

**LOAN AGREEMENT
(CITY AND COUNTY OF SAN FRANCISCO
PASS AND SMALL SITES PROGRAM)**

By and Between

THE CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, represented by the Mayor,
acting by and through the Mayor's Office of Housing and Community Development,

and

MEDA SMALL PROPERTIES, LLC
a California limited liability company,

for

**654 Capp Street
San Francisco, CA 94110**

**PASS - Market Rate Loan: [\$XXX,XXX.XX]
PASS - Below Market Rate Loan: [\$XXX,XXX.XX]
PASS - Deferred Loan: [\$XXX,XXX.XX]
[2016 G.O. Bond (Series 2019A): \$XXX,XXX.XX]**

SSP Loan: [\$XXX,XXX.XX]

Dated as of [_____], 20__

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EXHIBITS

- A Schedules of Income and Rent Restrictions
- B-1 Table of Sources and Uses of Funds
- B-2 Annual Operating Budget
- B-3 20-Year Cash Flow Proforma
- C Form of Tenant Income Certification
- D Reserved
- E Governmental Requirements
- F Lobbying/Debarment Certification Form
- G Form of Annual Monitoring Report
- H Tenant Selection Plan Policy
- I MOHCD Tenant Screening Criteria Policy
- J Reserved
- K Reserved
- L Insurance Requirements
- M MOHCD Residual Receipts Policy

LOAN AGREEMENT
(City and County of San Francisco
PASS and SSP Program)

[Project Name]
[Property Address]

THIS LOAN AGREEMENT ("Agreement") is entered into as of [_____], by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "City"), represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development ("MOHCD"), and **[BORROWER'S NAME IN BOLD, CAPITAL LETTERS]**, [a California nonprofit public benefit corporation] [a California limited partnership] [a California limited liability company] ("Borrower").

RECITALS

A. On July 18, 2014, the Citywide Affordable Housing Loan Committee authorized the Small Sites Acquisition and Rehabilitation Loan Program ("Small Sites Program") for the purpose of preserving and stabilizing San Francisco's existing rental housing stock of buildings that are up to 25 units and occupied by low- to moderate-income tenants who are vulnerable to displacement due to market-driven increases in evictions. Through this approval, MOHCD is authorized to provide loans to individual entities for acquisition and rehabilitation of specific existing residential buildings.

B. On November 3, 1992, the voters of the City and County of San Francisco approved Proposition A, which provided for the issuance of up to \$350 million in general obligation bonds to establish and fund a Seismic Safety Loan Program. On November 8, 2016, the voters of the City and County of San Francisco approved Proposition C expanding the permitted use of the bonds to finance the costs to acquire, improve, rehabilitate and convert at-risk multi-unit residential buildings to permanent affordable housing. [Use if SSP Funding Sources include 2015 GO Bond proceeds] [Under Chapter 66 of the San Francisco Administrative Code and the Preservation and Seismic Safety ("PASS") Program Regulations adopted by MOHCD, the City is authorized to provide a portion of proceeds of the bonds (the "2016 GO Bond (Series 2019A)", and collectively with the 2015 GO Bond, the "Bonds") under this Agreement to Borrower for the preservation of affordable housing. The proceeds of the Bonds and the [Fees] are collectively referred to as the "Funds".] [Use if SSP Funding Sources do not include 2015 GO Bond proceeds] [Under Chapter 66 of the San Francisco Administrative Code and the Preservation and Seismic Safety ("PASS") Program Regulations adopted by MOHCD, the City is authorized to provide a portion of proceeds of the bonds (the "2016 GO Bond (Series 2019A)", and the "Bonds") under this Agreement to Borrower for the preservation of affordable housing. The proceeds of the Bonds and the [Fees] are collectively referred to as the "Funds".]

[Alternatives C-H are below for SSP funding sources. Select and revise and re-letter as appropriate. If multiple funding source recitals are used, adjust defined terms accordingly so that "Funds" covers all sources. For example, if using HOME funds and CDBG funds, define the

HOME funds as (“HOME Funds”), the CDBG funds as (“CDBG Funds”) and together with the HOME Funds, (the “Funds”)].

C. Under the Inclusionary Affordable Housing Program set forth in Sections 415.1 *et seq.* of the San Francisco Planning Code, the Citywide Affordable Housing Fund receives in-lieu Affordable Housing Fees ("Funds") paid by housing developers to satisfy requirements of the Inclusionary Affordable Housing Program. The City may use the Funds to finance affordable housing preservation and development. MOHCD administers the Funds pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them.

D. Pursuant to Section 423.5 of the San Francisco Planning Code (“Section 423.5”), the Citywide Affordable Housing Fund receives from the San Francisco Department of Building Inspection a percentage of impact fees paid by sponsors of developments located in Designated Affordable Housing Zones in the Eastern Neighborhoods Program Area (“Fees”). The City may use the Fees received by the Citywide Affordable Housing Fund (the "Funds") to finance housing affordable to qualifying households and related improvements according to the permitted uses set forth in Section 423.5. MOHCD administers the Funds pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them.

E. On November 3, 2015, the voters of the City and County of San Francisco approved Proposition A, which provided for the issuance of up to \$310 million in general obligation bonds to finance the construction, acquisition, improvement, rehabilitation, preservation and repair of certain affordable housing improvements (the "2015 GO Bond"). A portion of the Small Sites Program loan will be comprised of 2015 GO Bond proceeds.

F. Under the Inclusionary Affordable Housing Program set forth in Sections 415.1 *et seq.* of the San Francisco Planning Code, the Citywide Affordable Housing Fund receives in-lieu Affordable Housing Fees (“Fees”) paid by housing developers to satisfy requirements of the Inclusionary Affordable Housing Program. The City may use the Fees received by the Citywide Affordable Housing Fund to finance housing affordable to qualifying households. MOHCD administers the Fees pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them. A portion of the Small Sites Program Loan will be comprised of Citywide Affordable Housing Fees.

G. On August 19, 2005, the Board of Supervisors approved Ordinance No. 217-05 (the “Ordinance”), adding a new Section 318 to the San Francisco Planning Code (now numbered Section 418), which, among other things, established a new Rincon Hill Downtown Residential District. The Ordinance imposed a South of Market (SoMa) Community Stabilization Fee of \$14 per square foot on residential development and a Rincon Hill Community Improvements Impact Fee of \$11 per square foot within the new Residential District. The money collected from the SoMa Community Stabilization Fee, along with up to \$6 million transferred from the Rincon Hill Community Improvements Fund for enumerated types of improvements in SoMa, including affordable housing, is in a separate fund called the SoMa Community Stabilization Fund (the “Funds”), which must be used to address various impacts of destabilization on residents and businesses in SoMa. On May 11, 2017, the San Francisco Board of Supervisors approved Resolution 207-17, which authorized the use of \$10,000,000 in Funds to

provide acquisition and rehabilitation loans for real property in the SoMa area. [Insert Date of BOS approval for use of SOMA funds], On _____, 2____, the San Francisco Board of Supervisors Budget and Finance Sub-Committee approved the release of [\$_____] to provide a Small Sites Program loan to [Insert Borrower Name] for the acquisition and rehabilitation of _____ [Project Name or address] .

H. On June 26, 2016, the San Francisco Board of Supervisors approved Ordinance 137-16 establishing the Downtown Neighborhoods Preservation Fund (“Downtown Neighborhoods Fund”) and authorizing up to \$40 million in funding from fees paid pursuant to Sections 413 *et seq.* and 415.1 *et seq.* of the San Francisco Planning Code, for acquisition and rehabilitation of existing housing, within a one mile radius of 50 First Street. To the extent permitted by law, the City intends to reimburse amounts disbursed under this Agreement with proceeds from the Downtown Neighborhoods Fund.

I. Borrower owns a fee interest in certain real property located at [Project Address], San Francisco, California (the “Site”), which is currently developed as a [Description of Site: Mixed Use - __-unit mixed-use property, including __ units of residential rental housing and __-units of commercial space consisting of ____ square feet with ____ (collectively, the “Commercial Space”)] [Residential: __-unit multifamily residential property]. Borrower desires to use the Funds to repay its acquisition loan and in order to continue to preserve the Site as residential housing affordable to low- to moderate-income households (the "Project").

J. The City has reviewed Borrower's application for Funds and, in reliance on the accuracy of the statements in that application, has agreed to make a loan of Funds to Borrower (the "SSP Loan") in the amount of [_____ and No/100 Dollars (\$ _____)] (the “SSP Loan Amount”) under this Agreement to fund certain costs related to the Project. In addition, the City has reviewed Borrower's application for Funds and, in reliance on the accuracy of the statements in that application, has agreed to make (1) a market rate loan of Funds to Borrower (the “Market Rate Loan”) in the amount of [_____ and No/100 Dollars (\$ _____)] (the “Market Rate Loan Amount”), (2) a below market rate loan of Funds to Borrower (“BMR Loan”) in the amount of [_____ and No/100 Dollars (\$ _____)] (the “BMR Loan Amount”), and (3) a deferred loan of Funds to Borrower (the “Deferred Loan”) in the amount of [_____ and No/100 Dollars (\$ _____)] (the “Deferred Loan Amount”), for a total loan of Funds to Borrower in the amount of [_____ and No/100 Dollars (\$ _____)] (the "Funding Amount"), under this Agreement to fund certain costs related to the Project.

K. Borrower has secured additional [financing or grant] for the Project in the form of a [loan/grant] from [_____] in the amount of [_____ and No/100 Dollars (\$ _____)]. [Description of additional financing. Remember to add any defined terms to the definitions section if appropriate.].

AGREEMENT

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

ARTICLE 1 DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

"Accounts" means all depository accounts, including reserve and trust accounts, required or authorized under this Agreement or otherwise by the City in writing. All Accounts must be maintained in accordance with **Section 2.3**.

"Agreement" means this Loan Agreement.

"Agreement Date" means the date first written above.

"Annual Monitoring Report" has the meaning set forth in **Section 10.3**.

"Annual Operating Budget" means an annual operating budget for the Project attached hereto as **Exhibit B-2**, which may not be adjusted without the City's prior written approval.

"Approved Plans" has the meaning set for in **Section 5.2**.

"Approved Specifications" has the meaning set forth in **Section 5.2**.

"Authorizing Resolutions" means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company, a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Borrower's authority to execute, deliver and perform the obligations under the City Documents to which Borrower is a party or by which it is bound.

"BMR Loan" has the meaning set forth in **Recital J**.

"BMR Loan Amount" has the meaning set forth in **Recital J**.

"BMR Note" means the promissory note executed by Borrower in favor of the City in the original principal amount of the BMR Loan Amount.

"Bonds" has the meaning set forth in **Recital B**.

"Borrower" means _____, [a California nonprofit public benefit corporation] [a California limited partnership whose general partner [a California limited liability company whose sole member and manager] is _____], a California nonprofit public

benefit corporation ("General Partner" if Borrower is a limited partnership OR "Manager" if Borrower is an LLC)], and its authorized successors and assigns.

"Certificate of Preference" means the form establishing a priority right for tenant selection, as further described in the Operational Rules.

"Certificate of Preference Holder" means a person or household that has been issued a Certificate of Preference.

"CFR" means the Code of Federal Regulations.

"Charter Documents" means: (a) in the case of a corporation, its articles of incorporation and bylaws; (b) in the case of a partnership, its partnership agreement and any certificate or statement of partnership; and (c) in the case of a limited liability company, its operating agreement and any LLC certificate or statement. The Charter Documents must be delivered to the City in their original form and as amended from time to time and be accompanied by a certificate of good standing for Borrower issued by the California Secretary of State and, if Borrower is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than ninety (90) days before the Agreement Date.

"City" means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOHCD. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOHCD unless otherwise indicated.

[Revise as appropriate.]

"City Documents" means this Agreement, the Notes, the Deeds of Trust, the Declaration of Restrictions and any other documents executed or, delivered in connection with this Agreement.

"CNA" means a 20-year capital needs assessment or analysis of replacement reserve requirements.

[Delete the following 2 definitions if the Project does not contain Commercial Space.]

"Commercial Income" means all receipts received by Borrower from the operation of the Commercial Space, including rents, fees, deposits (other than security deposits), any accrued interest disbursed from any reserve account authorized under this Agreement for a purpose other than that for which the reserve account was established, reimbursements, and other charges paid to Borrower in connection with the Commercial Space.

"Commercial Space" has the meaning set forth in **Recital C** As used in this Agreement, the term excludes common area space in the Project to be used primarily for the benefit of the Qualified Tenants.

