriminate. In the performance of this Agreement, Borrower agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, 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 Borrower, in any of Borrower's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by Borrower.

(b) Non-Discrimination in Benefits. Borrower 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) Borrower understands and agrees that under the State Public Records Law (Cal. Gov. Code §§ 6250 *et seq.*), this Agreement and any and all records, information and materials submitted to OCII or the City hereunder are public records subject to public disclosure. Borrower 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. Compliance with Minimum Compensation Policy and Health Care Accountability Policy. Borrower agrees, as of the date of this Agreement and during the term of this Agreement, to comply with the provisions of the Agency's Minimum Compensation Policy and Health Care Accountability Policy (the "Policies"), adopted by Agency Resolution 168-2001, as such policies may be amended from time to time. Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the Policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City's Department of Public Health, or to participate in a health benefits program developed by the City's Director of Health.

10. Limitations on Contributions. Through execution of this Agreement, Borrower 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. Borrower 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. Borrower further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Borrower's board of directors; Borrower's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Borrower; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Borrower. Additionally, Borrower acknowledges that Borrower must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Borrower agrees to provide to OCII the names of each member of Borrower's general partners' (or, if applicable, general partners' managing members) board of directors; Borrower'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 Borrower'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 Borrower.

**ATTACHMENT 7**  
**PREVAILING WAGE PROVISIONS**  
**(LABOR STANDARDS)**

11.1 **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as “Labor Standards”) apply to any and all construction of the Improvements as defined in the Agreement between the Borrower and the Office of Community Investment and Infrastructure (OCII) “Successor Agency” of which this Exhibit H and these Labor Standards are a part.

11.2 **All Contracts and Subcontracts shall contain the Labor Standards. Confirmation by Construction Lender.**

- (a) All specifications relating to the construction of the Improvements shall contain these Labor Standards and the Borrower 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 Borrower 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 Borrower shall also supply a written confirmation to the Agency from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.

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

- (a) “Contractor” is the Borrower if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Improvements.
- (b) “Laborers” and “Mechanics” are all persons providing labor to perform the construction, including working foremen and security guards.

- (c) "Working foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the work week.

#### 11.4

##### Prevailing Wage.

- (a) All Laborers and Mechanics employed in the construction of the Improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §11.5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of escrow closing the Agency shall provide the Borrower with a copy of the applicable Wage Determination.
- (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 Borrower that the intent of the Labor

Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §11.8. The Executive Director of the Agency may require the Borrower to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §11.4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

- (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.

**11.5** **Permissible Payroll Deductions.** The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when 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.

**11.6 Apprentices and Trainees.** Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be

paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

- 11.7** **Overtime.** No Contractor contracting for any part of the construction of the Improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.

**11.8** **Payrolls and Basic Records.**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.
- (b) 1. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply

of which may be obtained from the Agency. The Contractor if a prime contractor or the Borrower 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.

- (c) 2. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.
- (d) The Contractor shall make the records required under this §11.8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

**11.9** **Occupational Safety and Health.** No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

**11.10** **Equal Opportunity Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in Exhibit I of the Agreement including Schedules A and B. Any conflicts between the language contained in these Labor Standards and Exhibit I shall be resolved in favor of the language set forth in Exhibit I, except that in no event shall less than the prevailing wage be paid.

**11.11** **Nondiscrimination Against Employees for Complaints.** No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

**11.12** **Posting of Notice to Employees.** A copy of the Wage Determination referred to in subsection (a) of §11.4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Borrower at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Improvements before construction

commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

**11.13 Violation and Remedies.**

- (a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
- (b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by §11.2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §11.8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Borrower 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 Borrower, 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 Borrower 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 Borrower, 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 Borrower 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.
- (d) Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Borrower shall continue to withhold the moneys until the dispute has

been resolved either by agreement, or failing agreement, by arbitration as is provided in §11.14.

- (e) 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.
- (f) 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 Borrower 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 Borrower, or as appropriate to one or the other if the Borrower or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §11.4) and copies of all notices sent or received by the Agency

pursuant to §11.13. Such material shall be made part of the arbitration record.

- (f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.
- (g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.
- (h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Borrower 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 Borrower 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 Borrower, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

**SAN FRANCISCO REDEVELOPMENT AGENCY**

**NOTICE TO EMPLOYEES**

***EQUAL  
OPPORTUNITY  
group  
NON-DISCRIMI-  
NATION***

The contractor must take equal opportunity steps to provide employment opportunities to minority persons and women and shall not discriminate on the basis of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

***PREVAILING  
attached  
WAGE***

You shall not be paid less than the wage rate to this Notice for the kind of work you perform.

***OVERTIME  
times  
day***

You must be paid not less than one and one-half your basic rate of pay for all hours worked over 8 a or 40 a week, whichever is greater.

***APPRENTICES  
approved  
the***

Apprentice rates apply only to employees registered under an apprenticeship or trainee program by the Bureau of Apprenticeship and Training or California Division of Apprenticeship Standards.

***PROPER PAY***

If you do not receive proper pay, write the Office of Community Investment and Infrastructure, OCII  
1 South Van Ness Ave. 5<sup>th</sup> Floor  
San Francisco, CA 94103  
or call 749-2546 and ask for  
**Mr. George Bridges**  
Contract Compliance Specialist

**ATTACHMENT 8**

## TENANT INCOME CERTIFICATION

Initial Certification  
  Recertification  
  Other \_\_\_\_\_

Effective Date: \_\_\_\_\_  
 Move-in Date: \_\_\_\_\_  
 (MM/DD/YYYY)

### PART I - DEVELOPMENT DATA

Property Name: _____	County: _____
BIN #: _____	
Address: _____	Unit Number: _____ #
Bedrooms: _____	

### PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien
1			HEAD			
2						
3						
4						
5						
6						
7						

### PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
<b>TOTALS</b>	\$ _____	\$ _____	\$ _____	\$ _____
Add totals from (A) through (D), above				<b>TOTAL INCOME (E):</b> \$ _____

### PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from
<b>TOTALS:</b>			\$ _____	\$ _____
Enter Column (H) Total		Passbook Rate	= (J) Imputed Income	
If over \$5000 \$ _____ X 2.00%			\$ _____	
Enter the greater of the total of column I, or J: imputed income				<b>TOTAL INCOME FROM ASSETS (K)</b> \$ _____

(L) Total Annual Household Income from all Sources [Add (E) + (K)] \$ \_\_\_\_\_

**HOUSEHOLD CERTIFICATION & SIGNATURES**

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature	(Date)	Signature	(Date)
Signature	(Date)	Signature	(Date)

**PART V. DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1	\$ _____	Household Meets Income Restriction at:	<b>RECERTIFICATION</b> Current Income Limit x \$ _____ Household income exceeds recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%	
Current Income Limit per Family Size:	\$ _____		
Household Income at Move-in:	\$ _____	Household Size at Move-in:	_____

**PART VI. RENT**

Tenant Paid Rent \$ _____ Utility Allowance \$ _____		Rent Assistance: \$ _____ Other non-optional charges: \$ _____	
GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & other non-optional charges)	\$ _____	Unit Meets Rent Restriction at:	<input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%
Maximum Rent Limit for this unit:	\$ _____		

**PART VII. STUDENT STATUS**

ARE ALL OCCUPANTS FULL TIME STUDENTS? <input type="checkbox"/> yes <input type="checkbox"/> no	If yes, Enter student explanation* (also attach documentation)	*Student Explanation: 1 TANF assistance 2 Job Training Program 3 Single parent/dependent 4 Married/joint return
	Enter 1-4	

**PART VIII. PROGRAM TYPE**

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit <input type="checkbox"/> See Part V above.	b. HOME <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 60% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> OI**	c. Tax Exempt <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 60% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	d. AHDP <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	e. _____ <input type="checkbox"/> (Name of Program) <i>Income Status</i> <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> OI**
---	--	--	---	---

\*\* Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked

**SIGNATURE OF OWNER/REPRESENTATIVE**

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Res Agreement (if applicable), to live in a unit in this Project.

\_\_\_\_\_  
SIGNATURE OF OWNER/REPRESENTATIVE

\_\_\_\_\_  
DATE

## INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

*This form is to be completed by the owner or an authorized representative.*

### Part I - Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date	Enter the date the tenant has or will take occupancy of the unit.
Effective Date	Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.
Property Name	Enter the name of the development.
County	Enter the county (or equivalent) in which the building is located.
BIN #	Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
Address	Enter the address of the building.
Unit Number	Enter the unit number.
# Bedrooms	Enter the number of bedrooms in the unit.

### Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definitions:

H	-	Head of Household	S	-	Spouse
A	-	Adult co-tenant	O	-	Other family member
C	-	Child	F	-	Foster child(ren)/adult(s)
L	-	Live-in caretaker	N	-	None of the above

Enter the date of birth, student status, and social security number or alien registration number for each occupant.

*If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.*

### Part III - Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

- Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
- Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
- Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).
- Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
- Row (E) Add the totals from columns (A) through (D), above. Enter this amount.

#### Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

- Column (F) List the type of asset (i.e., checking account, savings account, etc.)
- Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
- Column (H) Enter the cash value of the respective asset.
- Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
- TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

- Row (K) Enter the greater of the total in Column (I) or (J)
- Row (L) Total Annual Household Income From all Sources Add (E) and (K) and enter the total

#### HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

#### Part V - Determination of Income Eligibility

Total Annual Household Income from all Sources Enter the number from item (L).

Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
Current Income Limit x 140%	For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

#### Part VI - Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of <u>non-optional</u> charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

#### Part VII - Student Status

If all household members are full time\* students, check "yes". If at least one household member is not a full time student, check "no".

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

*\*Full time is determined by the school the student attends.*

#### Part VIII - Program Type

Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit      See Part V above.

- HOME If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household's designation.
- Tax Exempt If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household's designation.
- AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, mark the appropriate box indicating the household's designation.
- Other If the property participates in any other affordable housing program, complete the information as appropriate.

#### SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

*These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.*

**ATTACHMENT 9**  
**Intentionally Omitted**

**ATTACHMENT 10**  
**COMMERCIAL SPACE POLICY**

**ATTACHMENT 11**  
**MINIMUM COMPENSATION POLICY**

**ATTACHMENT 12**  
**HEALTH CARE ACCOUNTABILITY POLICY**

**Office of Community  
Investment and Infrastructure**  
(Successor to the San Francisco  
Redevelopment Agency)

One South Van Ness Avenue  
San Francisco, CA 94103  
415.749.2400



EDWIN M. LEE, Mayor

Christine Johnson, Chair  
Mara Rosales, Vice-Chair  
Theodore Ellington  
Marilyn Mondejar  
Darshan Singh  
Tiffany Bohee, Executive Director

March 21, 2014

**33433 Report**

This report is submitted consistent with the requirements of Section 33433 of the California Health and Safety Code. Specifically, Section 33433 states that before any property that was acquired, in whole or in part, with tax increment funds is sold or leased for development, the sale or lease shall first be approved by the legislative body by resolution after a public hearing. The Board of Supervisors (the "BOS") is the legislative body for purposes of Section 33433. The property that is the subject of this report was not acquired with tax increment funds. However, the Redevelopment Plan for the Transbay Redevelopment Project Area ("Redevelopment Plan") requires that the Board of Supervisors shall approve the sale or lease of any property acquired by the Former San Francisco Redevelopment Agency ("Former Agency") or the Office of Community Investment and Infrastructure ("OCII"), as Successor to the Former Agency, pursuant to the Option Agreement for the Purchase and Sale of Real Property ("Option Agreement"), in a manner consistent with the standards and procedures that govern the disposition of property acquired with tax increment funds and that appear in Section 33433 of the California Health and Safety Code.

On April 16, 2013, the Commission on Community Investment and Infrastructure ("CCII") approved a disposition and development agreement ("DDA") between OCII and the development team or Golub Real Estate Corporation ("Golub" or "Developer") and Mercy Housing California ("Mercy" or "Affordable Developer") for the development of 409 market-rate residential units and 70 affordable family rental residential units (at 50 percent of area median income), along with shared open space and a shared underground parking garage, on the parcel located at 280 Beale Street, commonly known as Block 6 in the Transbay Redevelopment Project Area ("Project Area"). The Golub/Mercy team was selected by the Former Agency after a competitive request for proposals ("RFP") was issued in July 2011 and proposals were received from a total of four development teams. Block 6 is the first phase of a larger development that includes an additional 77 affordable family rental residential units (also at 50 percent of area median income) and a child care facility that will be developed on Block 7, immediately adjacent to Block 6, by Mercy. The DDA, however, does not cover Block 7 because it will be constructed at a future date when additional affordable housing funds are available from OCII.

On August 29, 2013, the BOS approved the 33433 Report related to the 409-unit market rate component of Transbay Block 6. Currently, OCII is preparing to enter into a long term Air Rights Lease with Mercy for the 70-unit affordable component of Transbay Block 6 ("Project") pursuant to the DDA.

The Project will be an eight-story podium building on the east end of the block with 70 units (56 1-bedroom units and 14 2-bedroom units). It will also include the following features:

- 8-13 spaces within a shared underground parking garage with a total of approximately 133 spaces, entirely under Block 6, which will accommodate parking for the Project, the Market-Rate Project, and the Block 7 Affordable Project;
- A shared open space on Block 6, which will be used by both the Market-Rate Project and the Block 6 Affordable Project, and which will be open to the public during daytime hours; and
- Streetscape improvements pursuant to the Transbay Streetscape and Open Space Plan and the approved Schematic Designs for Folsom Street.