"Completion Date" has the meaning set forth in **Section 5.6**.

"Compliance Term" means the period commencing on the date the SSP Deed of Trust and PASS Deed of Trust are recorded in the Recorder's Office of San Francisco County and remaining for the time during which the Project, or any modification of the Project, remains in existence, but in any event no less than seventy five (75) years, even if the Loan is repaid or otherwise satisfied or the SSP Deed of Trust and PASS Deed of Trust are reconveyed before that date.

"Construction Contract" has the meaning set forth in **Section 5.2**.

"Contracting Manual" means the Contracting Implementation Manual (CIM) issued by MOHCD and dated July 2013, as the same may be amended from time to time.

"Declaration of Restrictions" means a recorded declaration of restrictions in form and substance acceptable to the City that requires Borrower and the Project to comply with the use restrictions in this Agreement for the Compliance Term, even if the Loan is repaid or otherwise satisfied, this Agreement terminates or the SSP Deed of Trust and PASS Deed of Trust are reconveyed.

"Deferred Loan" has the meaning set forth in **Recital J**.

"Deferred Loan Amount" has the meaning set forth in **Recital J**.

"Deferred Note" means the promissory note executed by Borrower in favor of the City in the original principal amount of the Deferred Loan Amount.

"Deeds of Trust" means collectively the PASS Deed of Trust and the SSP Deed of Trust.

"Department of Building Inspection" has the meaning set forth in **Section 5.2**.

[Use the following definition if Developer Fees will be paid to an entity other than Borrower. Delete the next 2 definitions if no Developer Fees are allowed.]

"Developer" means _____, [a California nonprofit public benefit corporation] [A California Limited Partnership whose general partner [a California limited liability company whose manager] is _____, a California nonprofit public benefit corporation ("General Partner"/"Manager")], and its authorized successors and assigns.

"Developer Fees" has the meaning set forth in **Section 15.1**.

"Disbursement" means the disbursement of all or a portion of the Funding Amount by the City as described in **Article 4**.

"Displaced Tenant Preference Certificate Holder" means a person or household that has been issued a certificate under the Displaced Tenant Preference Program, as further described in the Operational Rules.

"Distributions" has the meaning set forth in **Section 13.1**.

"Environmental Activity" means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.

"Environmental Laws" means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" law) (42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. §§ 6901 *et seq.*); the National Environmental Policy Act of 1969 ("NEPA") (24 CFR §§ 92 and 24 CFR §§ 58); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the "California Superfund" law) (Cal. Health & Safety Code §§ 25300 *et seq.*); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (Cal. Health & Safety Code §§ 25249.2 *et seq.*); and Sections 25117 and 25140 of the California Health & Safety Code.

"Escrow Agent" has the meaning set forth in **Section 4.2**.

"Event of Default" has the meaning set forth in **Section 19.1**.

"Excess Proceeds" has the meaning set forth in **Section 5.8**.

"Expenditure Request" means a written request by Borrower for a Disbursement from the Funding Amount, which must certify that the Project costs covered by the Expenditure Request have been paid or incurred by Borrower.

"Funding Amount" has the meaning set forth in **Recital J**.

"Funds" has the meaning set forth in **Recital B**.

"GAAP" means generally accepted accounting principles in effect on the date of this Agreement and at the time of any required performance.

"Governmental Agency" means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present

or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the rehabilitation, construction, operation or maintenance of developments similar to the Project will not be deemed "Hazardous Substances" for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

"HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

"in balance" means that the sum of undisbursed Funds and any other sources of funds that Borrower has closed or for which Borrower has firm commitments will be sufficient to complete rehabilitation of the Project, as determined by the City in its sole discretion.

"Income Restrictions" means the maximum household income limits for Qualified Tenants, as described in **Section 7**.

"Indemnify" means, whenever any provision of this Agreement requires a person or entity (the "Indemnitor") to Indemnify any other entity or person (the "Indemnitee"), that the Indemnitor will be obligated to defend, indemnify and protect and hold harmless the Indemnitee, its officers, employees, agents, constituent partners, and members of its boards and commissions from and against any and all Losses arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition with respect to which the Indemnitor is required to Indemnify an Indemnitee, whether the act, omission, event, occurrence or condition is caused by the Indemnitor or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen; *provided that* no Indemnitor will be obligated to Indemnify any Indemnitee against any Loss arising or resulting from the gross negligence or intentional wrongful acts or omissions of the Indemnitee or its agents, employees or contractors. If a Loss is attributable partially to the grossly negligent or intentionally wrongful acts or omissions of the Indemnitee (or its agents, employees or contractors), the Indemnitor must Indemnify the Indemnitee for that part of the Loss not attributable to its own grossly negligent or intentionally wrongful acts or omissions or those of its agents, employees or contractors.

"Indemnitee" has the specific meaning set forth in **Section 23.1** and the general meaning set forth in the definition of "Indemnify."

"Indemnitor" has the meaning set forth in the definition of "Indemnify."

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency.

"Loan" means, collectively, the SSP Loan, the Market Rate Loan, the BMR Loan, and the Deferred Loan.

"Loss" or "Losses" includes any loss, liability, damage, cost, expense or charge and reasonable attorneys' fees and costs, including those incurred in a proceeding in court or by mediation or arbitration, on appeal or in the enforcement of the City's rights or in defense of any action in a bankruptcy proceeding.

"Market Rate Loan" has the meaning set forth in **Recital J**.

"Market Rate Loan Amount" has the meaning set forth in **Recital J**.

"Market Rate Note" means the promissory note executed by Borrower in favor of the City in the original principal amount of the Market Rate Loan Amount.

"Marketing and Tenant Selection Plan" has the meaning set forth in **Section 6.1**.

"Maturity Date" has the meaning set forth in **Section 3.1**.

"Median Income" means median income as published annually by MOHCD, derived from the Income Limits determined by HUD for the San Francisco area, adjusted solely for household size, but not high housing cost area, also referred to as "Unadjusted Median Income."

"MOHCD" means the Mayor's Office of Housing and Community Development or its successor.

"MOHCD Monthly Project Update" has the meaning set forth in **Section 10.2**.

"Notes" (or each "Note") means collectively the SSP Note, the Market Rate Note, the BMR Note, and the Deferred Note.

"Operating Reserve Account" has the meaning set forth in **Section 12.2**.

"Operational Rules" means MOHCD's Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities dated August 1, 2015, as amended from time to time.

"Opinion" means an opinion of Borrower's California legal counsel, satisfactory to the City and its legal counsel, that Borrower is a duly formed, validly existing California **[Entity Type]** in good standing under the laws of the State of California, has the power and authority to enter into the City Documents and will be bound by their terms when executed and delivered, and that addresses any other matters the City reasonably requests.

"out of balance" means that the sum of undisbursed Funds and any other sources of funds that Borrower has closed or for which Borrower has firm commitments will not be sufficient to complete rehabilitation of the Project, as determined by the City in its sole discretion.

"PASS Deed of Trust" means the deed of trust executed by Borrower granting the City a lien on the Site and the Project to secure Borrower's performance under this Agreement, the Declaration of Restrictions, the Market Rate Note, the Below Market Rate Note, and the Deferred Note, in form and substance acceptable to the City.

"Payment Date" means the first day of the month that is one calendar month after the date that the PASS Deed of Trust and SSP Deed of Trust are recorded in the Recorder's Office of San Francisco County, and each succeeding 1st day of the month until the Maturity Date.

"Permitted Exceptions" means liens in favor of the City, real property taxes and assessments that are not delinquent, and any other liens and encumbrances the City expressly approves in writing in its escrow instructions.

"Preferences Ordinance" means Chapter 47 of the San Francisco Administrative Code, as amended from time to time.

"Project" means the development described in **Recital [D]**. If indicated by the context, "Project" means the Site and the improvements developed on the Site.

"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 Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages and any other compensation due and payable to the employees or agents of Borrower 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 any junior or senior financing secured by the Site and used to finance the Project that has been approved by the City; (d) all other expenses actually incurred to cover operating costs of the Project, including maintenance and repairs and the fee of any managing agent as indicated in the Annual Operating Budget; (e) required deposits to the Replacement Reserve Account, Operating Reserve Account, Vacancy Reserve Account and any other reserve account required under this Agreement; (f) the approved annual asset management fees in the amount of [\$_____] (plus a 3.5% annual increase as indicated in the Annual Operating Budget and approved by the City); and (g) any extraordinary expenses approved in advance by the City (other than expenses paid from any reserve account).

"Project Income" means all income and receipts in any form received by Borrower from the operation of the Project, including rents, fees, deposits (other than tenant security deposits), any accrued interest disbursed from any reserve account required under this Agreement for a purpose other than that for which the reserve account was established, reimbursements and other charges paid to Borrower in connection with the Project. Interest accruing on any portion of the Funding Amount is not Project Income. **[Add if appropriate: , or Commercial Income.]**

"Project Operating Account" has the meaning set forth in **Section 11.1**.

[Delete the following definition if the Project does not contain Commercial Space.]

“Public Benefit Purposes” means activities or programs that primarily benefit low-income persons, are implemented by one or more nonprofit 501(c)(3) public benefit organizations, or have been identified by a City agency or a community planning process as a priority need in the neighborhood in which the Project is located.

[Delete the following definition if the Loan will be secured and the Work for Hire provision is not applicable.]

"Publication" means any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, webpage, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Project or is paid for in whole or in part using the Funding Amount.

"Qualified Tenant" means household occupying the Project that has been certified and approved as earning no more than the maximum permissible annual income level allowed by this Agreement and that has entered into a lease with Borrower in a form approved by City. As the context requires, “Qualified Tenant” also means households occupying the Project that have entered into a lease with Borrower in a form approved by City but have not been income certified, in accordance with **Section 7.2(a)**.

"Rent" means the monthly sum charged to Qualified Tenants for rent in compliance with this Agreement.

"Replacement Reserve Account" has the meaning set forth in **Section 12.1**.

"Residual Receipts" means Project Income remaining after payment of Project Expenses. The amount of Residual Receipts must be based on figures contained in audited financial statements.

"Retention" has the meaning set forth in **Section 4.7**.

“SBE Manual” means that certain Small Business Enterprise Program manual dated July 1, 2015, as the same may be amended from time to time.

"Section 8" means rental assistance provided under Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. § 1437f) or any successor or similar rent subsidy programs.

"Senior Lien" has the meaning set forth in **Section 24.1**.

“Severely Rent Burdened” means a Qualified Tenant household paying fifty percent (50%) or more of its gross monthly income (as shown on the Qualified Tenant’s income certification required under **Section 7.4** below) on Rent.

"SFHA" means the San Francisco Housing Authority.

"Site" means the real property described in **Recital D [E]** of this Agreement.

"SSP Deed of Trust" means the deed of trust executed by Borrower granting the City a lien on the Site and the Project to secure Borrower's performance under this Agreement, the Declaration of Restrictions, and the SSP Note, in form and substance acceptable to the City.

"SSP Loan" has the meaning set forth in **Recital J**.

"SSP Loan Amount" has the meaning set forth in **Recital J**.

"SSP Note" has the meaning set forth in **Recital J**.

[Delete the following definition if the Project does not contain Commercial Space.]

"Surplus Cash" means Commercial Income remaining after payment of the sum of commercial debt service, operating expenses for the Commercial Space and reserve deposits for the Commercial Space but excludes depreciation, amortization, depletion, other non-cash expenses or expenditures from reserve accounts.

"Table" means: (a) the Table of Sources and Uses, (b) the Annual Operating Budget, and (c) the 20-Year Cash Flow Proforma.

"Table of Sources and Uses" means a table of sources and uses of funds attached hereto as **Exhibit B-1**, including a line item budget for the use of the Funding Amount, which table may not be adjusted without the City's prior written approval.

"Tenant Screening Criteria Policy" has the meaning set forth in **Section 6.3**.

"Title Policy" means an ALTA extended coverage lender's policy of title insurance in form and substance satisfactory to the City, issued by an insurer selected by Borrower and satisfactory to the City, together with any endorsements and policies of coinsurance and/or reinsurance required by the City, in a policy amount equal to the Funding Amount, insuring the SSP Deed of Trust and PASS Deed of Trust and indicating the Declaration of Restrictions as valid liens on the Site, each subject only to the Permitted Exceptions.

"20-Year Cash Flow Proforma" means the 20-year cash flow proforma for the Project attached as **Exhibit B-3**.

"Unit" means a residential rental unit within the Project.

"Vacancy Reserve Account" has the meaning set forth in **Section 12.3**.

"Waiting List" has the meaning set forth in **Section 6.5**.

1.2 Interpretation. The following rules of construction will apply to this Agreement and the other City Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word "include(s)" means

"include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific City Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated.

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other City Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the City Documents. The language of this Agreement must be construed as a whole according to its fair meaning.

1.3 Websites for Statutory References. The statutory and regulatory materials listed below may be accessed through the following identified websites.

(a) CFR provisions: <https://www.govinfo.gov/help/cfr>

(b) OMB circulars: <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>

(c) S.F. Administrative Code: <https://sfgov.org/civilservice/SAN-FRANCISCO-ADMINISTRATIVE-CODE>

1.4 Contracting Manual. As applicable, Borrower shall use the Contracting Manual as a guide to Borrower's responsibilities under Laws and regulations regarding soliciting, awarding and administering contracts associated with projects assisted by federal funds. In the event of a conflict between the terms of the Contracting Manual and this Agreement, the terms of the Agreement shall prevail.

ARTICLE 2 FUNDING.

2.1 Funding Amount. The City agrees to lend to Borrower a maximum principal amount equal to the Funding Amount in order to [finance the acquisition and rehabilitation of the Site] [provide permanent financing for the Project] to preserve affordability that might otherwise be lost to the market-rate real estate market. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

2.2 Use of Funds. Borrower acknowledges that the City's agreement to make the Loan is based in part on Borrower's agreement to use the Funds solely for the purpose set forth in **Section 2.1** and agrees to use the Funds solely for that purpose in accordance with the approved Table of Sources and Uses. Notwithstanding anything to the contrary contained herein, City shall not approve expenditure of Funds for expenses incurred by Borrower prior to [Date _____] [If this language is an issue for a specific Project, please consult with MOHCD's CFO and City Attorney before revising]

2.3 Accounts; Interest. Each Account to be maintained by Borrower under this Agreement must be held in a bank or savings and loan institution acceptable to the City as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, any interest earned on funds in any Account must be used for the benefit of the Project.

2.4 Records. Borrower must maintain and provide to the City upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures from each Account authorized under this Agreement or by the City in writing and keep all estimates, invoices, receipts and other documents related to expenditures from each Account. In addition Borrower must provide to the City promptly following Borrower's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all funds (including accrued interest) in each Account have been disbursed for eligible uses.

2.5 Conditions to Additional Financing. The City may grant or deny any application by Borrower for additional financing for the Project in its sole discretion.

[Add any other limitations (except affordability) on the use of Funds. Delete if no other restrictions are listed in loan evaluation.]

2.6 Other Restrictions.

ARTICLE 3 TERMS. Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Notes, which will govern in the event of any conflicting provision in this Agreement.

[The Maturity Date and Compliance Term should be consistent across the Loan Agreement, Notes, and Declaration]

3.1 Maturity Date. Borrower must repay all amounts owing under the City Documents on the date that is the fortieth (40th) anniversary of the date that is the first day of the

first full month following the date the SSP Deed of Trust and PASS Deed of Trust are recorded in the Recorder's Office of San Francisco County (the "Maturity Date").

3.2 Compliance Term; Declaration of Restrictions. Borrower must comply with all provisions of the City Documents relating to the use of the Site and the Project, as set forth in the Declaration of Restrictions to be recorded in the Official Records, for the Compliance Term.

3.3 Interest. The outstanding principal balance of the SSP Loan will bear simple interest at a rate of 3% per annum, as provided in the SSP Note. The outstanding principal balance of the Market Rate Loan will bear interest at a rate of 5.16725% per annum, compounding monthly, as provided in the Market Rate Note. The outstanding principal balance of the BMR Loan will bear interest at a rate of 1.38908% per annum, compounding monthly, as provided in the BMR Note. The outstanding principal balance of the Deferred Loan will bear interest at a rate of 1.38908% per annum compounding monthly, as provided in the Deferred Note.

3.4 Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, the principal balance of the Loan will bear interest at the default interest rate set forth in the Notes, with such default interest rate commencing as of the date specified in each Note and continuing until such Event of Default is fully cured. In addition, the default interest rate will apply to any amounts to be reimbursed to the City under any City Document if not paid when due or as otherwise provided in any City Document.

3.5 Repayment of Principal and Interest. The outstanding principal balance of the Loan, together with all accrued and unpaid interest will be due and payable on the Maturity Date according to the terms set forth in full in the Notes.

3.6 Changes In Funding Streams. The City's agreement to make the Loan on the terms set forth in this Agreement and the Notes is based in part on Borrower's projected sources and uses of all funds for the Project, as set forth in the Table of Sources and Uses. Borrower covenants to give written notice to the City within thirty (30) days of any significant changes in budgeted funding or income set forth in documents previously provided to the City. Examples of significant changes include loss or adjustments (other than regular annual adjustments) in funding under Shelter + Care, Section 8 or similar programs. The City reserves the right to modify the terms of this Agreement based upon any new information so provided, in its reasonable discretion.

3.7 Additional Borrower Covenants. Borrower hereby covenants and agrees to perform the following additional obligations:

- (a) Borrower shall accept rental assistance (such as Section 8 and VASH, or any successor or similar rent subsidy programs) to the extent that Rent charged for the Unit complies with such program regulations and a Qualified Tenant who submits a voucher or other form of rental assistance has been selected through the marketing process described in **Article 6** and is otherwise qualified for the Unit.

- (b) To the extent possible, as allowable by applicable law, and in compliance with MOHCD's marketing procedures outlined in Article 6 of this Agreement, Borrower will maximize the occupancy of the Units.

3.8 Additional City Approvals. Borrower understands and agrees that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Borrower understands and agrees that neither entry by City into this Agreement nor any approvals given by City under this Agreement shall be deemed to imply that Borrower will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Property. By entering into this Agreement, City is in no way modifying or limiting the obligations of Borrower to develop the Property in accordance with all local laws. Borrower understands that any development of the Property shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Property, which may include, without limitation, the San Francisco City Planning Commission and the San Francisco Board of Supervisors. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

3.9 PASS Program Costs. Borrower hereby covenants and agrees to pay MOHCD the following PASS program costs and fees:

- (a) Origination Fee – On or before the Agreement Date, the Borrower shall pay MOHCD a fee equal to **[\$15,000]**. The Borrower shall pay the Origination Fee to MOHCD by certified or official bank check or other means of payment acceptable to MOHCD.
- (b) City Attorney Expenses – On or before the Agreement Date, the Borrower shall pay MOHCD a fee equal to \$15,000. The Borrower shall pay the City Attorney Expenses fee to MOHCD by certified or official bank check or other means of payment acceptable to MOHCD.
- (c) Compliance Monitoring Fee – The initial installment of this fee, which must be paid in full on or before the Agreement Date to cover the first year of monitoring, is **[\$2,500]**. Thereafter, the fee for the coming year, which is due on the anniversary of the Agreement Date, is \$2,500. For Properties subject to City-imposed affordability restrictions, the fee is payable annually in advance for the duration of the Compliance Term. For Properties not subject to such restrictions, the fee is payable annually in advance through Loan maturity or prepayment.
- (d) Loan Servicing Fee – The cost of this fee is \$2,500 annually in advance. The first installment of the fee, which covers the first year of servicing,

must be paid in full on or before the Agreement Date. Thereafter, the fee for the coming year is due on the anniversary of the Agreement Date through Loan maturity or prepayment.

- (e) Adjustments – All fees in Section 3.9 shall be increased proportionately in the event of an increase in the Loan, but shall not be decreased in the event of a reduction in the Loan.

ARTICLE 4 CLOSING; DISBURSEMENTS.

4.1 Generally. Subject to the terms of this Agreement, the City will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses.

4.2 Closing. Unless otherwise agreed by the City and Borrower in writing, Borrower will establish an escrow account with the title company issuing the Title Policy, or any other escrow agent Borrower chooses, subject to the City's approval (the "Escrow Agent"). The parties will execute and deliver to the Escrow Agent written instructions consistent with the terms of this Agreement. In the event the escrow does not close on or before the expiration date of escrow instructions signed by the City, or any other mutually agreed date, the City may declare this Agreement to be null and void.

[Revise as appropriate for the circumstances. Add any additional conditions contained in Loan Evaluation to the end of Section.]

4.3 Conditions Precedent to Closing. The City will authorize the close of the Loan upon satisfaction of the conditions in this Section.

(a) Borrower must have delivered to the City fully executed (and for documents to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to the City: (i) the Notes; (ii) this Agreement (in triplicate); (iii) the SSP Deed of Trust; (iv) the PASS Deed of Trust; (v) the Declaration of Restrictions; (vi) the Authorizing Resolutions; and (vii) any other City Documents reasonably requested by the City.

(b) Borrower must have delivered to the City: (i) Borrower's Charter Documents, and an Opinion; (ii) a comprehensive maintenance and operating plan for the Project duly approved by Borrower's governing body that includes, but is not limited to, plans for emergencies and emergency maintenance, vacant unit turnover, preventive maintenance and inspection schedule, and marketing and resident selection or the equivalent achieved through a contract with a 3rd party property manager; and (iii) a CNA that has been duly approved by the City.

[Insert the following if the Borrower secured additional financing, delete if not]

(c) Borrower must have closed the [Additional Grant or Loan Name] loan or delivered to the City satisfactory evidence that Borrower has obtained commitments for any additional financing that may be required for the Project, in amounts and from lenders or investors satisfactory to the City in its sole discretion.

(d) Any lender with a security interest or other party with an interest in the Property must have agreed to subordinate its interest in the Site to the Declaration of Restrictions by instrument satisfactory in form and substance to the City.

(e) Borrower must have delivered to the City insurance endorsements and, if requested by the City, copies of policies for all insurance required under Exhibit L of this Agreement.

(e) Borrower must have delivered to the City a preliminary report on title for the Site dated no earlier than thirty (30) days before the Agreement Date.

(f) Borrower must have submitted a "Phase I" environmental report for the Site, or any other report reasonably requested by the City, prepared by a professional hazardous materials consultant acceptable to the City.

(g) The Declaration of Restrictions, SSP Deed of Trust, and PASS Deed of Trust must have been recorded as valid liens in the Official Records, subject only to the Permitted Exceptions.

(h) The Escrow Agent must have committed to provide to the City the Title Policy in form and substance satisfactory to the City.

(i) Borrower must have delivered to the City satisfactory evidence that current tenants in Project are aware of the transfer of property, the change in regulation to rents, and any rent increases that will be implemented as a result of the Project.

(j) Borrower must have income certified the existing tenants residing on the Site and deliver sufficient evidence to the City that 66% of the Units occupied as of the Agreement Date are occupied by households with a combined average income at or below 80% Median Income. For the purposes of this Agreement, Borrower may include any Units that are vacant as of the Agreement Date in such calculation, using the maximum household income allowable pursuant to Exhibit A for each such vacant Unit.

[Add any other conditions to closing contained in the Loan Evaluation.]

4.4 Disbursement of Funds. Following satisfaction of the conditions in **Section 4.3**, the City will authorize the Escrow Agent to disburse Funds for [acquisition of][permanent financing for] the Project, as provided in the City's escrow instructions.

4.5 Disbursements. The City's obligation to approve any expenditure of Funds after the Loan closing is subject to Borrower's satisfaction of the following conditions precedent.

(a) Borrower must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City. Additionally, the City must approve all requested reallocations of Funds for line items previously approved by the City.

(b) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(c) With respect to any Expenditure Request that covers rehabilitation or construction costs, Borrower must have certified to the City that the Project complies with the labor standards set forth in **Exhibit E, Section 1**, if applicable.

(d) The Loan must be in balance.

4.6 Loan In Balance. The City may require Borrower to pay certain costs incurred in connection with the Project from sources of funds other than the Loan at any time the City determines that the Loan is out of balance. When the City is satisfied that the Loan is again in balance, the City will recommence making Disbursements for Expenditure Requests meeting the conditions set forth above.

4.7 Reserved

4.8 Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured, or during the pendency of an uncured Event of Default; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Borrower under this Agreement exceed the Funding Amount.

ARTICLE 5 RESERVED

ARTICLE 6 MARKETING.