The Project will be built in an air rights parcel (“Air Rights Parcel”) to be owned by OCII, and subsequently MOHCD, and leased to Mercy via a long term air rights lease (“Air Rights Lease”). Golub currently owns all of Block 6. As required by the DDA, prior to the start of construction of the Project, Golub will transfer the Air Rights Parcel for the Project to OCII and OCII and Mercy will enter into the Air Rights Lease. OCII will own the Air Rights Parcel until completion of construction of the Project, at which time ownership will transfer to MOHCD as the housing successor agency, subject to compliance with the Redevelopment Dissolution Law requirements governing the transfer of non-affordable housing assets to the Housing Successor under Health & Safety Code § 34176 (f) and subject to issuance of a certificate of completion or other terms specified in the Air Rights Lease. Mercy will own the improvements and lease the air rights from OCII/MOHCD, consistent with the typical ground lease terms of MOHCD and the Former Agency. Golub will own the underground garage and the tower and townhomes which are above the garage. The garage spaces allocated to the Block 6 Affordable Project will be provided for in a reciprocal easement agreement which will govern the shared portions of the market rate and affordable projects and will be subject to OCII/MOHCD review and approval.

Pursuant to Section 33433, a copy of the Air Rights Lease is included with this report as Attachment 1 and both the Air Rights Lease and this report have been submitted to the Clerk of the Board and made available for public inspection and copying on March 25, 2014, in advance of the April 6, 2014, date of the first publication of the notice of the public hearing on April 22, 2014. Below is a summary of the agreement, as required by Section 33433, Subsections (2)(B)(i-v):

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

- A. “A copy of the proposed sale or lease.” Please refer to the Air Rights Lease Agreement (Attachment 1).
- B. “A summary which describes and specifies all of the following:”
  - (i) “The cost of the agreement to OCII, including land acquisition costs, clearance costs, and relocation costs, the costs of any improvements to be provided by OCII, plus the expected interest on any loans or bonds to finance the agreements.”

The total cost of OCII’s acquisition of Air Rights Parcel was \$0. OCII will not incur clearance, relocation, or improvement costs. Furthermore, no interest will be generated on

loans or bonds used to finance the land acquisition or the subsequent lease to the Affordable Developer.

- (ii) “The estimated value of the interest to be conveyed or leased, determined at the highest and best uses permitted under the plan.”

The value of the Air Rights Parcel that is to be leased to the Developer, determined on April 16, 2013, at the highest and best use permitted under the plan is \$4,338,958.

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

The estimated value of the property to be conveyed, determined with the conditions, covenants, and development costs required by the sale, is \$4,338,958, if the units within the Project were not subject to affordability restrictions. With the affordability restrictions, the value of the property to be conveyed is \$0. The property is being leased to the developer for a period of 75 years. The annual air rights rent is \$433,896, but with only \$15,000 guaranteed. The balance of the annual rent is to be paid from residual receipts to the extent any surplus cash is available. The present value of the guaranteed lease payments is \$246,838, using a discount rate of 6% percent.

The present value of the fixed total rental amount, including the residual property interest at the end of the 55-year term, is substantially less than the fair market value of the interest to be leased, determined at the highest and best use. Only \$15,000 of the annual rent is guaranteed and the remainder is to be paid from “surplus cash” generated by the Project annually, i.e., operating income that is in excess of operating expenses. The less than fair market value rent is necessary to achieve affordability for very low income families and the consideration to be received by OCII is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Air Rights Lease. This lease structure is necessary to ensure the continued and successful operation of the Project, but creates a high level of uncertainty regarding the value of the residual rents (i.e., rent in addition to the \$15,000 guaranteed rent) that OCII will actually collect. Therefore, the residual rents are not considered in the calculation of the present value of the projected lease payments.

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

Block 6 was formerly occupied by a portion of the Embarcadero Freeway, which was demolished after the 1989 Loma Prieta Earthquake. After the freeway was demolished, Block 6 was a surface parking lot operated by the State of California, until it was acquired by the TJPA to be used for construction staging. Surface parking was identified as an

economic indicator of blight in the 2005 Report on the Redevelopment Plan for the Transbay Redevelopment Project, which was prepared as part of the plan adoption materials for the Board of Supervisors. The section of the Report on the Redevelopment Plan titled "Underutilized Areas and Vacant Lots" on Page V-8 states, "Given the Project Area's density and location in the Financial District, surface parking lots do not maximize the economic and development potential of the lot or area." Block 6 is identified as an "Underutilized Area" on Figure V-3 in the Report on the Redevelopment Plan. The Golub/Mercy project on Block 6 will assist in the elimination of blight by converting a surface parking lot/construction staging area into a dense, mixed-use residential development.

Additionally, the lease of the property will assist in the elimination of blight by providing housing opportunities for a population – very low income families – that is underserved by the market and therefore at serious risk of homelessness. Finally, the lease and development of this property will transform a vacant, underutilized parcel, bringing quality architecture, new homes, and neighborhood-serving commercial space to the community.

(v) This report has been made available to the public at the offices of OCII, 1 South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, California, no later than the time of publication of the first notice of hearing as mandated by California Health and Safety Code Section 33433.