6.1 Marketing and Tenant Selection Plan. No later than sixty (60) days after the Agreement Date, Borrower must deliver to the City for the City's review and approval an

affirmative plan for initial and ongoing marketing of the Units and a written tenant selection procedure for initial and ongoing renting of the Units based on MOHCD's then-current form of marketing and tenant selection plan (the "Marketing and Tenant Selection Plan"), all in compliance with the restrictions set forth in **Exhibit A** and in form and substance acceptable to the City. Borrower must obtain the City's approval of reasonable alterations to the Marketing and Tenant Selection Plan. Borrower must market and rent the Units in the manner set forth in the Marketing and Tenant Selection Plan, as approved by the City. Before marketing any Units, Borrower must provide the City with updated implementation and contact information.

6.2 Affirmative Marketing and Tenant Selection Plan Requirements. Borrower's Marketing and Tenant Selection Plan must address how Borrower intends to market vacant Units and any opportunity for placement on the Waiting List, as defined in 6.5. The Marketing and Tenant Selection Plan shall include as many of the following elements as are appropriate to the Project, as determined by the City: **[Add any project-specific requirements.]**

(a) A reasonable accommodations policy that indicates how Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying, and a policy giving disabled individuals a priority in the occupancy of accessible Units.

(b) A plan that satisfies the requirement to give preference in occupying units first to Certificate of Preference Holders in accordance with the Operational Rules and the Preferences Ordinance.

(c) A plan that satisfies the requirement to give preference in occupying units second to Displaced Tenant Preference Certificate Holders in accordance with the Operational Rules and the Preferences Ordinance; provided, however, that depending on the requirements of non-City funding approved by the City for the Project, the preferences set forth in this paragraph may not apply.

(d) A list of local neighborhood newspapers, community-oriented radio stations, on the internet and in other media that are likely to reach low-income households in which the apartments will be advertised. All advertising must display the Equal Housing Opportunity logo.

(e) Copies of draft notices to be sent to neighborhood-based, nonprofit housing corporations and other low-income housing advocacy organizations that maintain waiting lists or make referrals for below-market-rate housing.

(f) Notices to SFHA.

(g) Notices to MOHCD.

(h) To the extent practicable, Borrower must give preference to potential tenants who have been displaced from other units in the City by rehabilitation or construction work financed in whole or part by the City. To implement this requirement, Borrower agrees to

give preferential consideration to applications of displaced persons provided to Borrower by the City.

(i) To the extent practicable, without holding Units off the market, the community outreach efforts listed above must take place before advertising vacant Units or open spots on the Waiting List to the general public.

(j) An acknowledgement that, with respect to vacant Units, the marketing elements listed above shall only be implemented if there are no qualified applicants interested or available from the Waiting List.

6.3 Marketing and Tenant Selection Plan & Tenant Screening Criteria Requirements.

(a) Borrower's Marketing and Tenant Selection Plan shall comply with the requirements of the Tenant Selection Plan Policy as set forth in the attached **Exhibit H**. The Marketing and Tenant Selection Plan must be kept on file at the Project at all times.

(b) Borrower's tenant screening criteria must comply with the Tenant Screening Criteria Policy set forth in the attached **Exhibit I**.

6.4 Marketing Records. Borrower must keep records of: (a) activities implementing the Marketing and Tenant Selection Plan; (b) advertisements; and (c) other community outreach efforts.

6.5 Waiting List. Borrower's Marketing and Tenant Selection Plan must contain, at a minimum, policies and criteria that provide for the selection of tenants from a written waiting list that complies with the Marketing and Tenant Selection Plan (the "Waiting List"). Each Waiting List shall be valid for a six (6) month period following the lottery date, at which time such Waiting List shall expire. The Marketing and Tenant Selection Plan may allow an applicant to refuse an available Unit for good cause without losing standing on the Waiting List but shall limit the number of refusals without cause as approved by the City. The Waiting List and the previous expired Waiting Lists must be kept on file at the Project for three (3) years after the expiration of such lists.

ARTICLE 7 AFFORDABILITY AND OTHER LEASING RESTRICTIONS.

7.1 Term of Leasing Restrictions. Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect for the Compliance Term and survive the prior repayment or other satisfaction of the Loan, termination of this Agreement or reconveyance of the SSP Deed of Trust and PASS Deed of Trust; and (b) following the expiration of the Compliance Term with respect to any Unit then occupied by a Qualified Tenant, until the Qualified Tenant voluntarily vacates his/her Unit or is evicted lawfully for just cause.

7.2 Borrower's Covenant; Rent Restrictions.

(a) Borrower covenants to rent all Units at all times to households certified as Qualified Tenants at initial occupancy and at the Rent described in this Agreement. Notwithstanding the foregoing, only 66% of the households occupying Units on the Agreement Date must be income certified as Qualified Tenants on the Agreement Date, provided that all such households enter into a lease with Borrower in a form approved by City on or before the Agreement Date. Borrower may include any Units that are vacant as of the Agreement Date in its calculation of the percentage of Qualified Tenants, using the maximum household income allowable set forth in **Exhibit A** for each such Unit, so long as Borrower rents the Units to Qualified Tenants at such rates. Borrower will rent all Units that are occupied as of the Agreement Date at the initial Rent set forth in **Exhibit A**, as adjusted thereafter in accordance with this **Section 7**.

(b) A Qualified Tenant at initial occupancy may not be required to vacate the Unit due to subsequent rises in household income. In no event will any Qualified Tenant be required to pay Rent in excess of 30% of 120% Median Income except as provided in **Section 7.3(d)**.

(c) Required Rents for the Units as of the Agreement Date will be as set forth in **Exhibit A**.

(d) After the Agreement Date, the Rent for each Unit that becomes vacant shall be set at the amount necessary to bring the Project's combined average Rents for all Units as close as is possible to the amount calculated as 30% of 80% Median Income, but no more than 30% of 120% Median Income.

7.3 Rent Adjustments and Restrictions. Rent for all Units shall be increased annually by the greater of: (x) the percentage change in annual operating expenses, up to a maximum of 3.5%, or (y) 2%, except as follows:

(a) Phased Increases. ~~[Delete and re-letter sections and section references if no phased increases]~~ Increases in Rent for existing Qualified Tenants occupying Units __ and __ shall be increased on the specified anniversaries of the Agreement Date according to the table set forth in **Exhibit A**. After such phased increases, Rent shall be adjusted as otherwise described in this **Section 7**.

(a) Reserved.

(b) Severely Rent Burdened Qualified Tenants. If the Rent increase described in this **Section 7** results in any Qualified Tenant household becoming Severely Rent Burdened, Borrower is not required to increase the Rent of the Severely Rent Burdened Qualified Tenant until such time as the Qualified Tenant is no longer Severely Rent Burdened, provided that: (i) Borrower first demonstrates to the satisfaction of MOHCD, in MOHCD's sole discretion, that the Project maintains short- and long-term financial sustainability in the form of positive cash flow, adequately funded reserves, and other indicators as MOHCD may reasonably request; (ii) at each annual income recertification, the ability of all households to pay required rent increases will be reassessed, as will the Borrower cash flow, to ensure short- and long-term financial sustainability if Borrower elects not to impose the required annual Rent increase for any Severely

Rent Burdened Qualified Tenant; and (iii) all Regulatory Obligations continue to be met. Similarly, if the circumstances described in this subsection are met, a Unit becomes vacant and a Qualified Tenant demonstrates to Borrower that it is Severely Rent Burdened, Borrower may reduce such Qualified Tenant's Rent to a level no lower than 40% of that Qualified Tenant's gross monthly income, thus resulting in a higher Rent that will be required for the vacant Unit. If more than one Qualified Tenant is eligible for such a Rent reduction, the reduction shall be equally distributed among such eligible Qualified Tenants.

(c) Recovery of Project Expenses. With the City's prior written approval, Rent increases for Units exceeding the amounts permitted by the first sentence of **Section 7.3** may be permitted once annually in order to recover increases in approved Project Expenses, provided that: (i) in no event may single or aggregate Rent increases exceed ten percent (10%) per year unless such an increase is contemplated in a City-approved temporary relocation plan or is necessary due to the expiration of Section 8 or other rental subsidies; and (ii) Rents for each Unit may in no event exceed 30% of 120% Median Income. The City's approval for such Rent increases under this subsection shall not be unreasonably withheld.

(d) Rent Subsidy Programs. For those households that hold rent subsidy vouchers, such as Section 8 and VASH, on an annual basis Borrower shall request and use best efforts to receive an increase in contract rent equivalent to the percentage change in Fair Market Rent or equivalent payment standard, whichever is greater. For any Qualified Tenant participating in a rent or operating subsidy program where the rent charged is calculated as a percentage of household income, adjustments to Rent charged may be made according to the rules of the relevant subsidy program, and provided the Qualified Tenant paid portion of Rent does not exceed 30% of 120% Median Income. For any Qualified Tenant that becomes ineligible to continue participating in a rent or operating subsidy program, there is no limit on the increase in Rent charged as long as it does not exceed 30% of 120% Median Income.

(e) Recovery of Property Tax Increases. In addition to the Rent increases contemplated in this **Section 7** and with the City's prior written approval, if a Qualified Tenant's household income exceeds eighty percent (80%) of California Median Income (as published by the California Department of Housing and Community Development) during occupancy of a Unit, Borrower may adjust the charges for Rent for such Qualified Tenant to absorb the amount of property taxes attributable to the Qualified Tenant's Unit as a result of the loss of the State of California's welfare exemption for low-income housing properties. The City may, in its sole discretion, require that Rent increases allowed under this subsection be implemented over a period of time in order to reduce the burden on an existing Qualified Tenant. Rents charged under this subsection may not exceed 30% of 120% Median Income. The City's approval for such Rent increases shall not be unreasonably withheld. If such Qualified Tenant's household income subsequently decreases and the Unit becomes eligible for the California welfare property tax exemption, Borrower may reduce such Qualified Tenant's Rent by the amount of property tax savings attributable to the Qualified Tenant's Unit, as provided in Section 7.3(b).

(f) Excess Rent. If Borrower increases Rents or offers a vacant Unit for rent at a rate that exceeds the rules described in this Agreement, the resulting excess cash flow will be

paid by Borrower to the Qualified Tenants who were overcharged, and Borrower's actions will constitute an Event of Default pursuant to **Section 19**.

7.4 Certification.

(a) As a condition to initial occupancy, each person who desires to be a Qualified Tenant in the Project must be required to sign and deliver to Borrower a certification in the form shown in **Exhibit C** in which the prospective Qualified Tenant certifies that he/she or his/her household qualifies as a Qualified Tenant. In addition, each person must provide any other information, documents or certifications deemed necessary by the City to substantiate the prospective Qualified Tenant's income. Certifications provided to and accepted by the SFHA will satisfy this requirement.

(b) Each Qualified Tenant in the Project must recertify to Borrower on an annual basis his/her household income.

(c) Income certifications with respect to each Qualified Tenant who resides in a Unit or resided therein during the immediately preceding calendar year must be maintained on file at Borrower's principal office, and Borrower must file or cause to be filed copies thereof with the City promptly upon request by the City.

7.5 Form of Lease. The form of lease for Qualified Tenants must provide for termination of the lease and consent to immediate eviction for failure to qualify as a Qualified Tenant if the Qualified Tenant has made any material misrepresentation in the initial income certification.

7.6 Nondiscrimination. Borrower agrees not to discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, gender identity, height, weight, source of income or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC) in the operation and use of the Project except to the extent permitted by law or required by any other funding source for the Project. Borrower agrees not to discriminate against or permit discrimination against Qualified Tenants using Section 8 certificates or vouchers or assistance through other rental subsidy programs.

7.7 Security Deposits. Security deposits may be required of tenants only in accordance with applicable state law and this Agreement. Any security deposits collected must be segregated from all other funds of the Project in an Account held in trust for the benefit of the tenants and disbursed in accordance with California law. The balance in the trust account must at all times equal or exceed the aggregate of all security deposits collected plus accrued interest thereon, less any security deposits returned to tenants.

[Delete the following and renumber if Project does not have Commercial Space.]

7.8 Commercial Space. All leases of Commercial Space must be to a bona fide third party tenant capable of performing its financial obligations under its lease, which must reflect arms'-length transactions at the then-current market rental rates for comparable space, *provided that*, leases for Public Benefit Purposes may be at below-market rates so long as the sum of Project Income and Commercial Income meets approved cash flow requirements for the Project. Allowed uses of Commercial Space must be consistent with all applicable development plans and local planning and building codes and be reasonably compatible with the design and purpose of the Project. If a lease of Commercial Space does not restrict its use to Public Benefit Purposes, all Surplus Cash generated from the lease shall (a) then be directed toward repayment of the Loan; or (b) be used for a Public Benefit Purpose. All Surplus Cash shall be subject to the MOHCD Policy on the Use of Residual Receipts.

ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE PROJECT.

8.1 Borrower's Responsibilities.

(a) Subject to the rights set forth in **Section 8.2**, Borrower will be specifically and solely responsible for causing all maintenance, repair and management functions performed in connection with the Project, including selection of tenants, recertification of income and household size, evictions, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower must maintain or cause to be maintained the Project, including the Units and common areas, in a safe and sanitary manner in accordance with local health, building and housing codes, California Health and Safety Code 17920.10 and any applicable provisions of 24 CFR Part 35.

8.2 Contracting With Management Agent.

(a) Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in **Section 8.1(a)**, subject to the City's prior written approval of both the management agent and, at the City's discretion, the management contract between Borrower and the management agent, *provided, however*, that the arrangement will not relieve Borrower of responsibility for performance of those duties. Any management contract must contain a provision allowing Borrower to terminate the contract without penalty upon no more than thirty (30) days' notice. As of the Agreement Date, the City has approved [Name of Borrower's management agent] as Borrower's management agent, subject to approval of the management contract.

(b) The City will provide written notice to Borrower of any determination that the contractor performing the functions required in **Section 8.1(a)** has failed to operate and manage the Project in accordance with this Agreement. If the contractor has not cured the failure within a reasonable time period, as determined by the City, Borrower must exercise its right of termination immediately and make immediate arrangements for continuous and continuing performance of the functions required in **Section 8.1(a)**, subject to the City's approval.

8.3 Borrower Management. Borrower may manage the Project itself only with the City's prior written approval. The City will provide written notice to Borrower of any determination that Borrower has failed to operate and manage the Project in accordance with this Agreement, in which case, the City may require Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements the City deems necessary to ensure performance of the functions required in **Section 8.1(a)**.

ARTICLE 9 GOVERNMENTAL REQUIREMENTS.

9.1 Borrower Compliance. Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of Funds for the construction, rehabilitation and/or operation of the Project, including those set forth in **Exhibit E**. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to **Section 23.1**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

(a) Borrower understands and agrees that it will be monitored by the City from time to time to assure compliance with all terms and conditions in this Agreement and all Laws. Borrower acknowledges that the City may also conduct periodic on-site inspections of the Project. Borrower must cooperate with the monitoring by the City and ensure full access to the Project and all information related to the Project as reasonably required by the City.

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all Funds, including all documents evidencing any Project Income and Project Expenses. Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) Borrower must provide written notice of the replacement of its executive director, director of housing development, director of property management and/or any equivalent position within thirty (30) days after the effective date of such replacement.

10.2 Reserved

10.3 Annual Reporting. Borrower must file with the City annual report forms (the "Annual Monitoring Report") that include audited financial statements with an income and expense statement for the Project covering the applicable reporting period, a statement of balances, deposits and withdrawals from all Accounts, line item statements of Project Expenses, Project Income, Residual Receipts and any Distributions made, evidence of required insurance, a description of marketing activities and a rent roll, no later than one hundred fifty (150) days after

the end of Borrower's fiscal year. The Annual Monitoring Report must be in substantially the form attached as **Exhibit G** or as later modified during the Compliance Term.

10.4 Capital Needs Assessment. Borrower must deliver to MOHCD an updated CNA every seven (7) years after the Completion Date for approval. The updated CNA must include an analysis of Borrower's actual expenditures for capital needs compared to the most recently approved CNA, Borrower's 20-Year Proforma and initial Annual Operating Budget and its then-current Annual Operating Budget.

[Use first alternative for direct financing. Use second alternative for takeout financing.]

[10.5 Project Completion Report. Within the specific time periods set forth below after the completion of rehabilitation or construction, the lease-up and/or permanent financing of the Project, as applicable, Borrower must provide to the City the reports listed below certified by Borrower to be complete and accurate. Subsequent to the required submission of the reports listed below, Borrower shall provide to the City information or documents reasonably requested by the City to assist in the City's review and analysis of the submitted reports:

(a) within one hundred-eighty (180) days after the Completion Date, a report on use of Small Disadvantaged Business Enterprises as defined in the SBE Manual, including the type of work and the dollar value of such work;

(b) within ninety (90) days after the Completion Date, a report demonstrating compliance with all requirements regarding relocation, including the names of all individuals or businesses occupying the Site on the date of the submission of the application for Funds, those moving in after that date, and those occupying the Site upon completion of the Project.

(c) within one hundred-eighty (180) days after the Completion Date, and if the Project has used federal funds, a report demonstrating compliance with all requirements regarding HUD Section 3 and MOHCD Section 3 hiring goals, including documentation of total labor hours worked on the Project, total Section 3 hours worked, total wages paid, total Section 3 wages paid, and the names of all individuals employed to comply with the Section 3 and Section 3 goals, including the total hours worked for each individual and total wages paid to each individual.]

[10.5 Reserved]

10.6 Response to Inquiries. At the request of the City, its agents, employees or attorneys, Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations and condition of the Project, the status of any mortgage encumbering the Project and any other requested information with respect to Borrower or the Project.

10.7 Delivery of Records. At the request of the City, made through its agents, employees, officers or attorneys, Borrower must provide the City with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:

(a) all tax returns filed with the United States Internal Revenue Service, the California Franchise Tax Board and/or the California State Board of Equalization on behalf of Borrower and any general partner or manager of Borrower;

(b) all certified financial statements of Borrower and, if applicable, its general partner or manager, the accuracy of which must be certified by an auditor satisfactory to the City; and

(c) any other records related to Borrower's ownership structure and the use and occupancy of the Site.

10.8 Access to the Project and Other Project Books and Records. In addition to Borrower's obligations under **Sections 2.4, 10.1, 10.3, 10.4, 10.6 and 10.7** and any other obligations to provide reports or maintain records in any City Document, Borrower agrees that duly authorized representatives of the City will have: (a) access to the Project throughout the Compliance Term to monitor the progress of work on the Project and compliance by Borrower with the terms of this Agreement; and (b) access to and the right to inspect, copy, audit and examine all books, records and other documents Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under **Section 10.9**

10.9 Records Retention. Borrower must retain all records required for the periods required under applicable Laws.

ARTICLE 11 USE OF INCOME FROM OPERATIONS.

11.1 Project Operating Account.

(a) Borrower must deposit all Project Income promptly after receipt into a segregated depository account (the "Project Operating Account") established exclusively for the Project. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget, as it may be revised from time to time with the City's approval. Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses. Withdrawals from the Project Operating Account (including accrued interest) for other purposes may be made only with the City's express prior written approval.

(b) Borrower must keep accurate records indicating the amount of Project Income deposited into and withdrawn from the Project Operating Account and the use of Project Income. Borrower must provide copies of the records to the City upon request.

ARTICLE 12 REQUIRED RESERVES.

12.1 Replacement Reserve Account.

(a) Commencing no later than sixty (60) days after the Agreement Date, or any other date the City designates in writing, Borrower must establish or cause to be established

a segregated interest-bearing replacement reserve depository account (the "Replacement Reserve Account"). On or before the 15th day of each third month following establishment of the Replacement Reserve Account, Borrower must make quarterly deposits from Project Income into the Replacement Reserve Account in the amount necessary to meet the requirements of this Section. The City may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems necessary.

(b) Borrower must make an initial deposit into the Replacement Reserve Account in an amount equal to [Amount in text (\$_____)]. Thereafter, quarterly deposits must equal the higher of (i) the amount needed under Borrower's approved Capital Needs Assessment (CNA), or (ii) 1/4th of the applicable amount set forth in the chart below. Borrower may request adjustments every seven (7) years based on its most recently approved CNA.

No. of Units	Replacement Reserve Deposits Per-Unit, Per-Year
Less than or equal to 10	400
11-25	350

(c) In addition, if at any time the balance of the Replacement Reserve Account is below one and a half (1.5) times the original capitalized replacement reserve balance set forth in **Section 12.1(b)** above, Borrower shall deposit into the Replacement Reserve Account the funds that would otherwise be allocated to the City's share of Residual Receipts until it reaches that amount. Any Residual Receipts remaining above that amount shall be paid to the City in accordance with the Notes.

(d) Borrower may withdraw funds from the Replacement Reserve Account solely to fund capital improvements for the Project, such as replacing or repairing structural elements, furniture, fixtures or equipment of the Project that are reasonably required to preserve the Project. Borrower may not withdraw funds (including any accrued interest) from the Replacement Reserve Account for any other purpose without the City's prior written approval.

12.2 Operating Reserve Account.

(a) Commencing no later than sixty (60) days after the Agreement Date, or any other date the City designates in writing, Borrower must establish or cause to be established a segregated interest-bearing operating reserve depository account (the "Operating Reserve Account") by depositing funds in an amount equal to [Amount in text (\$_____)]. The City may review the adequacy of deposits to the Operating Reserve Account periodically and require adjustments as it deems necessary.

(b) No less than annually after establishing the Operating Reserve Account and continuing until the Compliance Term has expired, Borrower must make additional deposits, if necessary, to bring the balance in the Operating Reserve Account to an amount equal to twenty-five percent (25%) of the prior year's actual Project Expenses.

(c) Borrower may withdraw funds from the Operating Reserve Account solely to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, abnormally high vacancies and other expenses that vary seasonally or from month to month in the Project. Borrower may not withdraw funds (including any accrued interest) from the Operating Reserve Account for any other purpose without the City's prior written approval.

[If approved in the Loan Evaluation, tenant improvement and replacement reserves may be established for Projects with Commercial Space. Sample language below.]

12.3 Commercial Space Reserve Account(s). In addition to the reserve requirements set forth above, Borrower may establish the following reserve accounts: (a) a tenant improvements reserve in the amount of [Amount in text (\$_____)]; and (b) a replacement reserve account for the Commercial Space in an amount equal to [amount in text (\$_____)].

[Update numbering if above is included]

12.3 Other Reserve Requirements. Borrower shall establish an interest-bearing vacancy reserve depository account for the [Add requirements for any other project-specific reserve accounts: "Vacancy Reserve Account" to cover lost monthly rental income during the rehabilitation of Unit[s] __ in the amount of \$_____ (the "Initial Deposit") into the Vacancy Reserve Account on the Agreement Date.

Borrower may use the funds from the Initial Deposit only for the payment of Project Expenses, and may only withdraw amounts each month equivalent to what would have been the monthly rent for the Units that are vacant due to the Project rehabilitation. If the Unit __ rehabilitation is completed in less than twelve (12) months from the Agreement Date, the remaining balance from the Initial Deposit shall be deposited in the Operating Reserve Account.]

ARTICLE 13 DISTRIBUTIONS.

13.1 Definition. "Distributions" refers to cash or other benefits received as Project Income from the operation of the Project and available to be distributed to Borrower or any party having a beneficial interest in the Project, but does not include reasonable payments for property management, asset management or other services performed in connection with the Project.

13.2 Conditions to Distributions. The 20-Year Cash Flow Proforma attached hereto as Exhibit B-2 includes projections of annual Distributions. Exhibit B-2 is not intended to impose limits on the amounts to be annually distributed. Distributions for a particular fiscal year may be made only following: (a) City approval of the Annual Monitoring Report submitted for that year; (b) the City's determination that Borrower is not in default under this Agreement or any other agreement entered into with the City and County of San Francisco or the City for the Project; and (c) the City's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement. The City will be deemed to have approved Borrower's written request for approval of a proposed Distribution unless the City delivers its disapproval or request for more information to Borrower within thirty (30) business days after the City's receipt of the request for approval.

13.3 Prohibited Distributions. No Distribution may be made in the following circumstances:

(a) when a written notice of default has been issued by any entity with an equitable or beneficial interest in the Project and the default is not cured within the applicable cure periods; or

(b) when the City determines that Borrower or Borrower's management agent has failed to comply with this Agreement; or

(c) if required debt service on all loans secured by the Project and all operating expenses have not been paid current; or

(d) if the Replacement Reserve Account, Operating Reserve Account or any other reserve account required for the Project is not fully funded under this Agreement; or

(e) if the Loan is to be repaid from Residual Receipts, Borrower failed to make a payment when due on a Payment Date and the sum remains unpaid; or

(f) during the pendency of an uncured Event of Default (including Borrower's failure to provide its own funds at any time the City determines the Loans are out of balance) under any City Document.

13.4 Borrower's Use of Residual Receipts for Development. To the extent that making a Distribution is not inconsistent with any other financing agreement for the Project, and subject to the limitations in this Article, with the City's prior written approval, Borrower may retain a portion of Residual Receipts in lieu of using them to repay the Loan in an amount consistent with the Residual Receipts Policy attached hereto as Exhibit K. Borrower acknowledges that the City may withhold its consent to a Distribution in any year in which Residual Receipts are insufficient to meet Borrower's payment obligations under the Notes.

ARTICLE 14 SYNDICATION PROCEEDS.

14.1 Distribution and Use. If Borrower is a limited partnership or limited liability company, and unless otherwise approved by the City in writing, Borrower must allocate, distribute and pay or cause to be allocated, distributed and paid all net syndication proceeds and all loan and grant funds as specified in the Table. Borrower must notify the City of the receipt and disposition of any net syndication proceeds received by Borrower during the term of this Agreement.

ARTICLE 15 DEVELOPER FEES.

15.1 Amount. Borrower is entitled to receive fees from the Loan in a total amount not to exceed [Amount in text] Dollars (\$[Numerical amount]) for developing the Project ("Developer Fees"), payable as described in **Section 15.2.**

[Use for Direct Financing, or delete for Take Out Financing.]

15.2 Payment.

(a) At Completion. If any Loan proceeds remain after payment of all costs and expenses described in **Exhibit B-1**, excluding Borrower's Development Consulting Fee in the amount of [amount in text] Dollars (\$_____) and the Developer Overhead/Profit (Fee) in the amount of [amount in text] Dollars (\$_____), and following issuance by the San Francisco Department of Building Inspection of a Notice of Completion or similar document approved by MOHCD signifying full completion of the rehabilitation of the Site, Borrower shall receive such Loan proceeds up to the amount of the Developer Fees on the Completion Date. In its sole discretion, MOHCD may withhold the portion of Developer Fees payable to Borrower on the Completion Date by the amount of any development costs incurred in connection with the Project that exceed the Project's projected \$_____ total development costs, up to \$_____.

(b) From Residual Receipts. Subject to **Section 12.1(c)**, if any Developer Fee remains unpaid after Completion excluding any portion of the Developer Fee withheld by MOHCD pursuant to **Section 5.2(a)**, 50% of Residual Receipts shall be retained by Borrower in payment of its remaining unpaid Developer Fee and 50% of Residual Receipts shall be used to repay the Loan, until such time as the full remaining unpaid Developer Fee is paid.

(c) From Refinancing Proceeds. If any Developer Fee remains unpaid at the time Borrower refinances the Project, the remaining unpaid fee may be paid out of the proceeds from the refinancing of the Project.

ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of all or any portion of its interest in the Site or Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases or occupancy agreements to occupants of Units; or [(b) leases, subleases, or occupancy agreements for the Commerical Space with City's prior approval;] (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion. Any other transfer, assignment, encumbrance or lease without the City's prior written consent will be voidable and, at the City's election, constitute an Event of Default under this Agreement. The City's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Agreement.

ARTICLE 17 INSURANCE AND BONDS.

17.1 Borrower's Insurance. Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and

maintained, insurance and bonds as set forth in **Exhibit L** throughout the Compliance Term of this Agreement at no expense to the City.

ARTICLE 18 GOVERNMENTAL APPROVALS.

18.1 Compliance. Borrower covenants that it has obtained or will obtain in a timely manner and comply with all federal, state and local governmental approvals required by Law to be obtained for the Project. Subject to **Section 23.1**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 19 DEFAULT.

19.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the City Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any City Document will constitute an "Event of Default," including the following:

(a) Borrower fails to make any payment required under this Agreement within ten (10) days after the date when due; or

(b) Any lien is recorded against all or any part of the Site or the Project without the City's prior written consent, whether prior or subordinate to the lien of the SSP Deed of Trust, the PASS Deed of Trust, or the Declaration of Restrictions, and the lien is not removed from title or otherwise remedied to the City's satisfaction within thirty (30) days after Borrower's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(c) Borrower fails to perform or observe any other term, covenant or agreement contained in any City Document, and the failure continues for thirty (30) days after Borrower's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(d) Any representation or warranty made by Borrower in any City Document proves to have been incorrect in any material respect when made; or

(e) All or a substantial or material portion of the improvements on the Site is damaged or destroyed by fire or other casualty, and the City has determined upon restoration or repair that the security of the SSP Deed of Trust or the PASS Deed of Trust has been impaired or that the repair, restoration or replacement of the improvements in accordance with the requirements of the SSP Deed of Trust and PASS Deed of Trust is not economically practicable or is not completed within two (2) years of the receipt of insurance proceeds; or all or a

substantial or material portion of the improvements is condemned, seized or appropriated by any non-City Governmental Agency or subject to any action or other proceeding instituted by any non-City Governmental Agency for any purpose with the result that the improvements cannot be operated for their intended purpose; or

(f) Borrower is dissolved or liquidated or merged with or into any other entity; or, if Borrower is a corporation, partnership, limited liability company or trust, Borrower ceases to exist in its present form and (where applicable) in good standing and duly qualified under the laws of the jurisdiction of formation and California for any period of more than ten (10) days; or, if Borrower is an individual, Borrower dies or becomes incapacitated; or all or substantially all of the assets of Borrower are sold or otherwise transferred except as permitted under **Section 16.1**; or

(g) Without the City's prior written consent, Borrower assigns or attempts to assign any rights or interest under any City Document, whether voluntarily or involuntarily, except as permitted under **Section 16.1**; or

(h) Without the City's prior written consent, Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in Borrower or of its right, title or interest in the Project or the Site except as permitted under **Article 16**; or

(i) Without the City's prior written consent, Borrower transfers, or authorizes the transfer of, funds in any Account required or authorized under this Agreement; or

(j) The SSP Deed of Trust, the PASS Deed of Trust, or the Declaration of Restrictions ceases to constitute a valid and indefeasible perfected lien on the Site and improvements, subject only to Permitted Exceptions; or

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(l) Any material adverse change occurs in the financial condition or operations of Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project; or

(m) Borrower fails to make any payments or disbursements required to bring the Loan in balance after the City determines that the Loan is out of balance; or

(n) Borrower ceases rehabilitation or construction of the Project for a period of fifteen (15) consecutive working days, and the cessation is not excused under **Section 19.3**; or

(o) Borrower is in default of its obligations with respect to any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods; or

(p) Borrower is in default of its obligations under any other agreement entered into with the City and County of San Francisco, and the default remains uncured following the expiration of any applicable cure periods.

19.2 Remedies. During the pendency of an uncured Event of Default, the City may exercise any right or remedy available under this Agreement or any other City Document or at law or in equity. All of the City's rights and remedies following an Event of Default are cumulative, including:

(a) The City at its option may declare the unpaid principal balance of the Notes, together with default interest as provided in the Notes and any other charges due under the Notes and the other City Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Borrower expressly waives.

(b) The City at its option may terminate all commitments to make Disbursements or to release the Site from the SSP Deed of Trust, the PASS Deed of Trust, or the Declaration of Restrictions, or, without waiving the Event of Default, the City may determine to make further Disbursements or to release all or any part of the Site from the SSP Deed of Trust, the PASS Deed of Trust, or the Declaration of Restrictions upon terms and conditions satisfactory to the City in its sole discretion.

(c) The City may perform any of Borrower's obligations in any manner, in the City's reasonable discretion.

(d) The City, either directly or through an agent or court-appointed receiver, may take possession of the Project and enter into contracts and take any other action the City deems appropriate to complete or construct all or any part of the improvements, subject to modifications and changes in the Project the City deems appropriate.

(e) The City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Borrower's noncompliance with this Agreement.

(f) Upon the occurrence of an Event of Default described in **Section 19.1(k)**, the unpaid principal balance of the Notes, together with default interest as provided in the Notes and any other charges due under the Notes and the other City Documents, will become due and payable automatically. **[Be sure that this provision correctly refers to the Subsection on bankruptcy/insolvency default. This is a bankruptcy-specific provision. It does not duplicate § 19.2(a) and may NOT be deleted.]**

(g) All costs, expenses, charges and advances of the City in exercising its remedies or to protect the Project will be deemed to constitute a portion of the principal balance of the Notes, even if it causes the principal balance to exceed the face amount of the Notes, unless Borrower reimburses the City within ten (10) days of the City's demand for reimbursement.

19.3 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of the City or Borrower rendered impossible to perform while the event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes for either; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotion; fire or other casualty and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse Borrower's performance only in the event that Borrower has provided notice to the City within thirty (30) days after the occurrence or commencement of the event or events, and Borrower's performance will be excused for a period ending thirty (30) days after the termination of the event giving rise to the delay.

ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

20.1 Borrower Representations and Warranties. As a further inducement for the City to enter into this Agreement, Borrower represents and warrants as follows:

(a) The execution, delivery and performance of the City Documents will not contravene or constitute a default under or result in a lien upon assets of Borrower under any applicable Law, any Charter Document of Borrower or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting Borrower.

(b) When duly executed, the City Documents will constitute the legal, valid and binding obligations of Borrower. Borrower hereby waives any defense to the enforcement of the City Documents related to alleged invalidity of the City Documents.

(c) No action, suit or proceeding is pending or threatened that might affect Borrower or the Project adversely in any material respect.

(d) Borrower is not in default under any agreement to which it is a party, including any lease of real property.

(e) None of Borrower, Borrower's principals or Borrower's general contractor has been suspended or debarred by the Department of Industrial Relations or any Governmental Agency, nor has Borrower, any of its principals or its general contractor been suspended, disciplined or prohibited from contracting with any Governmental Agency.

(f) The Loan is in balance, and the Funding Amount, together with all other committed sources of financing for the Project, are sufficient to complete the Project in accordance with this Agreement.

(g) All statements and representations made by Borrower in connection with the Loan remain true and correct as of the date of this Agreement.

ARTICLE 21 NOTICES.

21.1 Written Notice. All notices required by this Agreement must be made in writing and may be communicated by personal delivery, by a nationally recognized courier that obtains receipts, facsimile (if followed within one (1) business day by first class mail) or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five (5) days after mailing, *provided that* any notice that is received after 5 p.m. on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:

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

To Borrower: [Borrower's name]
[Borrower's address]
San Francisco, CA [Zip code]

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Section.

21.2 Required Notices. Borrower agrees to provide notice to the City in accordance with **Section 21.1** of the occurrence of any change or circumstance that: (a) will have an adverse effect on the physical condition or intended use of the Project; (b) causes the Loan to be out of balance; or (c) will have a material adverse effect on Borrower's operation of the Property or ability to repay the Loan.

[May add if requested.]

21.3 Notice to Limited Partner. The City agrees to deliver a copy of any notice of default to Borrower's limited partner at the address set forth below at the same time and in the same manner as notice is delivered to Borrower. The City's failure to deliver notice under this Section will not affect or impair the City's right to enforce its rights at law or in equity arising by reason of an Event of Default.

To: _____

Attn: _____

ARTICLE 22 HAZARDOUS SUBSTANCES.

22.1 Borrower's Representations. Borrower represents and warrants to the City that, to the best of Borrower's actual knowledge, without independent investigation or inquiry as of the Agreement Date, the following statements are true and correct except as disclosed in [the \[Add reference here to any existing environmental reports and date\]](#) or otherwise in writing: (a) the Site is not in violation of any Environmental Laws; (b) the Site is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Substances, except in limited quantities customarily used in residences and offices and in compliance with Environmental Laws; (c) the Site does not consist of any landfill or contain any underground storage tanks; (d) the improvements on the Site do not consist of any asbestos-containing materials or building materials that contain any other Hazardous Substances; (e) no release of any Hazardous Substances in the improvements on the Site has occurred or in, on, under or about the Site; and (f) the Site is not subject to any claim by any Governmental Agency or third party related to any Environmental Activity or any inquiry by any Governmental Agency (including the California Department of Toxic Substances Control and the Regional Water Quality Control Board) with respect to the presence of Hazardous Substances in the improvements on the Site or in, on, under or about the Site, or the migration of Hazardous Substances from or to other real property.

22.2 Covenant. Unless the City otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, Borrower must: (a) comply with all applicable Environmental Laws relating to the Site and the Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Site, *provided that* nothing contained in this Section will prevent Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; and (b) deliver to the City notice of the discovery by Borrower of any event rendering any representation contained in this Section incorrect in any respect promptly following Borrower's discovery.

ARTICLE 23 INDEMNITY.