Commission on Community Investment and Infrastructure

RESOLUTION NO. 29-2014

**Adopted April 15, 2014**

AUTHORIZING A LOAN AGREEMENT WITH MERCY HOUSING CALIFORNIA 62, L.P., A CALIFORNIA LIMITED PARTNERSHIP, IN THE AMOUNT OF \$14,000,000, FOR ACTIVITIES RELATED TO THE CONSTRUCTION OF 69 AFFORDABLE HOUSING UNITS PLUS ONE MANAGER'S UNIT AT 280 BEALE STREET ON TRANSBAY BLOCK 6, APPROVAL OF AN AIR RIGHTS LEASE FOR TRANSBAY BLOCK 6 AFFORDABLE HOUSING AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITYACT; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, The California Legislature in 2003 enacted Assembly Bill 812 ("AB 812") authorizing the demolition of the historic Transbay Terminal building and the construction of the new Transbay Transit Center (the "TTC") (Stat. 2003, Chapter 99, codified at § 5027.1 of the Cal. Public Resources Code). AB 812 also mandated that 25% of the residential units developed in the area around the Center "shall be available to" low income households, and an additional 10% "shall be available to" moderate income households if the City and County of San Francisco (the "City") adopted a redevelopment plan providing for the financing of the Center.

WHEREAS, In 2003, in an agreement with the Transbay Joint Powers Authority ("TJPA") and the City, the State agreed to transfer approximately 10 acres of State-owned property (the "State-owned parcels") in and around the then-existing Transbay Terminal to the City and the TJPA, which would then sell the State-owned parcels and use the revenues from the sales to finance the Center (the "Cooperative Agreement"). The City agreed, among other things, to commit property tax revenue through its Redevelopment Agency to the Center. Under the Cooperative Agreement, the State relied on tax increment financing under a redevelopment plan to improve and sell the parcels.

WHEREAS, The Board of Supervisors of the City and County of San Francisco approved a Redevelopment Plan for the Transbay Redevelopment Project Area (the "Project Area") by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 (the "Redevelopment Plan"). The Redevelopment Plan provided for the financing of the TTC and established a program for the Redevelopment Agency of the City and County of San Francisco (the "Former Agency") to redevelop and revitalize the blighted Project Area.

WHEREAS, In 2006, the TJPA and the Former Agency executed an agreement ("Implementation Agreement"), which required the Former Agency to take the lead role in facilitating the development of the State-owned parcels. Specifically, the Implementation Agreement required the Former Agency to: (1) prepare and sell the State-owned parcels to third parties, (2) deposit the sale proceeds into a trust account to help the TJPA pay the cost of constructing the TTC, (3)

implement the Redevelopment Plan to enhance the financial feasibility of the Project, and (4) fund the state-mandated affordable housing program.

WHEREAS, In 2008, the City, the Former Agency and the TJPA entered into an agreement that granted options to the Former Agency to acquire the State-owned parcels, arrange for development of the parcels, and distribute the net tax increment to the TJPA to use for the Center (the "Option Agreement"). The Option Agreement provided the means by which the Former Agency could fulfill its obligations under the Implementation Agreement to prepare and sell the State-owned parcels. The Option Agreement granted to the Former Agency "the exclusive and irrevocable option to purchase" the former State-owned parcels in the Project Area that are programmed for development, which are listed in the Option Agreement, including Blocks 2-12 and Parcel F (Section 2.1 of the Option Agreement at p. 4).

WHEREAS, On July 6, 2011, pursuant to the Implementation Agreement, the Former Agency issued a Request for Proposals (the "RFP") from development teams to design and develop a high-density, mixed-income residential project on Blocks 6/7 in the Project Area. On December 6, 2011, after a competitive selection process, the Former Agency Commission authorized staff to enter into negotiations for the development of Blocks 6/7 with the development team lead by Golub Real Estate Corp. ("Golub") and Mercy Housing California ("Mercy"), along with Solomon Cordwell and Buenz ("SCB") as the lead architect for the market-rate component of the development and Santos Prescott and Associates ("Santos Prescott"), a small business enterprise, as the architect for the affordable component (the "Block 6 Affordable Project").

WHEREAS, On February 1, 2012, the Former Redevelopment Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26"), codified in relevant part in California's Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) ("AB 1484"). (Together, AB 26 and AB 1484 are referred to as the "Redevelopment Dissolution Law.")

WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former Redevelopment Agency's assets (other than housing assets) and obligations were transferred to the Office of Community Investment and Infrastructure ("OCII"), as Successor Agency to the Former Agency. Some of the Former Agency's housing assets were transferred to the City, acting by and through the Mayor's Office of Housing and Community Development ("MOHCD").

WHEREAS, 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). Under this limited authority, a successor agency may enter into contracts if a pre-existing

enforceable obligation requires that action. See also Cal. Health & Safety Code § 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with an agency's authority under enforceable obligations to "enforce existing covenants and obligations, or . . . perform its obligation."). The Implementation Agreement and several other Transbay obligations are "enforceable obligations" requiring OCII to take the actions proposed by this Resolution. Cal. Health & Safety Code § 34171 (d) (1).

WHEREAS, On April 15, 2013 the California Department of Finance ("DOF") approved the OCII's request that DOF determine "finally and conclusively" that the Implementation Agreement, AB 812 and the Pledge Agreement are enforceable obligations that will not require additional DOF review in the future. On September 10, 2013, DOF interpreted this Final and Conclusive Determination as meaning that "any sale, transfer, or conveyance of property related to this project, and as outlined in the project documents, is authorized" and further verified that it would not initiate an "objection to any sale, transfer and/or conveyance of property related to this project." Email, J. Howard, DOF Assist. Program Budget Manager, to T. Bohee, OCII Executive Director (Sep. 10, 2013, 09:17 AM).

WHEREAS, The original proposal from Golub/Mercy included a purchase price of \$30,000,000, 545 residential units (409 market-rate units, including 61 inclusionary units and 136 stand-alone affordable units), and a requested subsidy from the Former Agency for the stand-alone affordable units of approximately \$200,000 per unit. However, due to the dissolution of the Former Agency on February 1, 2012, and the challenges that created for funding the affordable component of the development, the original proposal from Golub/Mercy was revised.

WHEREAS, Under the revised proposal, Blocks 6/7 will include a total of 556 residential units, as well as ground-floor retail, shared open space and underground parking. Based on this revised proposal, OCII staff negotiated the terms of a disposition and development agreement (the "DDA") with Golub/Mercy for the sale of Blocks 6/7 and the development of Block 6 with 409 market-rate units, 70 affordable units, shared open space, and a shared underground parking garage. Instead of providing inclusionary units in the market-rate component of the project, Golub will pay an affordable housing fee ("Affordable Housing Fee") of \$24,300,000 to OCII to provide funding for all of the anticipated Former Agency subsidy for the Block 6 Affordable Project and a portion of the Former Agency subsidy for Block 7. The DDA, however, does not cover the development of Block 7, which includes 77 affordable units, a child care facility and shared open space, because it will be constructed once construction of the Block 6 Affordable Project is completed by Mercy, and when additional affordable housing funding becomes available, currently anticipated to be by mid to late 2015.

WHEREAS, On April 16, 2013, the DDA was approved by the Commission on Community Investment and Infrastructure ("Commission") and executed. Mercy is obligated under the terms of the DDA to develop the Block 6 Affordable Project. As part of the negotiated terms of the DDA, Golub was allowed to pay directly for any

predevelopment costs for the affordable components, including up to \$2,000,000 for the Block 6 Affordable Project plus up to \$1,000,000 for the Block 7 Affordable Project, plus the shared costs for the underground parking structure as part of the Affordable Housing Fee once approved by MOHCD/OCII staff. These costs were all incurred after the selection of Golub and Mercy by the Former Agency Commission in December 2011.

WHEREAS, In October, 2013 Golub completed the purchase of Block 6 and paid the Affordable Housing Fee. In accordance with the terms of the DDA, Golub will transfer the air rights parcel ("Air Rights Parcel") for the Block 6 Affordable Project back to OCII once it has been created, and OCII will transfer that parcel to the Borrower through a long term Air Rights Lease.

WHEREAS, On November 15, 2013, the Citywide Affordable Housing Loan Committee approved a loan with the Borrower for the development of the Block 6 Affordable Project for an amount not to exceed \$14,000,000 including predevelopment expenses and shared costs not to exceed \$2,208,374 paid by Golub and Mercy and approved by MOHCD and OCII staff as the previously paid portion of the loan amount.

WHEREAS, Mercy is now requesting to enter into a seventy-five (75) year air rights lease (with one twenty-four (24) year option) in connection with the development and operation of the Project (the "Air Rights Lease Agreement"); and

WHEREAS, On April 20, 2004, the Former Agency Commission adopted Resolution No. 45-2004, certifying the Final Environmental Impact Statement/Environmental Impact Report (the "Final EIS/EIR") for the Transbay Redevelopment Project, and on January 25, 2005 adopted Resolution No. 11-2005, adopting findings under the California Environmental Quality Act ("CEQA"), a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program in connection with the adoption of the Redevelopment Plan. The Board of Supervisors and the City Planning Commission adopted similar findings. Because the Final EIS/EIR includes evaluation of the new Transbay Transit Center, the TJPA also adopted environmental findings.