23.1 Borrower's Obligations. Borrower must Indemnify the City and its respective officers, agents and employees (individually or collectively, an "Indemnitee") against any and all Losses arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the City Documents (including those covenants set forth in **Article 22** above); (b) any failure of any representation by Borrower to be correct in all respects when made; (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise; (d) any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the City Documents, the Loan, the Site or the Project or any transaction contemplated by, or the relationship between Borrower and the City or any action or inaction by the City under, the City Documents; (f) the occurrence, before the expiration of the Compliance Term, of any Environmental Activity or any failure of Borrower or any other person to comply with all applicable Environmental Laws relating to the Project or the Site; (g) the occurrence, after the Compliance Term, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring before the Compliance Term; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under **Sections 9.1, 18.1 and 22.2**; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnitee will be entitled to indemnification under this Section for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, upon written notice, Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at Borrower's sole expense. Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement.

23.2 No Limitation. Borrower's obligations under **Section 23.1** are not limited by the insurance requirements under this Agreement.

ARTICLE 24 GENERAL PROVISIONS.

24.1 Subordination. The SSP Deed of Trust may be subordinated to other financing secured by and used for development of the Project (in each case, a "Senior Lien"), but only if MOHCD determines, in its sole discretion, that subordination is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project. Following review and approval by MOHCD and approval as to form by the City Attorney's Office, the Director of MOHCD or his/her successor or designee will be authorized to execute any approved subordination agreement without the necessity of any further action or approval.

24.2 No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of the City, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the City and Borrower or Borrower's agents, employees or contractors.

24.3 No Claims by Third Parties. Nothing contained in this Agreement creates or justifies any claim against the City by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Project. Borrower must include this requirement as a provision in any contracts for the development of the Project.

24.4 Entire Agreement. This Agreement and its Exhibits incorporate the terms of all agreements made by the City and Borrower with regard to the subject matter of this Agreement. No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on the City or Borrower.

24.5 City Obligations. The City's sole obligation under this Agreement is limited to providing the Funds as described in this Agreement, up to the Funding Amount. Under no circumstances, including breach of this Agreement, will the City be liable to Borrower for any special or consequential damages arising out of actions or failure to act by the City in connection with any of the City Documents.

24.6 Borrower Solely Responsible. Borrower is an independent contractor with the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Borrower is solely responsible for: (a) its own acts and those of its agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by Borrower, any of its contractors or subcontractors and the City and its officers, representatives, agents and employees on account of any act, error or omission of Borrower in the performance of this Agreement or any other City Document and the development and operation of the Project; and (c) all costs and expenses relating to Borrower's performance of obligations under the City Documents, the delivery to the City of documents,

information or items under or in connection with any of the City Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing and/or recording of any City Document or document required under any City Document.

24.7 No Inconsistent Agreements. Borrower warrants that it has not executed and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions of this Agreement.

24.8 Inconsistencies in City Documents. In the event of any conflict between the terms of this Agreement and any other City Document, the terms of this Agreement control unless otherwise stated; *provided, however*, that any provision in this Agreement in conflict with any Law will be interpreted subject to that Law.

24.9 Governing Law. This Agreement is governed by California law without regard to its choice of law rules.

24.10 Joint and Several Liability. If Borrower consists of more than one person or entity, each is jointly and severally liable to the City for the faithful performance of this Agreement.

24.11 Successors. Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns. This provision does not relieve Borrower of its obligation under the City Documents to obtain the City's prior written consent to any assignment or other transfer of Borrower's interests in the Loan, the Site or the ownership interests in Borrower.

24.12 Attorneys' Fees. If any legal action is commenced to enforce any of the terms of this Agreement or rights arising from any party's actions in connection with this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Agreement, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Notes from the date of the award until paid.

24.13 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

24.14 Time. Time is of the essence in this Agreement. Whenever the date on which an action must be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

24.15 Further Assurances. Borrower agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by the City from time to time to confirm or otherwise carry out the purpose of this Agreement.

24.16 Binding Covenants. The provisions of the City Documents constitute covenants running with the land and will be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title or interest in whatever form, including leasehold interests, in or to any part of the Property, except that the same will terminate and become void automatically at the expiration of the Compliance Term of this Agreement. Any attempt to transfer any right, title or interest in the Property in violation of these covenants will be void.

24.17 Consent. Except as expressly provided otherwise, whenever consent or approval of a party is required in any City Document, that party agrees not to withhold or delay its consent or approval unreasonably.

24.18 Counterparts. This Agreement may be executed in any number of counterparts, all of which will constitute but one agreement.

24.19 Borrower's Personnel. The Project shall be implemented only by competent personnel under the direction and supervision of Borrower.

24.20 Borrower's Board of Directors. Borrower shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in Borrower's bylaws and other governing documents, and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Borrower's board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Borrower of its obligations under this Agreement.

24.21 Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:

EXHIBITS

- A Schedules of Income and Rent Restrictions
- B-1 Table of Sources and Uses of Funds
- B-2 Annual Operating Budget
- B-3 20-Year Cash Flow Proforma
- C Form of Tenant Income Certification
- D Reserved
- E Governmental Requirements
- F Lobbying/Debarment Certification Form
- G Form of Annual Monitoring Report
- H Tenant Selection Plan Policy
- I MOHCD Tenant Screening Criteria Policy

J Reserved
K Reserved
L Insurance Requirements
M MOHCD Residual Receipts Policy

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Francisco, California as of the date first written above.

THE CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
London N. Breed
Mayor

By: _____
Kate Hartley
Director, Mayor's Office of Housing
and Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

BORROWER:

[BORROWER'S NAME],
a California [Entity Type]

By: [General Partner's name],
a California [Entity Type]
Its: **General Partner; Manager; Sole Member**

By: _____
Name: [Name]
Title: [Title]

EXHIBIT A
Schedules of Income and Rent Restrictions

1. Income and Rent Restrictions
 - a. Required Rents for the Units as of the Agreement Date are as follows:
 [Modify or delete the following chart as necessary for particulars of transaction.]

Unit Number	Unit Size	Rent (monthly payments) as of the Agreement Date
1		
2		
3		
4		
5		

2. Phased Increases. Increases in Rent for existing Qualified Tenants occupying Units __ and __ shall be increased on the specified anniversaries of the Agreement Date according to the table set forth below. After such phased increases, Rent shall be adjusted as otherwise described in **Section 7** of the Agreement.

Unit Number	Rent (monthly payments) as of the Agreement Date	[Rent (monthly payments) on 1st anniversary of Agreement Date]	[Rent (monthly payments) on 2nd anniversary of Agreement Date]	[Rent (monthly payments) on 3rd anniversary of Agreement Date]	[Rent (monthly payments) on 4th anniversary of Agreement Date]
[#]	\$_____	\$_____	\$_____	\$_____	\$_____
[#]	\$_____	\$_____	\$_____	\$_____	\$_____
[#]	\$_____	\$_____	\$_____	\$_____	\$_____
[#]	\$_____	\$_____	\$_____	\$_____	\$_____

- b. After the Agreement Date, the Rent for each Unit that becomes vacant shall be set at the amount necessary to bring the Project's combined average Rents for all Units as close as is possible to the amount

calculated as 30% of 80% Median Income, but no more than 30% of 120% Median Income.

2. Reserved

EXHIBIT B-1

Table of Sources and Uses of Funds

Attached.

EXHIBIT B-2
Annual Operating Budget

Attached.

EXHIBIT B-3

20-Year Cash Flow Proforma

[This Proforma must include the same line items as the Annual Operating Budget shown in Exhibit B-2.]

Attached.

EXHIBIT C
Tenant Income Certification Form

Attached.

EXHIBIT D

First Source Hiring Requirements and Numerical Goals

[Required for all loan above \$200,000 or funded with Prop. A or HOME funds; otherwise ("Intentionally omitted.")]

Borrower's use of Funds triggers the following hiring requirements imposed by the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83) as incorporated into MOHCD's Section 3 Plan. [Use if CityBuild project: Sponsor shall work with CityBuild to meet Section 3 requirements.]

1. Section 3 Requirements.

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u ("Section 3"), based on Borrower's receipt of City funds under MOHCD's Section 3 Plan. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing, to the greatest extent feasible.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and to post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions and the anticipated date work will begin.

(d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled: (i) after the contractor is selected but before

the contract is executed; and (ii) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.

2. Recommended Minimum Numerical Goals. Contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth below for training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns, which represent minimum numerical goals.

(a) Training and Employment of Section 3 Residents (24 CFR § 135.30(b)). Contractors and subcontractors may demonstrate compliance by committing to employ Section 3 residents as thirty percent (30%) of the aggregate number of new hires (full-time employees for permanent, temporary or seasonal employment) and an overall goal of thirty percent (30%) of total work hours for the entire project.

(b) Contracts with Section 3 Business Concerns (24 CFR § 135.30). Contractors and subcontractors may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(i) At least ten percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(ii) At least three percent (3%) of the total dollar amount of all other Section 3 covered contracts.

EXHIBIT E
Governmental Requirements

1. **Prevailing Wages and Working Conditions.**

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

If applicable, Borrower shall include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Borrower’s failure to comply with its obligations under this Section shall constitute a material breach of the Agreement. A Contractor’s or Subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

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 the City 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 Section 15.103 of the San Francisco Charter, Article III, Chapter 2, and Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, and Sections 1090 through 1097 and 87100 *et seq.* of the California Government Code, all of which relate to prohibited conflicts of interest and prohibited contributions 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 the City immediately if Borrower at any time obtains knowledge of facts constituting a violation. The City will notify its Ethics Commission of the parties to this Agreement in accordance with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code.

(c) In the event of any violation of the conflict of interest prohibitions, Borrower agrees that the City may refuse to consider any future application for funding from Borrower or any entity related to Borrower until the violation has been corrected to the City's satisfaction, in the City'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 the City 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. Borrower may use vacant Units in the Project to accommodate the temporary relocation of Qualified Tenants in other Small Sites Program Projects to complete rehabilitation for a period of up to 30 days, during which time, relocated Qualified Tenants must sign a relocation lease, approved as to form by the City, giving the relocated Qualified Tenant temporary right to the Unit for no more than a 30 day period. The use of Small Sites Program Units for temporary relocation applies only to other Small Sites Program Qualified Tenants and not to tenants residing in properties subject to other funding sources and/or program regulations.

7. First Source Hiring. Borrower agrees to comply with San Francisco Administrative Code, Chapter 83, as applicable.

8. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Borrower Shall Not Discriminate. In the performance of this Agreement, Borrower agrees not to discriminate against any employee, City and County employee working with Borrower or any subcontractor, applicant for employment with Borrower or any subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by Borrower 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), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subcontracts. Borrower shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code. Borrower's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) 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 the City 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 entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Contract. As a condition to this Agreement, Borrower shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the executed form by the San Francisco Contract Monitoring Division.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B ("Nondiscrimination in Contracts") and 12C ("Nondiscrimination in Property Contracts") of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Borrower shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Borrower understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions

of this Agreement may be assessed against Borrower and/or deducted from any payments due Borrower.

9. MacBride Principles. Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Borrower acknowledges and agrees that he or she has read and understood this Section.

10. Tropical Hardwood & Virgin Redwood Ban. Pursuant to § 804(b) of the San Francisco Environment Code, City urges all grantees and borrowers not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

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

12. Submitting False Claims; Monetary Penalties. Any borrower, grantee, contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A borrower, grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the borrower, grantee, contractor, subcontractor or consultant:

(a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;

(b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

(c) conspires to defraud the City by getting a false claim allowed or paid by the City;

(d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or

(e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

13. Sunshine Ordinance.

(a) Borrower acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Borrower that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request. Further, Borrower specifically agrees that any meeting of the governing body of its general partner/manager that addresses any matter relating to the Project or to Borrower's performance under this Agreement will be conducted as a passive meeting. **[Substitute last sentence if Borrower is LP/LLC: Further, Borrower specifically agrees that any meeting of the governing body of its general partner/manager that addresses any matter relating to the Project or to Borrower's performance under this Agreement will be conducted as a passive meeting.]**

(b) By executing this Agreement, Borrower agrees to comply with the provisions of Chapter 12L of the San Francisco Administrative Code to the extent applicable. **[If Borrower is not a nonprofit corporation, may delete remainder of Subsection.]** By executing this Agreement, Borrower agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the San Francisco Administrative Code. Borrower further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Borrower acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. Borrower further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

(c) In accordance with the Citizen's Right to Know Act of 1998 (S. F. Admin. Code Chapter 79), no officer, department, board or commission of the City may approve a City Project, as defined in Chapter 79, unless a sign has been posted on the applicable property at least fifteen (15) days before approval. A City Project is a project that involves new construction, a change in use or a significant expansion of an existing use where the City funding for the project is \$50,000 or more. If the loan will be used for a City Project, this Agreement

will not become effective until fifteen (15) days following the posting of the requisite sign, or, in the alternative, thirty (30) days following the delivery of written notices to residents and owners within 300 feet of the Site, and the City will have the right to nullify or revoke this Agreement without cost or liability of any sort whatsoever at any time before that date. If Borrower believes that this Agreement relates to a City Project and that the requisite sign has not been posted, Borrower must notify the City so that the City may determine the applicability of Chapter 79, and, if necessary, post the requisite sign.

14. Prohibition on Use of Public Funds for Political Activities. Borrower shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Borrower is subject to the enforcement and penalty provisions in Chapter 12G.

15. Nondisclosure of Private Information. Borrower has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information", and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Borrower agrees that any failure of Borrower to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against Borrower pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Borrower.

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

(a) Borrower shall remove all graffiti from any real property owned or leased by Borrower in the City and County of San Francisco within forty eight (48) hours of the earlier of Borrower's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Borrower to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any

mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

(b) Any failure of Borrower to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

17. Resource-Efficient Building Ordinance. Borrower acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. Borrower hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Property.

18. Consideration of Criminal History in Hiring and Employment Decisions.

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

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

(c) Borrower shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Borrower’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

(e) Borrower or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 16.16(d), above. Borrower or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Borrower or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Borrower or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Borrower and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Borrower or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Borrower understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

19. Food Service Waste Reduction Requirements. Borrower agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Borrower agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Borrower agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Borrower's failure to comply with this provision.

20. Bottled Drinking Water. Unless exempt, Borrower agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Agreement as though fully set forth.

EXHIBIT F
Lobbying/Debarment Certification Form

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This lobbying certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

3. Neither the undersigned nor its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. The undersigned will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of \$100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities and will obtain the certification of each contractor or subcontractor whose bid is accepted that such contractor or subcontractor is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities.

[BORROWER'S NAME],
a California [Entity Type]

By: [Borrower's name],
a California [Entity Type]
Its: Sole Member

By: _____
Name: [Name]
Title: [Title]

[NAME OF BORROWER]:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT G
Form of Annual Monitoring Report

Attached.

EXHIBIT H

Tenant Selection Plan Policy

This policy is in addition to the obligations to comply with applicable federal, state and local civil rights laws, including laws pertaining to reasonable accommodation and limited English proficiency (LEP),¹ **and the applicable provision of the Violence Against Women Act, Pub. Law 109-62 (January 5, 2006), as amended.**

Application Process

- **Application Materials.** MOHCD shall provide an application to be used prior to the housing lottery. The housing provider agrees to use this application to determine lottery eligibility. The housing provider's written and/or electronic application materials should:
 - outline the screening criteria that the housing provider will use;
 - be in compliance with San Francisco Police Code Article 49 or the Fair Chance Ordinance,
 - outline how an applicant may request a modification of the admission process and/or a change in admission policies or practices as a reasonable accommodation;
 - be written in language that is clear and readily understandable,
- **First Interview.** In accordance with the housing provider policies, an initial interview is required to assess each applicant's minimum eligibility requirements for housing units. All applicants shall be offered the opportunity for an interview in lottery rank order.
- **Second Interview.** Before issuing a denial, the housing provider should consider offering a second interview to resolve issues and inconsistencies, gather additional information, and assist as much as possible with a determination to admit the applicant.
- **Confidentiality.** All information provided will be kept confidential and be used only by the housing provider, the referring agency and the funding agency for the purpose of assisting and evaluating the applicant in the admission process. All applicant information shall be retained for 12 months after the final applicant interview.
- **Delays in the Process.** If delays have occurred or are likely to occur in the application and screening process or the process exceeds the housing provider's normal timeline for application and screening, the housing provider must immediately inform the referring agency and the funding agency, of the status of the application, the reason for the delay and the anticipated time it will take to complete the application process.

¹*See for e.g.*, Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), 42 U.S.C. §§ 3601, et seq.; 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7; Executive Order 13,166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000); Department of Housing and Urban Development Limited English Proficiency Guidance, 72 Fed. Reg. 2732 (Jan. 22, 2007); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 24 C.F.R. Parts 8 and 9; Title II of the Americans with Disabilities Act of 1990, as amended; California Fair Employment and Housing Act, Gov't Code §§ **12,955-12,956.2; Unruh Civil Rights Act, Civil Code § 51; California Disabled Persons Act, Civil Code § 51.4;** Dymally-Alatorre Bilingual Services Act, Gov't Code §**7290-7299.8; San Francisco Language Access Ordinance, No. 202-09 (April 14, 2009)**

- **Problems with the Referring Agency.** If at any point the housing provider has difficulty reaching or getting a response from the applicant and referring agency, the housing provider must immediately contact the referring agency, if possible, and the funding agency, DPH or HSA.
- **Limited English Proficiency Policy.** Throughout the application process, the housing provider must comply with City policy for language access requirements for applicants with limited English proficiency.

Reasonable Accommodation and Modification Policy

Reasonable Accommodation: The application process should provide information about how an applicant may make a reasonable accommodation request. At any stage in the admission process, an applicant may request a reasonable accommodation, if the applicant has a disability and as a result of the disability needs a modification of the provider's rules, policies or practices, including a change in the way that the housing provider communicates with or provides information to the applicant that would give the applicant an equal chance to be selected by the housing provider to live in the unit.

Reasonable Modification: Applicant may request a reasonable modification if he or she has a disability and as a result of the disability needs:

- a physical change to the room or housing unit that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site;
- a physical change in some other part of the housing site that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site.

Response to Request: The housing provider shall respond to a request for reasonable accommodation or modification within ten (10) business days. The response may be to grant, deny, or modify the request, or seek additional information in writing or by a meeting with the applicant. The housing provider will work with the applicant and referring agency to determine if there are ways to accommodate the applicant.

The housing provider shall grant the request if the provider determines that:

- the applicant has a disability;
- reasonable accommodation or modification is necessary because of the disability; and
- the request is reasonable (i.e., does not impose an undue financial or administrative burden or fundamentally alter the nature of the housing program.)

If the reasonable accommodation request is denied, the rejection must explain the reasons in writing. If the denial of the reasonable accommodation request results in the applicant being denied admission to the unit, the provisions of the section on Notice of Denial and Appeal Process apply.

Notice of Denial and Appeal Process

- The housing provider shall:
 - Hold a comparable unit for the household during the entire appeal process.
 - promptly send a written and electronic notice (to the addresses provided) to each applicant denied admission with a written and/or electronic copy to the referring agency and the funding agency. The notice should:
 - list all the reasons for the rejection, including the particular conviction or convictions that led to the decision in cases where past criminal offenses were a reason for rejection;
 - explain how the applicant can request an in person appeal to contest the decision;
 - state that an applicant with a disability is entitled to request a reasonable accommodation to participate in the appeal;
 - inform the applicant that he or she is entitled to bring an advocate or attorney to the in person appeal;
 - provide referral information for local legal services and housing rights organizations;
 - describe the evidence that the applicant can present at the appeal;
 - give applicants denied admission a date within which to file the appeal, which shall be at least ten (10) business days from the date of the notice;
 - unless an extension is agreed to by the applicant and the housing provider, hold the appeal within ten (10) business days of the request for the appeal;
 - confine the subject of the appeal to the reason for denial listed in the notice;
 - give the applicant a chance to present documents and/or witnesses showing that he or she will be a suitable tenant;
 - have an impartial supervisor or manager from the housing provider, but who is not the person who made the initial decision or a subordinate of the person who made the initial decision, conduct the appeal;
 - within 5 business days of the in person appeal, provide the applicant with a written decision that states the reason for the decision and the evidence relied upon. A copy of the written decision must be sent (electronically or otherwise) to the referring agency and the funding agency.

- If the rejection is based on a criminal background check obtained from a tenant screening agency, the Fair Chance Ordinance imposes additional notice requirements.

EXHIBIT I

Tenant Screening Criteria Policy

The screening criteria and considerations outlined below encourage providers to “screen in” rather than “screen out” applicants. These requirements are also designed to satisfy the requirements of San Francisco Police Code Article 49, Sections 4901-4920 or the Fair Chance Ordinance. This policy describes a minimum level of leniency; providers are encouraged to adopt less restrictive policies and processes whenever appropriate. For example, providers may opt not to review or consider applicant criminal records at all.

Screening Criteria

- Housing providers shall not automatically bar applicants who have a criminal record² in recognition of the fact that past offenses do not necessarily predict future behavior, and many applicants with a criminal record are unlikely to re-offend.
- Housing providers shall not consider:
 - arrests that did not result in convictions, except for an open arrest warrant;
 - convictions that have been expunged or dismissed under Cal. Penal Code § 1203.4 or 1203.4a;³
 - juvenile adjudications.
- Housing providers shall consider:
 - the individual circumstances of each applicant; and
 - the relationship between the offense, and
 - (1) the safety and security of other tenants, staff and/or the property; and
 - (2) mitigating circumstances such as those listed below.
 - only those offenses that occurred in the prior 7 years, except in exceptional situations, which must be documented and justified, such as where the housing provider staff is aware that the applicant engaged in violent criminal activity against staff, residents or community members and/or that the applicant intentionally submitted an application with materially false information regarding criminal activity.
 - mitigating factors, including, but not limited to:
 - (1) the seriousness of the offense;
 - (2) the age and/or circumstances of the applicant at the time of the offense;
 - (3) evidence of rehabilitation, such as employment, participation in a job training program, continuing education, participation in a drug or alcohol treatment program, or letters of support from a parole or probation officer, employer, teacher, social worker, medical professional, or community leader;

² The policy recognizes that some housing may be subject to mandatory laws that require the exclusion of an applicant based upon certain types of criminal activity.

³ The purpose of the statute is allow a petitioner to request a dismissal of the criminal accusations, a change in plea or setting aside of a verdict and to seek to have certain criminal records sealed or expunged and a release “from all penalties and disabilities resulting from the offense.”

- (4) if the offense is related to acts of domestic violence committed against the applicant;
- (5) if the offense was related to a person's disability.

EXHIBIT J
Reserved

EXHIBIT K
Reserved

EXHIBIT L
Insurance Requirements

Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date of this Agreement throughout the Compliance Term at no expense to the City: **[Any reduction in coverage is subject to approval by Risk Manager, Project Manager and City Attorney.]**

1. Borrower, Contractors.

(a) to the extent Borrower 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, injury or illness;

(b) commercial general liability insurance, with limits no less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate 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; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Borrower is conducting any activity on, alteration or improvement to the Site with risk of explosions, collapse, or underground hazards;

(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) professional liability insurance of no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Borrower's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Borrower shall assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Borrower's officers and employees against dishonesty with respect to the Funds of no less than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss, including the City as additional obligee or loss payee;

(f) pollution liability and/or asbestos pollution liability applicable to the work being performed with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This coverage

shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Borrower's contractor, provided that the policy must be "claims made" coverage and Borrower must require Borrower's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

2. Property Insurance.

Borrower must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) Prior to construction:

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

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-project basis; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

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

(c) Upon completion of construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor. For rehabilitation/construction projects that are unoccupied by residential or commercial tenants, tenant must obtain Property Insurance by the date that the project receives a Certificate of Substantial Completion.

(ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site that is used by

Borrower for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as loss payee.

The following notice is provided in accordance with the provisions of California Civil Code Section 2955.5: Under California law, no lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

[Note: May delete the following section if inapplicable. Renumber if deleted.]

3. Commercial Space.

Borrower must require that all nonresidential tenants' liability insurance policies include Borrower and the City as additional insureds, as their respective interests may appear. Throughout the term of any lease of Commercial Space in the Project, Borrower 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.

3. General Requirements.

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

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

(c) With respect to any property insurance, Borrower hereby waives all rights of subrogation against the City 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 Borrower's insurance by the City will not relieve or decrease the liability of Borrower under this Agreement.

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

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

(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 Agreement, 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) Borrower must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

[If the environmental reports show the presence of, or activities may cause exposure to, hazardous materials, special coverage will be required. Check with Risk Manager.]

Exhibit M
MOHCD Residual Receipts Policy

Attached.