WHEREAS, The Final EIS/EIR includes by reference a number of addenda. The addenda include the following:

- a. Addendum #1 – adopted by the TJPA on June 2, 2006, assessed the additional use of the temporary Transbay Terminal by Greyhound, another transit carrier; and,
- b. Addendum #2 – adopted by the TJPA on April 19, 2007, assessed modifications of the rail tracks and underground tunnels leading to the new Transit Center; and,
- c. Addendum #3 – adopted by the TJPA on January 17, 2008, evaluated the addition of 546 Howard Street to the Transit Center; and,

- d. Addendum #4 – adopted by the TJPA on October 17, 2008, evaluated the configuration, boarding platforms and passenger waiting areas, and bus staging areas of the temporary Terminal, and associated modifications to bus lanes on surrounding streets; and,
- e. Addendum #5 – adopted by the TJPA on April 9, 2009, evaluated the building design of the new Transit Center; and,
- f. Addendum #6 – adopted by the TJPA on December 8, 2011, evaluated minor refinements to the proposed bus ramp component of the Transit Center.

WHEREAS, In adopting each Addendum, the TJPA determined that modifications to the Project would not require subsequent environmental review and would not require major revisions to the Final EIS/EIR.

WHEREAS, The Final EIS/EIR is a program EIR under CEQA Guidelines Section 15168 and a redevelopment plan EIR under CEQA Guidelines Section 15180. The Final EIS/EIR is also a project EIR under CEQA Guidelines Section 15161 for certain structures and facilities, including the Temporary Terminal. The development of approximately 556 units of market-rate and affordable housing on Transbay Blocks 6/7 is an undertaking pursuant to and in furtherance of the Redevelopment Plan in conformance with CEQA Sections 15180 and 15168.

WHEREAS, OCII staff has reviewed the Loan Agreement and related actions for Transbay Blocks 6/7 and finds the proposed actions to be Implementing Actions to facilitate construction of market-rate and affordable housing on Transbay Blocks 6/7 and within the scope of the Project analyzed in the Final EIS/EIR and subsequent addenda and no additional environmental review is required pursuant to State CEQA Guidelines Sections 15180 and 15168; and,

WHEREAS, OCII staff, in making the necessary findings for the Implementing Actions contemplated herein, considered and reviewed the Final EIS/EIR and addenda, has made documents related to the Implementing Actions, the Final EIS/EIR, and addenda available for review by the OCII Commission and the public, and these files are part of the record before OCII; and,

WHEREAS, The Final EIS/EIR findings and statement of overriding considerations adopted in accordance with CEQA by the Agency Commission by Resolution No. 11-2005 dated January 25, 2005 were and remain adequate, accurate and objective and are incorporated herein by reference as applicable to the Implementing Actions; now therefore, be it

RESOLVED, The Office of Community Investment and Infrastructure finds and determines that authorizing the Executive Director to execute a Loan Agreement for the Block 6 Affordable Project is an Implementing Action within the scope of the project analyzed in the Final EIS/EIR and Addenda and requires no additional

environmental review pursuant to State CEQA Guidelines Sections 15180, 15168, 15162 and 15163 for the following reasons:

- a. The Implementing Action is within the scope of the project analyzed in the Final EIS/EIR and Addenda and no major revisions are required due to the involvement of new significant environmental effects or a substantial increase in the severity of significant effects previously identified in the Final EIS/EIR;
- b. No substantial changes have occurred with respect to the circumstances under which the project analyzed in the Final EIS/EIR and Addenda was undertaken that would require major revisions to the Final EIS/EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Final EIS/EIR; and,
- c. No new information of substantial importance to the project analyzed in the Final EIS/EIR and Addenda has become available which would indicate that (a) the Implementing Actions will have significant effects not discussed in the Final EIS/EIR; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the Final EIS/EIR will substantially reduce one or more significant effects on the environment.

RESOLVED, The Office of Community Investment and Infrastructure, acting as the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, hereby authorizes the Executive Director to execute a Loan Agreement and an Air Rights Lease Agreement for Transbay Block 6 Affordable Housing with Mercy Housing California 62, L.P. a California limited partnership, for activities related to the construction of 69 affordable housing units plus one manager's unit at 280 Beale Street on Transbay Block 6, substantially in the form approved by the City Attorney acting as counsel to OCII, and to execute any related documents and adopting environmental findings pursuant to the California Environmental Quality Act.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of April 15, 2015.

Natasha Jones  
Commission Secretary

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## NOTICE OF PUBLIC HEARING

### BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco, as a Committee of the Whole, will hold a public hearing to consider the following proposals and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

**Date:** Tuesday, May 6, 2014

**Time:** 3:00 p.m.

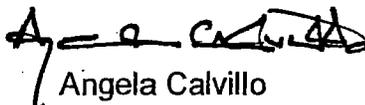
**Location:** Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA

**Subject:** File No. 140294. Public Hearing to consider the proposal of the Successor Agency to the Redevelopment Agency, also commonly known as the Office of Investment and Infrastructure, to enter into an Air Rights Lease, for a term of 75 years commencing upon Board approval, for the purpose of developing housing for a very low-income families, located at 280 Beale Street, commonly known as Transbay Block 6, with Mercy Housing California 62, L.P., a California limited partnership, consistent with the provisions of the California Health and Safety Code, Section 33433, and to authorize the issuance and delivery of multifamily housing revenue bonds in an aggregate principal amount not to exceed \$15,000,000 for the purpose of providing financing for the acquisition and construction of a 70-unit multifamily rental housing project known as Transbay/Block 6 Project; approving the form of and authorizing the execution of a trust indenture providing the terms and conditions of the bonds; approving the form of and authorizing the execution of a regulatory agreement and declaration of restrictive covenants; approving the form of and authorizing the execution of a loan agreement; authorizing the collection of certain fees; ratifying and approving any action heretofore taken in connection with the bonds and the project; granting general authority to City officials to take actions necessary to implement this Resolution; and related matters.

The Mayor's Office of Housing and Community Development (acting on behalf of the Office of Community Investment and Infrastructure) has prepared a report pursuant to the California Health and Safety Code, Section 33433, Community Redevelopment Law, Section 33342.2, for the proposed matters listed above. The report contains the following: 1) a copy of the underlying transactional document, and 2) a summary of the proposed transaction. Interested persons may inspect and, upon payment of the costs of reproduction, obtain copies of the reports at either of the following address: 1) Office of Community Investment and Infrastructure, One South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, California, 94103 or 2) Office of the Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton Goodlett Place, San Francisco, California 94102.

Pursuant to Government Code, Section 65009, notice is hereby given, if you challenge, in court, the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

In accordance with San Francisco Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on these matters may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public records in these matters, and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton Goodlett Place, San Francisco, California 94102. Information relating to is available in the Office of the Clerk of the Board and agenda information will be available for public review on Friday, May 2, 2014.

  
Angela Calvillo  
Clerk of the Board

POSTED/DATED: April 15, 2014  
PUBLISHED: April 21 & 28, 2014

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To the right is a copy of the notice you sent to us for publication in the SAN FRANCISCO CHRONICLE. Please read this notice carefully and call us with any corrections. The Proof of Publication will be filed with the Clerk of the Board. Publication date(s) for this notice is (are):

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#### NOTICE OF PUBLIC HEARING BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, AS A COMMITTEE OF THE WHOLE, WILL HOLD A PUBLIC HEARING TO CONSIDER THE FOLLOWING PROPOSALS AND SAID PUBLIC HEARING WILL BE HELD AS FOLLOWS, AT WHICH TIME ALL INTERESTED PARTIES MAY ATTEND AND BE HEARD: DATE: TUESDAY, MAY 6, 2014 TIME: 3:00 P.M. LOCATION: LEGISLATIVE CHAMBER, ROOM 250 LOCATED AT CITY HALL, 1 DR. CARLTON B. GOODLETT PLACE, SAN FRANCISCO, CA

Subject: File No. 140294. Public Hearing to consider the proposal of the Successor Agency to the Redevelopment Agency, also commonly known as the Office of Investment and Infrastructure, to enter into an Air Rights Lease, for a term of 75 years commencing upon Board approval, for the purpose of developing housing for a very low-income families, located at 280 Beale Street, commonly known as Transbay Block 6, with Mercy Housing California 62, L.P., a California limited partnership, consistent with the provisions of the California Health and Safety Code, Section 33433, and to authorize the issuance and delivery of multifamily housing revenue bonds in an aggregate principal amount not to exceed \$15,000,000 for the purpose of providing financing for the acquisition and construction of a 70-unit multifamily rental housing project known as Transbay/Block 6 Project; approving the form of and authorizing the execution of a trust indenture providing the terms and conditions of the bonds; approving the form of and authorizing the execution of a regulatory agreement and declaration of restrictive covenants; approving the form of and authorizing the execution of a loan agreement; authorizing the collection of certain fees; ratifying and approving any action heretofore taken in connection with the bonds and the project; granting general authority to City officials to take actions necessary to implement this Resolution; and related matters.

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Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

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or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee or as Special Order at Board.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

**Sponsor(s):**

Supervisor Jane Kim

**Subject:**

Air Rights Lease of Successor Agency property for 280 Beale Street Transbay Block 6 Affordable Housing

**The text is listed below or attached:**

See attached.

Signature of Sponsoring Supervisor: \_\_\_\_\_



For Clerk's Use Only:

