File No. 130794 Committee Item No. _____
Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS

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Completed by: _____ **Date** _____
Completed by: Alisa Miller **Date** September 12, 2013

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FILE NO. 130794 RESOLUTION NO.

[Disposition and Development Agreement - Golub Real Estate and Mercy Housing - 280 Beale Street (Transbay Block 6) - $30,000,000]

Resolution retroactively approving and authorizing the Office of Community Investment and Infrastructure, as Successor Agency to the San Francisco Redevelopment Agency, to enter into a Disposition and Development Agreement for the sale and development of land located at 280 Beale Street, Assessor's Parcel No. 3738-004, commonly known as Transbay Block 6, with Golub Real Estate Corporation, an Illinois corporation, and Mercy Housing California, a California non-profit public benefit corporation beginning April 16, 2013.

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

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

Redevelopment Agency to the Center. Under the Cooperative Agreement, the State relied on tax increment financing under a redevelopment plan to improve and sell the parcels; and

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

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

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

Agreement, including Blocks 2-12 and Parcel F (Section 2.1 of the Option Agreement at p. 4); and

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

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

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

WHEREAS, Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal. Health & Safety Code § 34177.5 (a). Under this limited

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

WHEREAS, Under Redevelopment Dissolution Law, a successor agency may request that the Department of Finance ("DOF") "provide written confirmation that its determination of [an] enforceable obligation as approved in a Recognized Obligation Payment Schedule ["ROPS"] is final and conclusive." Cal. Health & Safety Code § 34177.5 (i). To be eligible for a final and conclusive determination, the enforceable obligation must provide for the "irrevocable commitment of property tax revenue and . . . the allocation of such revenues is expected to occur over time." Id. If DOF issues a final and conclusive determination, DOF will not question the existence of the enforceable obligation in the future, but may still review whether specific payments under the enforceable obligation, as appearing on a ROPS, "are required," Id; and

WHEREAS, On November 7, 2012, the Successor Agency submitted a request to DOF that it determine "finally and conclusively" that the Transbay Implementation Agreement, AB 812, and the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement ("Pledge Agreement") are enforceable obligations. The request explained that each of these obligations had previously appeared on a DOF-approved ROPS, that they met the statutory definition of an "enforceable obligation" and that they required the commitment of property tax revenue over time; and

WHEREAS, On April 15, 2013, DOF determined "finally and conclusively" that the Implementation Agreement, AB 812, and the Pledge Agreement are enforceable obligations that will not require additional DOF review in the future. Significantly, the effect of this DOF determination is to allow OCII to take the actions proposed under this Resolution, without additional review, because they are "in compliance with an enforceable obligation," Cal. Health & Safety Code § 34177.3; and

WHEREAS, The original proposal for Blocks 6/7 from Golub/Mercy included a purchase price of $30,000,000 to be paid by Golub, construction of 545 residential units (409 market-rate units, including 61 inclusionary units at 50 percent of area median income and 136 stand-alone affordable family units at 50 percent of area median income), and a requested subsidy from the Former Agency for the stand-alone affordable units of approximately $200,000 per unit. However, due to the dissolution of the Former Agency on February 1, 2012, and the challenges that created for funding the affordable component of the development, the original proposal from Golub/Mercy was revised; and

WHEREAS, The revised proposal for Blocks 6/7 from Golub/Mercy includes a purchase price of $30,000,000 to be paid by Golub (same as the original proposal), construction of 556 residential units (409 market-rate units and 147 stand-alone affordable family units at 50 percent of area median income), and payment of a $24.3 million affordable housing fee by Golub to fund all of the affordable housing units on Block 6 and a portion of the affordable housing units on Block 7. Based on this revised proposal, OCII staff negotiated the terms of a disposition and development agreement ("DDA") with Golub/Mercy for the sale and development of Block 6 with 409 market-rate units, 70 affordable units, shared open space, and a shared underground parking garage. The DDA, however, does not cover the development of Block 7, which includes 77 affordable units, a child care facility and shared

open space, because it will be constructed at a future date by Mercy, when additional affordable housing funding becomes available; and

WHEREAS, On April 16, 2013, the Commission on Community Investment and Infrastructure approved the DDA and the exercise of OCII's option to acquire Blocks 6/7 from the TJPA pursuant to the Option Agreement. OCII will deliver written notice to the TJPA and acquire Blocks 6/7 prior to close of escrow with Golub under the DDA. Golub will acquire all of Blocks 6/7 from OCII then subdivide the larger parcel into separate parcels, including Block 6 and Block 7. Once the properties are subdivided, Block 7 and the Affordable Airspace Parcels on Block 6 will be reconveyed to OCII for development at a later date, subject to a separate agreement between OCII and Mercy. Provided, however, that the DDA also provides that if a subdivision map is finalized and recorded prior to OCII's transfer to Golub, then only the Block 6 land parcel. Furthermore, the DDA provides that, prior to its development, OCII will permit Golub and Mercy to use Block 7 for staging related to the construction of Block 6, pursuant to a license agreement that will be executed at a future date; and

WHEREAS, Block 6, a TJPA-owned parcel, which will be transferred to OCII, located at 280 Beale Street, the northeast corner of Folsom and First Streets, Assessor's Block No. 3738, Lot No. 004, San Francisco, California, in the Project Area, is an underutilized lot currently improved by a surface parking lot ("Property"); and

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

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

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

WHEREAS, Ground leases with Mercy for the affordable housing parcels on both Block 6 and Block 7 will be presented to the Board of Supervisors at future dates for consideration as separate actions from the approval of the DDA; now, therefore, be it

RESOLVED, That the Board of Supervisors of the City and County of San Francisco does hereby find and determine that the sale of the Property from OCII to Golub Real Estate Corporation, an Illinois corporation: 1) includes consideration to be received by OCII that is not less than the fair reuse value at the use and with the covenants and conditions and developments costs authorized by the DDA; 2) includes a purchase price of $30,000,000, which was the highest price achieved through a competitive request for proposals process based on the development permitted on the site and the affordable housing requirements of the Redevelopment Plan, and which will be deposited into a Trust Account maintained by the TJPA for use to help pay the cost of constructing the new Transbay Transit Center; 3) will provide 70 units affordable family housing for households with incomes at or below 50 percent of area median income; 4) will provide $24.3 million in funding for affordable housing, of which approximately $14 million will be used to subsidize the 70 affordable family units to be developed on the Property and $10.3 million will be used to help subsidize the 77 affordable family units proposed for development on Block 7; and 5) will assist in the elimination of blight

by converting a underutilized parking lot into a high-density, mixed-use, mixed-income residential development; and, be it

FURTHER RESOLVED, That the Board of Supervisors hereby approves and authorizes OCII to execute the DDA for the sale of the Property from the Office of Community Investment and Infrastructure to Golub Real Estate Corporation, an Illinois corporation, substantially in the form of the DDA lodged with the City Attorney, and to take such further actions and execute such documents as are necessary to carry out the DDA on behalf of OCII.

KEYSER MARSTON ASSOCIATES
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

To: Mike Grisso, Senior Project Manager
Office of Community Investment and Infrastructure as Successor Agency to the Redevelopment Agency of the City and County of San Francisco

From: Tim Kelly

Date: August 28, 2013

Subject: Transbay Block 6: Estimated 2011 Hypothetical Land Value

Keyser Marston Associates, Inc. (KMA) has prepared this memorandum for the Office of Community Investment and Infrastructure as Successor Agency to the Redevelopment Agency of the City and County of San Francisco. The purpose is to provide an estimate of the hypothetical land value based on the highest and best use of Block 6 at the time the responses to the RFP for Block 6 were received in October 2011. The estimate assumes that a prospective buyer does not have the obligations as stated in the Purchase and Sale Agreement for affordable housing and community benefits. However, it is assumed that the buyer would need to fulfill the standard inclusionary requirement.

Block 6 is a 42,625-square-foot parcel on Folsom Street between Fremont and Beale Streets. The block is located within San Francisco's Transbay/Rincon Hill area, adjacent to the Financial District, with excellent views of San Francisco, the Bay, and the Bay Bridge, and just two blocks south of the future site of the new Transbay Transit Center, scheduled for completion in 2017. The block is also close to the Ferry Building, Yerba Buena Gardens, AT&T Ballpark and Mission Bay.

The hypothetical land value is based on the highest and best of Block 6 which is entitled for development of a high-density residential project with ground-floor retail. The entitlements allow approximately 479 residential units in a market rate tower (including the 15% affordable component).

This valuation analysis is a retrospective assessment of land values in 2011. At that time, the economy was emerging from a major recession. However, the investment environment in San Francisco has traditionally been one of the strongest in the nation. Market activity in 2011 was primarily for apartments and increased financing of

multifamily properties was beginning to be seen. National apartment developers and REITs were becoming more active. In late 2010 and 2011, there were limited publicly available sales of sites for development of high density apartments and typically sales prices "per door" were lower than prices paid by condominium developers prior to the recession. Multiple variables impacted the range of pricing, including such factors as: intrinsic value of location, expensive construction costs with high density development relative to value, BMR requirements, and restrictive financing criteria for new condominium developments that supported premium values prior to the recession. Reported land sales for high density residential sites include:

- *Rincon Hill*: In late 2010, 45 Lansing reportedly sold for $57,373 per unit. The site is small at 15,000 square feet and the entitlement allowed for a tower with a density at over 600 units per acre. After the sale, the entitled units were redesigned and increased up to 320 and the land value per entitled unit is adjusted to $38,900. Construction commenced in 2013 on a 39 story condominium tower.

- *South of Market*: For a site at 900 Folsom at Sixth Street, the reported price in late 2011 was approximately $69,000 per unit. The project is a 282 unit project in a concrete construction type. The density is approximately 218 units per acre. 15% of the units will be affordable. The project is under construction.

- *Mission Bay*: There were multiple land sales for apartment sites. In late 2010, UDR purchased a site for approximately $75,000 per unit. The project at Third and Channel Streets, known as Channel Mission Bay, is now under construction. Urban Housing Group purchased a site on Fourth Street for approximately $81,000 per unit and is now opened as Strata Apartments. In 2011, BRE Properties purchased two sites for approximately $115,000 per unit and construction commenced in 2013. For the reported Mission Bay land sales, the density is 160 units per acre or less. Also under the existing agreement between the Master Developer (seller of the sites) and the former Redevelopment Agency, the private development sites are all market rate units and affordable housing is developed separately on affordable sites.

- *Block 6:* In 2011, Golub offered $73,350 per unit for the market rate tower site. The offering included 15% inclusionary units within the 409 unit tower. It should be noted that while the Block 6 value per unit is less than Mission Bay, the density of the Block 6 tower site is substantially higher at approximately 380 units per acre.

In summary, for sites purchased in late 2010 and in 2011, the values per apartment unit ranged from $69,000 for a south of Market location to $75,000 to $115,000 in Mission Bay and $73,350 per unit for the market rate tower site on Block 6.

Based on the above, the hypothetical value for Block of $73,350 per unit is reasonable and is consistent with the Golub offer for the market rate tower on Block 6. The $73,350 per unit is higher than the reported 900 Folsom sale. The estimated value per unit is lower than Mission Bay, but the density is over twice that of Mission Bay, justifying a lower value per unit than Mission Bay.

In conclusion, KMA would estimate the hypothetical value for Block 6 to be $35.13 million based on 479 entitled units.

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

One South Van Ness Avenue
San Francisco, CA 94103
415.749.2400

33433 Report

280 Beale Street (Transbay Block 6)

August 29, 2013

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

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

Pursuant to Section 33433, a copy of the DDA is included with this report as Attachment 1 and both the DDA and this report have been submitted to the Clerk of the Board and made available for public inspection and copying on August 30, 2013, in advance of the

September 1, 2013, date of the first publication of the notice of the public hearing on September 17, 2013. Below is a summary of the agreement, as required by Section 33433, Subsections (2)(B)(i-v):

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

Block 6 is currently owned by the Transbay Joint Powers Authority ("TJPA") and will be transferred to OCII pursuant to the Option Agreement at no cost. All clearance costs will be paid by the Developer, pursuant to the DDA, and there are no relocation costs. All improvements will be constructed at the development team's cost. However, pursuant to the Transbay Redevelopment Project Implementation Agreement ("Implementation Agreement"), the DDA provides that the Developer shall be reimbursed up to $2,250,000 for the cost of constructing streetscape improvements on Blocks 6 and 7. In the original RFP, OCII was to provide this reimbursement. However, due to the dissolution of the Former Agency and the lack of funding available to OCII, the DDA states that OCII will work with the Interagency Plan Implementation Committee ("IPIC") to allocate funds from the proposed Mello-Roos Community Facilities District ("CFD") to reimburse the Developer, up to a maximum of $2,250,000. Block 6 is required to be part of the proposed CFD will be subject to the special tax.

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

The highest and best use value of Block 6 at the time the responses to the RFP were received in October 2011 has been estimated by Keyser Marston Associates, Inc. ("KMA") to be $35.13 million. The highest and best use value is the value of Block 6 as a market-rate residential development with 15 percent inclusionary affordable housing, or a total of 407 market-rate units and 72 inclusionary affordable units. A memorandum summarizing the highest and best use value calculated by KMA is included with this report as Attachment 2.

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

The purchase price in the DDA for Block 6 is $30 million. In addition, the DDA requires the Developer to pay $24.3 million for affordable housing ("Affordable Housing Fee"), for a total of $54.3 million. The Affordable Housing Fee will be paid to OCII and used to fund the entire subsidy required for the affordable residential units on Block 6 and a portion of the subsidy required for the affordable housing units on Block 7, to be constructed at a future date. Approximately $14 million of the Affordable Housing Fee

will be used for Block 6 and approximately $10.3 million will be used for Block 7. Based on the anticipated subsidy required for the affordable housing units (approximately $200,000 per unit), the Affordable Housing Fee will allow OCII to subsidize a total of approximately 120 affordable housing units, or nearly 70 percent more affordable housing than what would be achieved under the highest and best use scenario described above. The additional affordable housing units are required in order to comply with Assembly Bill 812 ("AB 812"), which was enacted by the California Legislature in 2003. AB 812 mandates that a total of 35 percent of all residential units developed in the Project Area be affordable to low- and moderate-income households.

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

Block 6 was formerly occupied by a portion of the Embarcadero Freeway, which was demolished after the 1989 Loma Prieta Earthquake. After the freeway was demolished, Block 6 was a surface parking lot operated by the State of California, until it was acquired by the TJPA to be used for construction staging. Surface parking were identified as an economic indicator of blight in the 2005 Report on the Redevelopment Plan for the Transbay Redevelopment Project, which was prepared as part of the adoption materials for the Board of Supervisors. The section of the Report on the Redevelopment Plan titled "Underutilized Areas and Vacant Lots" on Page V-8 states, "Given the Project Area's density and location in the Financial District, surface parking lots do not maximize the economic and development potential of the lot or area." Block 6 is identified as an "Underutilized Area" on Figure V-3 in the Report on the Redevelopment Plan. The Golub/Mercy project on Block 6 will assist in the elimination of blight by converting a surface parking lot/construction staging area into a dense, mixed-use residential development.

Prepared by: Michael J. Grisso, Senior Project Manager

Attachment 1: Disposition and Development Agreement, April 16, 2013

Attachment 2: Keyser Marston Associates, Inc., Memorandum, August 23, 2013

Commission on Community Investment and Infrastructure

RESOLUTION NO. 9-2013
Adopted April 16, 2013

CONDITIONALLY APPROVING, PURSUANT TO THE TRANSBAY IMPLEMENTATION AGREEMENT, THE SCHEMATIC DESIGN FOR A PROPOSED HIGH-DENSITY RESIDENTIAL PROJECT ON TRANSBAY BLOCKS 6/7, LOCATED ON FOLSOM STREET BETWEEN FREMONT AND BEALE STREETS, AND MAKING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; TRANSBAY REDEVELOPMENT PROJECT AREA

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

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

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

WHEREAS, In 2005, at the same time the Redevelopment Plan was adopted, the Former Agency adopted the Development Controls and Design Guidelines for the Transbay Redevelopment Project (the "Development Controls"), which provides detailed controls and recommendations for development within Zone One of the Project Area, including Blocks 6/7. In 2006, the Former Agency adopted the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (the "Streetscape and Open Space Plan"), which provides detailed concept plans

for all public infrastructure in the Project Area necessary for the development of the State-owned parcels; and,

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

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

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

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

WHEREAS, Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal. Health & Safety Code § 34177.5 (a). Under this limited authority, a successor agency may enter into contracts if a pre-existing enforceable obligation requires that action. See also Cal. Health & Safety Code § 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with an agency's authority under enforceable obligations to "enforce existing covenants and obligations, or . . . perform its obligation."). The Implementation

Agreement and several other Transbay obligations are "enforceable obligations" requiring OCII to take the actions proposed by this Resolution. Cal. Health & Safety Code § 34171 (d) (1); and,

WHEREAS, The Department of Finance ("DOF") is currently reviewing the Successor Agency's request that DOF determine "finally and conclusively" that the Implementation Agreement, AB 812, and the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement are enforceable obligations that will not require additional DOF review in the future. Until DOF issues a Final and Conclusive Determination acknowledging OCII's obligations to dispose of the State-owned parcels, OCII's acquisition and disposition of Blocks 6/7 will be subject to additional review and approval by the Oversight Board of the City and County of San Francisco and DOF; and,

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

WHEREAS, Under the revised proposal, Blocks 6/7 will include a total of 556 residential units, as well as ground-floor retail, shared open space and underground parking. Based on this revised proposal, OCII staff negotiated the terms of a disposition and development agreement (the "DDA") with Golub/Mercy for the sale of Blocks 6/7 and the development of Block 6 with 409 market-rate units, 70 affordable units, shared open space, and a shared underground parking garage. The DDA, however, does not cover the development of Block 7, which includes 77 affordable units, a child care facility and shared open space, because it will be constructed at a future date by Mercy, when additional affordable housing funding becomes available; and,

WHEREAS, OCII staff requested that the development team complete the schematic design for Blocks 6/7 all at once, even though the Block 7 Affordable Project will be constructed later. The Development Controls and the RFP envisioned both parcels being developed as a fully integrated project, so that the blocks will complement each other and work together, even though they are being designed by different architects. The development team agreed and SCB and Santos Prescott worked together and with OCII staff to prepare a unified schematic design that was reviewed and approved by the Transbay Citizens Advisory Committee (the "CAC") at its January 10, 2013, meeting; and,

WHEREAS, OCII has reviewed the design and it conforms to all of the requirements of the Redevelopment Plan, the Development Controls and the Streetscape and Open

Space Plan. In addition, the development team has created an attractive project and has responded to all of OCII's and the CAC's comments and revisions to the design for Blocks 6/7. However, as is typical, there remain a number of detailed issues that must be resolved in subsequent design stages (i.e., design development or construction documents); and,

WHEREAS, A copy of the schematic design is on file with the Commission Secretary in the OCII office; and,

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

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

a. Addendum #1 – adopted by the TJPA on June 2, 2006, assessed the additional use of the temporary Transbay Terminal by Greyhound, another transit carrier; and,

b. Addendum #2 – adopted by the TJPA on April 19, 2007, assessed modifications of the rail tracks and underground tunnels leading to the new Transit Center; and,

c. Addendum #3 – adopted by the TJPA on January 17, 2008, evaluated the addition of 546 Howard Street to the Transit Center; and,

d. Addendum #4 – adopted by the TJPA on October 17, 2008, evaluated the configuration, boarding platforms and passenger waiting areas, and bus staging areas of the temporary Terminal, and associated modifications to bus lanes on surrounding streets; and,

e. Addendum #5 – adopted by the TJPA on April 9, 2009, evaluated the building design of the new Transit Center; and,

f. Addendum #6 – adopted by the TJPA on December 8, 2011, evaluated minor refinements to the proposed bus ramp component of the Transit Center; and,

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

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

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

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

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

RESOLVED, The Commission on Community Investment and Infrastructure finds and determines that the conditional approval of the schematic design for Blocks 6/7 is an Implementing Action within the scope of the project analyzed in the Final EIS/EIR and Addenda and requires no additional environmental review pursuant to State CEQA Guidelines Sections 15180, 15168, 15162 and 15163 for the following reasons:

a. The Implementing Actions are within the scope of the project analyzed in the Final EIS/EIR and Addenda and no major revisions are required due to the involvement of new significant environmental effects or a substantial increase in the severity of significant effects previously identified in the Final EIS/EIR; and,

b. No substantial changes have occurred with respect to the circumstances under which the project analyzed in the Final EIS/EIR and Addenda was undertaken that would require major revisions to the Final EIS/EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Final EIS/EIR; and,

c. No new information of substantial importance to the project analyzed in the Final EIS/EIR and Addenda has become available which would indicate that (a) the Implementing Actions will have significant effects not discussed in the Final EIS/EIR; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the Final EIS/EIR will substantially reduce one or more significant effects on the environment; and, be it further

RESOLVED, The Office of Community Investment and Infrastructure, acting as the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, hereby approves the schematic design for a proposed high-density residential project on Transbay Blocks 6/7, located on Folsom Street between Fremont and Beale Streets, subject to the following conditions:

1. The location of the kitchen exhaust for restaurant use at Block 6 shall be located so as to minimize the effects that fumes may have on both nearby residences as well as private and publicly accessible open spaces.

2. Further study of the detailing of Buildings in Block 7, including but not limited to the following: a) railings for the ramps of Buildings 7A and 7B; b) return walls of the townhouses to consistently carry the materials proposed for the façade; c) design of bay windows of the townhouses so as to clearly define the areas of glazing from those finished with fiber cement siding; d) the fence proposed at the north side so as to ensure privacy and visual interest from the courtyard and the concrete walls surrounding the playground area; e) exterior walkways that provide access to the third and fourth floor townhouses so as to ensure visual interest and articulation, and f) landscaping materials for the courtyard and perimeter landscaped areas.

3. The building materials, colors, finishes, architectural detailing (including window details) shall be subject to further review and approval by OCII staff during the Design Development phase. Materials and colors shall be provided as part of the review. Mock-ups of sufficient size shall be built on construction sites during an early phase of construction for OCII staff review and approval to ensure consistency with this Schematic Design.

4. The design of the trash and recycling areas shall be subject to further review and approval by OCII staff during the Design for Development phase to ensure that they allow for direct pick-up by the solid waste collector from the service areas to avoid trash and recycling bins on-street.

5. The generator and transformer rooms and other utility spaces shall be minimized and located along Clementina Street to the maximum extent possible.

6. All building signage shall be subject to further review by OCII staff review and approval. A signage plan shall be prepared prior to or concurrent with Design Development for OCII staff approval.

7. The design of the ground floor of Block 6 along Beale Street is subject to further review pending resolution of the interior uses at this location.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of April 16, 2013.

Natasha Jones

Commission Secretary

Commission on Community Investment and Infrastructure

RESOLUTION NO. 10-2013
Adopted April 16, 2013

AUTHORIZING, PURSUANT TO THE TRANSBAY IMPLEMENTATION AGREEMENT AND OPTION AGREEMENT, THE EXECUTIVE DIRECTOR TO EXERCISE AN OPTION TO PURCHASE BLOCKS 6/7 (BLOCK 3738, LOT 004), LOCATED ON FOLSOM STREET BETWEEN FREMONT AND BEALE STREETS, FROM THE TRANSBAY JOINT POWERS AUTHORITY AND TO EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT WITH GOLUB REAL ESTATE CORP., AN ILLINOIS CORPORATION, AND MERCY HOUSING CALIFORNIA, A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION, FOR A PROPOSED RESIDENTIAL PROJECT WITH 409 MARKET-RATE AND 70 AFFORDABLE UNITS ON BLOCK 6, AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; TRANSBAY REDEVELOPMENT PROJECT AREA

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

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

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

WHEREAS, In 2006, the TJPA and the Former Agency executed an agreement ("Implementation Agreement"), which required the Former Agency to take the lead role in facilitating the development of the State-owned parcels. Specifically,

the Implementation Agreement required the Former Agency to: (1) prepare and sell the State-owned parcels to third parties, (2) deposit the sale proceeds into a trust account to help the TJPA pay the cost of constructing the TTC, (3) implement the Redevelopment Plan to enhance the financial feasibility of the Project, and (4) fund the state-mandated affordable housing program; and,

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

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

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

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

WHEREAS, Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are "in compliance with an enforceable obligation that existed

prior to June 28, 2011." Cal. Health & Safety Code § 34177.5 (a). Under this limited authority, a successor agency may enter into contracts if a pre-existing enforceable obligation requires that action. See also Cal. Health & Safety Code § 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with an agency's authority under enforceable obligations to "enforce existing covenants and obligations, or . . . perform its obligation."). The Implementation Agreement and several other Transbay obligations are "enforceable obligations" requiring OCII to take the actions proposed by this Resolution. Cal. Health & Safety Code § 34171 (d) (1); and,

WHEREAS, Under Redevelopment Dissolution Law, a successor agency may request that the Department of Finance ("DOF") "provide written confirmation that its determination of [a] enforceable obligation as approved in a Recognized Obligation Payment Schedule ["ROPS"] is final and conclusive." Cal. Health & Safety Code § 34177.5 (i). To be eligible for a final and conclusive determination, the enforceable obligation must provide for the "irrevocable commitment of property tax revenue and . . . the allocation of such revenues is expected to occur over time." Id. If DOF issues a final and conclusive determination, DOF will not question the existence of the enforceable obligation in the future, but may still review whether specific payments under the enforceable obligation, as appearing on a ROPS, "are required," Id; and

WHEREAS, On November 7, 2012, the Successor Agency submitted a request to DOF that it determine "finally and conclusively" that the Transbay Implementation Agreement, AB 812, and the Transbay Redevelopment Project Tax Increment Allcoate and Sales Proceeds Pledge Agreement ("Pledge Agreement") are enforceable obligations. The request explained that each of these obligations had previously appeared on a DOF-approved ROPS, that they met the statutory definition of an "enforceable obligation" and that they required the commitment of property tax revenue over time; and

WHEREAS, On April 15, 2013, DOF determined "finally and conclusively" that the Implementation Agreement, AB 812, and the Pledge Agreement are enforceable obligations that will not require additional DOF review in the future. Significantly, the effect of this DOF determination is to allow OCII to take the actions proposed under this Resolution, without additional review, because they are "in compliance with an enforceable obligation," Cal. Health & Safety Code § 34177.3; and,

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

WHEREAS, Under the revised proposal, Blocks 6/7 will include a total of 556 residential units, as well as ground-floor retail, shared open space and underground parking. Based on this revised proposal, OCII staff negotiated the terms of a disposition and development agreement (the "DDA") with Golub/Mercy for the sale of Blocks 6/7 and the development of Block 6 with 409 market-rate units, 70 affordable units, shared open space, and a shared underground parking garage. The DDA, however, does not cover the development of Block 7, which includes 77 affordable units, a child care facility and shared open space, because it will be constructed at a future date by Mercy, when additional affordable housing funding becomes available; and,

WHEREAS, Approval of the DDA requires OCII to acquire Blocks 6/7 from the TJPA pursuant to the Option Agreement. If the Successor Agency exercises the option for Blocks 6/7, it will deliver written notice to the TJPA and acquire Blocks 6/7 prior to close of escrow with Golub under the DDA. Golub will acquire all of Blocks 6/7 from OCII then subdivide the larger parcel into separate parcels, including Block 6 and Block 7. Once the properties are subdivided, Block 7 will be reconveyed to OCII for development at a later date, subject to a separate agreement between OCII and Mercy. The DDA provides that, prior to its development, OCII will permit Golub and Mercy to use Block 7 for staging related to the construction of Block 6, pursuant to a license agreement that will be executed at a future date; and,

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

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

a. Addendum #1 – adopted by the TJPA on June 2, 2006, assessed the additional use of the temporary Transbay Terminal by Greyhound, another transit carrier; and,

b. Addendum #2 – adopted by the TJPA on April 19, 2007, assessed modifications of the rail tracks and underground tunnels leading to the new Transit Center; and,

c. Addendum #3 – adopted by the TJPA on January 17, 2008, evaluated the addition of 546 Howard Street to the Transit Center; and,

d. Addendum #4 – adopted by the TJPA on October 17, 2008, evaluated the configuration, boarding platforms and passenger waiting areas, and bus staging areas of the temporary Terminal, and associated modifications to bus lanes on surrounding streets; and,

e. Addendum #5 – adopted by the TJPA on April 9, 2009, evaluated the building design of the new Transit Center; and,

f. Addendum #6 – adopted by the TJPA on December 8, 2011, evaluated minor refinements to the proposed bus ramp component of the Transit Center; and,

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

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

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

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

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

RESOLVED, The Office of Community Investment and Infrastructure finds and determines that authorizing the Executive Director to exercise an option to purchase Blocks 6/7 and approving the DDA are Implementing Actions within the scope of the project analyzed in the Final EIS/EIR and Addenda and require no additional

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

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

RESOLVED, Based on the Department of Finance's Final and Conclusive Determination (April 15, 2013) that the Implementation Agreement is an enforceable obligation, the Office of Community Investment and Infrastructure, acting as the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, hereby authorizes the Executive Director to: (1) exercise an option to purchase Blocks 6/7 (Block 3738, Lot 004), located on Folsom Street between Fremont and Beale Streets, from the Transbay Joint Powers Authority pursuant to the Option Agreement; and (2) execute a Disposition and Development Agreement with Golub Real Estate Corp., an Illinois corporation, and Mercy Housing California, a California non-profit, substantially in the form approved by the City Attorney acting as counsel to OCII, and to execute any related documents.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of April 16, 2013.

Natasha Jones

Commission Secretary

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Real Estate & Development Services

Assessor's Block 3738, Lot 004
Transbay Block 6

Space Above This Line Reserved for Recorder's Use

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

The Successor Agency to the Redevelopment Agency of the City and County of San Francisco

and

Golub Real Estate Corp., an Illinois corporation

and

Mercy Housing California, a California non-profit public benefit corporation

FOR THE SALE AND DEVELOPMENT OF TRANSBAY BLOCK 6
(ASSESSOR'S BLOCK 3738, LOT 004)

Dated as of April 16, 2013

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement" or "DDA") is entered into as of April 16, 2013 , by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California (the "Successor Agency"), Golub Real Estate Corp., an Illinois Corporation (the "Developer") and Mercy Housing California, a California non-profit public benefit corporation (the "Affordable Developer") (collectively, the "Parties"). The Parties agree as follows:

RECITALS

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

B. The Former Agency, acting through the Board of Supervisors of the City, approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 (the "Redevelopment Plan"). Said Redevelopment Plan was filed in the Office of the Recorder of the City and County of San Francisco (the "Official Records").

C. On December 13, 2006, and in furtherance of the Redevelopment Plan, the Former Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, in Book B-103 of Official Records at page 210, as Document No. P-30087 (the "Project Area Declaration of Restrictions").

D. Per the Redevelopment Plan and the Transbay Redevelopment Project Tax Increment and Sales Proceeds Pledge Agreement (the "Pledge Agreement") between the Former Agency, the Transbay Joint Powers Authority (the "TJPA"), and the City and County of San Francisco (the "City"), land sale and net tax increment revenue generated by the parcels in the Project Area that are currently or formerly owned by the State of California (the "State") has been pledged to the TJPA to help pay the cost of building the Transbay Transit Center. The State-owned parcels include the development sites on Blocks 2 through 9, 11, and 12, and Parcels F, M and T.

E. In 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation ("Caltrans"), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-owned parcels to the City and the TJPA (the "Cooperative Agreement"). In 2006, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (the "Implementation Agreement") which requires the Successor Agency to prepare and sell the formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and affordable housing obligations. Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property (the "Option Agreement"), which sets forth the process for the transfer of certain of these parcels to the Former Agency to facilitate the sale of the parcels to private developers.

F. On July 6, 2011, the Former Agency complied with its obligations under the Implementation Agreement by issuing a Request for Proposals (the "RFP") from development teams to design and develop a high-density, mixed-income residential project on Blocks 6 and 7 in the Project Area. Blocks 6 and 7 comprise two adjacent development sites connected by a proposed extension of Clementina

Alley. Block 6 is a 42,625-square-foot parcel on Folsom Street between Fremont and Beale Streets, two blocks south of the future Transbay Transit Center. Block 7 is a 27,728-square-foot parcel located between Fremont and Beale Streets, immediately north of Block 6.

G. The development program for Blocks 6 and 7, as depicted on Attachment 1, Development Program, conforms to the goals and requirements of the Redevelopment Plan, the Development Controls and Design Guidelines for the Transbay Redevelopment Project (the "Development Controls"), and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (the "Streetscape Plan"). It includes (1) a market-rate residential project, consisting of approximately 350 market-rate units and inclusionary housing units in a 300-foot tower and a 50-foot townhouse development on Block 6 and (2) an affordable residential project consisting of approximately 100-150 subsidized affordable housing units in multiple buildings on Blocks 6 and 7. The development program also includes an open space parcel in the center of each block; a single, shared underground parking facility; a child care facility on Block 7; streetscape improvements, including the extension of Clementina Alley between Fremont and Beale Streets; ground-floor retail spaces along the Folsom Boulevard frontage; and a minimum LEED Silver level of certification.

H. Four proposals were received and deemed to meet the minimum threshold requirements defined in the RFP. Based on evaluation of the written proposals, as well as interviews with each team, the proposal from Golub Real Estate Corp. with Mercy Housing California, Solomon Cordwell Buenz, and Santos Prescott was scored the highest by a selection panel comprised of Former Agency staff, City staff, and a community representative. This proposal included a purchase price of $30,000,000 payable at the transfer of title; 545 residential units (409 market rate units, including 61 inclusionary units, and 136 Redevelopment Agency-sponsored affordable units); and a requested subsidy from the Former Agency of $186,000 per affordable unit.

I. On December 6, 2012, the Former Agency's Commission unanimously authorized the Former Agency, under its obligations in the Implementation Agreement, to begin drafting an exclusive negotiations agreement with the Developer.

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

K. Pursuant to the Redevelopment Dissolution Law, all of the Former Agency's assets (other than housing assets) and obligations were transferred to the Successor Agency. Some of the Former Agency's housing assets were transferred to the City, acting by and through the Mayor's Office of Housing ("MOH"). The Redevelopment Plan, Development Controls, and other relevant Project Area documents remain in effect.

L. Under the Redevelopment Dissolution Law, with approval from a successor agency's oversight board and the State of California's Department of Finance, a successor agency may continue to implement "enforceable obligations"—existing contracts, bonds, leases, etc.—which were in place prior to the suspension of redevelopment agencies' activities on June 28, 2011, the date that AB 26 was approved. Redevelopment Dissolution Law defines "enforceable obligations" to include bonds, loans, judgments or settlements, and any "legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy," (Cal. Health & Safety Code Section 34171(d)(1)(E)) as well as

certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. The Implementation Agreement, Pledge Agreement and Option Agreement meet the definition of "enforceable obligations" under the Redevelopment Dissolution Law.

M. AB 1484 authorizes successor agencies to enter into new agreements if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal. Health & Safety Code § 34177.5 (a). Under this limited authority, a successor agency may enter into contracts, such as this DDA, if a pre-existing enforceable obligation requires that action. See also Cal. Health & Safety Code § 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with an agency's authority under enforceable obligations to "enforce existing covenants and obligations, or . . . perform its obligation."). This Agreement, providing for the transfer of certain State-owned parcels to third parties, with the payment of the proceeds to the TJPA, resulting in the development of market-rate and affordable housing, is part of the Successor Agency's compliance with the pre-existing enforceable obligations under the Implementation Agreement and Option Agreement.

N. Due to the dissolution of the Former Agency, the subsidy required to construct the affordable residential project on Block 7 is not immediately available. Therefore, the Block 6 and 7 project will be phased and the program described in the RFP has been revised.

O. The parties currently anticipate that the development to be constructed pursuant to this Agreement will consist of the following components on Block 6: (1) a market-rate project consisting of 409 residential units on the Block 6 Tower, Podium 1, and Townhouse parcels (the "Market-Rate Project"); (2) an affordable project with approximately 70 residential units on the Block 6 Podium 2 parcel (the "Block 6 Affordable Project"); (3) streetscape improvements, including the construction of Clementina Alley; (4) ground-floor retail spaces on Folsom Street; (5) shared mid-block open space; and (6) off-street parking in an underground garage, which will include parking spaces for Block 7.

P. The Affordable Developer, working in conjunction with the Developer, will be obligated under the terms of this Agreement to develop the Block 6 Affordable Project. Accordingly, the Affordable Developer is a party to this Agreement specifically for obligations related to the Block 6 Affordable Project and the affordable project on Block 7. These obligations are primarily included in Article 4 and Section 9.03 of this Agreement.

Q. It is anticipated that the affordable project on Block 7, which will be constructed by the Affordable Developer pursuant to a separate agreement as funding becomes available, will have the following components: (1) approximately 80 residential units on the Block 7 Podium 1, Podium 2, and Townhouse parcels; (2) shared mid-block open space; (3) off-street parking in the Block 6 underground garage; and (4) a child care facility (collectively, the "Block 7 Affordable Project"). The Developer will have no obligation to construct the Block 7 Affordable Project; the Developer's obligations relative to the Block 7 Affordable Project will be met through the payment of the Block 7 Affordable Housing Fee as defined in Section 9.03(a).

R. The parties wish to enter into this Agreement to complete the sale of the Site to the Developer and Affordable Developer to construct the Improvements, as defined below.

ARTICLE 1 - CONTRACT TERMS

1.01 Successor Agency

The Successor Agency is a public body exercising its functions and powers and organized and existing under the California Community Redevelopment Law, as amended by the Redevelopment Dissolution Law, and includes any successor public agency designated by or pursuant to law. Pursuant to the Implementation Agreement and the Option Agreement, the Successor Agency has the duty to prepare and sell the Site.

1.02 Developer

The Developer is Golub Real Estate Corp., an Illinois corporation.

1.03 Affordable Developer

The Affordable Developer is Mercy Housing California, a California non-profit public benefit corporation.

1.04 Site

The Site is the real property located in the Transbay Redevelopment Project Area on Folsom Street between Fremont and Beale Streets that consists of three parcels as shown on the Site Plan (Attachment 2-A) and described in the Site Legal Description (Attachment 3-A) and contains approximately 42,625 square feet. The Developer will complete a lot line adjustment through the submittal of a lot line adjustment application to the City's Department of Public Works to reconfigure the parcels into the Market-Rate Parcel, the Block 6 Affordable Air Rights Housing Parcel, and the Block 7 Affordable Housing Parcel, as shown on the Proposed Site Plan (Attachment 2-B) and described in the Proposed Site Legal Description (Attachment 3-B).

1.05 Purchase Price

The purchase price for the Site, which the Developer shall deposit, in cash or immediately available funds, into the Trust Account, as defined in Section 2.03(f) below, shall be THIRTY MILLION AND 00/100 DOLLARS ($30,000,000) and shall be paid in one lump sum (less the Good Faith Deposit, defined in Section 1.07 below) at or prior to the close of Escrow (as defined in Section 2.02 below) simultaneously with transfer of title (the "Purchase Price"). If the Developer is not able to pay the Purchase Price by the Close of Escrow date specified in the Schedule of Performance, Attachment 4, an additional FOUR THOUSAND AND 00/100 ($4,000) shall be added to the Purchase Price for each calendar day beyond the Close of Escrow date specified in the Schedule of Performance until the date of the closing (the "Additional Purchase Payment"). In the event the Close of Escrow is after Sept. 1, 2013, the Additional Purchase Payment shall be increased to $7,000 per day.

The Developer shall not be required to pay the Additional Purchase Payment as a result of any delay or change to the Close of Escrow date caused or requested by the Successor Agency. Subject to the cost-sharing provisions in Section 9, the Developer also shall be responsible for paying any costs associated with this transaction, either directly or through reimbursement of any related Successor Agency or third party costs, including, but not limited to, title insurance, escrow fees, surveys, environmental review, parcel mapping, lot line adjustments, quiet title actions, permits, and inspections. The Successor Agency is selling the Site on an "as-is" basis, with Developer to rely solely on the results of its

investigations. The Successor Agency is not responsible for paying any costs associated with this transaction, except for staffing costs, as such costs are to be paid by the Successor Agency from the Negotiation Deposit (as defined below).

1.06 Negotiation Deposit

Within five (5) days of the Effective Date of this Agreement, Developer shall pay to the Successor Agency a non-refundable negotiation deposit of THREE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($350,000) (the "Negotiation Deposit") which shall be used by the Successor Agency to fund its staffing costs related to the RFP, this Agreement, and any other work related to this transaction.

1.07 Good Faith Deposit

Within thirty (30) days after the Effective Date of this Agreement, the Developer shall pay to the Successor Agency a non-refundable good faith deposit in the amount of TWO MILLION AND 00/100 DOLLARS ($2,000,000), which, if the Parties successfully close on the purchase-sale of the Site (or any portion of the Site pursuant to Section 1.04 and/or 2.03), shall be applied to the Purchase Price (the "Good Faith Deposit") and deposited into the Trust Account by the Successor Agency. Developer shall forfeit any right to reimbursement of the Good Faith Deposit or application of the Good Faith Deposit to the Purchase Price if Developer either (a) fails to close the transaction for any reason no later than October 1, 2013, or (b) in the case of an Event of Default by Developer as provided in Section 8.01, except if the Closing Date is extended as provided in Section 2.02(b) or except for an Event of Default by the Successor Agency as provided in Section 8.04.

1.08 Redevelopment Plan and Project Area Declaration of Restrictions

The Redevelopment Plan and the Project Area Declaration of Restrictions are the Redevelopment Plan and Project Area Declaration of Restrictions defined in the Recitals to this Agreement, as the same may be amended and extended from time to time. Development on the Site is subject to all the terms and conditions of the Redevelopment Plan and the Project Area Declaration of Restrictions.

1.09 Term of this Agreement/Schedule of Performance

(a) The term of this Agreement will begin on the Effective Date, as defined in Section 12.16, until the earlier of termination in accordance with its terms or Completion of Construction of Improvements has occurred (the "Term"). "Completion of Construction of the Improvements" shall be defined as Successor Agency receipt of a copy of the Final Certificates of Occupancy for the Improvements (as defined in the Scope of Development, Attachment 5), provided by the City of San Francisco's Department of Building Inspection ("DBI") ("Final C of O"), copies of which shall be provided to the Successor Agency's Executive Director no later than ten (10) business days after the Developer has received the Final C of O from DBI. Upon Developer's receipt of Final C of O, and Developer's subsequent submittal of Final C of O to the Successor Agency, and Successor Agency's issuance and recordation of a Notice of Termination, which the Agency agrees to promptly complete after receiving the Final C of O, Developer will be deemed to be discharged of all obligations of this Agreement, except for those provisions contained in Sections 5.01, 5.02 and 5.04. If a Final C of O for the Market-Rate Project is issued prior to a Final C of O for the Block 6 Affordable Project, the Successor Agency agrees to issue a partial Notice of Termination for the Market-Rate Project.

(b) Developer will perform its obligations under this Agreement in accordance with the Schedule of Performance, Attachment 4, subject to Section 8.07 (Force Majeure) and Section

2.07(a)(iii). Developer shall pay the Purchase Price at or prior to the Close of Escrow date specified in the Schedule of Performance or be subject to the Additional Purchase Payment as defined in Section 1.05.

1.10 Definitions/Interpretation of Agreement

(a) Terms are defined in Article 13 or have the meanings given them when first defined.

(b) Whenever an 'Attachment' is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Attachments are incorporated herein. Whenever a section, article or paragraph is referenced, it is a reference to this Agreement unless otherwise specifically referenced.

ARTICLE 2 - CONVEYANCE TERMS

2.01 Purchase and Development

Subject to all of the terms, covenants and conditions of this Agreement, Successor Agency agrees to sell and convey the Site (or a portion thereof as described in Section 2.03(d)) to Developer for the Purchase Price and for the purposes of developing, constructing, maintaining and operating the Market-Rate Improvements thereon, and Developer agrees to purchase the Site (or a portion thereof) from Successor Agency and pay the Purchase Price to Successor Agency. In accordance with this Agreement, Developer shall develop, construct, maintain and operate the Market-Rate Improvements thereon, and Affordable Developer shall develop, construct, maintain and operate the Block 6 Affordable Project, including the Block 6 Affordable Improvements thereon.

2.02 Escrow

(a) Open, Close of Escrow. On or before the date specified therefore in the Schedule of Performance, Attachment 4, Developer shall establish an escrow with any reputable title company doing business in the City and County of San Francisco selected by Developer and approved by Successor Agency ("Title Company") and shall notify Agency in writing of such escrow (the "Escrow"). At least fifteen (15) business days prior to the date specified for close of Escrow in the Schedule of Performance, Attachment 4, the Successor Agency and the Developer shall provide escrow instructions to the Title Company as shall be necessary and consistent with this Agreement; at the same time, providing copies to each other. At least two (2) business days prior to such date specified for close of Escrow, the parties shall each deposit into Escrow all documents and instruments that such party is obligated to deposit into Escrow in accordance with this Agreement.

(b) Closing Date. The Closing Date shall be no later than October 1, 2013. The Closing Date shall not be extended except for (i) force majeure as set forth in Section ____ herein, (ii) delays caused by the inability of the Successor Agency to deliver clean and insurable title as defined in Section 2.03. In the event the closing is delayed beyond Oct. 1, 2013 for any circumstance set forth in this Section 2.02(b), no further Additional Purchase Payment described in Section 1.05 shall be paid.

(c) Title, Escrow and Closing Costs. Developer shall pay to the Title Company or the appropriate payee thereof all title report costs; title insurance premiums and endorsement charges as requested by Developer; recording fees; and any escrow fees in connection with the conveyance of the Site by Successor Agency to Developer. The Successor Agency will not incur any expenses, in this Escrow transaction, except as otherwise provided in Section 1.05.

2.03 Title

(a) The escrow instructions shall provide that, upon the close of Escrow, the Title Company shall provide and deliver to Developer, an owner's title insurance policy (which at Developer's option may be an ALTA owner's policy) issued by the Title Company in an amount designated by Developer, insuring that fee simple title to the Site and all easements appurtenant thereto is vested in the Developer, without any encumbrances except those approved in writing by Developer (the "Approved Title Conditions") together with such endorsements to such title insurance policy as Developer shall require, all at the sole cost and expense of Developer (the "Title Policy").

(b) Prior to the Effective Date, the TJPA has initiated certain McEnerney Actions pursuant to McEs is CCP Section 751.01-751.28 et.seq. (Actions to Reestablish Destroyed Land Records)to resolve outstanding title issues at the Site, and shall use its best efforts to complete the McEnerney Actions prior to the Closing Date. Following the Effective Date, the TJPA shall continue to prosecute the McEnerney Actions to their conclusion, including but not limited to the entry of judgment, even if such prosecution extends past the Closing Date. The parties acknowledge that while it is the intent of the TJPA to complete the McEnerney Actions at the earliest possible date and prior to the Closing Date, in the event the McEnerney Actions are not finalized prior to the Closing Date, that event shall not be a basis for any extension of the Closing Date beyond October, 1, 2013.

(c) If Developer elects to secure an ALTA owner's policy, Successor Agency shall cooperate with Developer to secure such policy by providing surveys and engineering studies in its possession or control, if any, at no cost to Successor Agency and without warranty of any kind, which relate to or affect the condition of title. Successor Agency shall also execute a commercially reasonable form of Owner's Affidavit, as required by the Title Company. The responsibility of Successor Agency assumed by this paragraph is limited to providing such surveys and engineering studies, if any. Developer shall be responsible for securing any other surveys and engineering studies at its sole cost and expense.

(d) At the close of Escrow, Successor Agency shall convey to Developer fee simple title to Block 6 of the Site by the Grant Deed, free and clear of any liens, encumbrances and other matters affecting title except those approved in writing by Developer. In the event the McEnerney Actions are not complete before close of Escrow, alternative parcelization options may be used to create a legal description for Block 6, including the portion of land that will become Clementina Street ("Block 6"), for purposes of conveyance of Block 6 to Developer at Close of Escrow, including but not limited to the use of local lot line adjustment process or exceptions to the Subdivision Map Act, and the parties shall work together in good faith with the City Surveyor and promptly take all necessary actions including signing of documents and applications, to complete any such process prior to Close of Escrow. The Successor Agency shall work in good faith with Developer to obtain whatever additional assurances are necessary from any City Department or agency, including the Department of Public Works and the City Surveyor so that the Successor Agency conveys marketable and insurable title to Block 6 of in a manner reasonably acceptable to Developer and Developer's lenders and investment partners.

(e) Developer shall control and pursue parcelization of the Site following the Effective Date. It is anticipated that the Site will be divided by means of a lot line adjustment or subdivision map into two land parcels, Block 6 and Block 7, and that further an Airspace Parcel Map containing multiple Airspace Parcels shall be processed and recorded on Block 6 to divide Block 6 into the Market Rate Project Airspace Parcel or Parcels; and the Affordable Project Airspace Parcel. It is the intent of the parties that at Closing the Successor Agency shall transfer to Developer only the Block 6 land parcel, or the Market Rate Airspace Parcel(s) if the Airspace Parcel Map has been recorded.

However, if prior to August 1, 2013, the City Surveyor determines in writing that the conveyance of the Block 6 land parcel prior to the completion of the McEnerney Actions is prohibited by provisions of local law or the Subdivision Map Act or it is not possible to create a separate parcel for Block 6 prior to the Closing Date due to time constraints or other issues related to required submittals to the City Surveyor, then the Successor Agency will convey Blocks 6 and 7 to the Developer at the Close. Upon completion of the Subdivision Map, the Developer shall convey Block 7 to Successor Agency for future conveyance to MOH. The Block 7 Affordable Housing Parcel shall be conveyed by Developer back to the Successor Agency, without any encumbrances except those required for the construction or operation of the project, or those approved in writing by the Successor Agency, including but not limited to a license agreement with the Successor Agency, or MOH, to provide for use of Block 7 by the Developer and Affordable Developer for construction staging for the Market-Rate Improvements and the Affordable Improvements.

Following the parcelization of Block 6 pursuant to the Subdivision Map Act and the creation of the airspace parcels, the Block 6 Affordable Housing Project Airspace Parcel shall be conveyed to MOH or the Successor Agency, without any encumbrances except those required for the construction or operation of the project, or those approved in writing by the Successor Agency, in consultation with MOH.

(f) The TJPA has established a Trust Account that complies with Section III, Subsection G of the Cooperative Agreement and with the Director's Deeds by which the State deeded the Site to the City and the TJPA ("Trust Account"). The TJPA shall cause Caltrans to agree that, following Caltrans' receipt of a copy of this Agreement, Caltrans will submit an executed and acknowledged Relinquishment of Power of Termination, in substantially the form attached to the Cooperative Agreement as Exhibit 'D' (the "Caltrans Relinquishment"), together with escrow instructions from Caltrans to the Escrow Agent that provide that the Escrow Agent is authorized to record the Caltrans Relinquishment in the Official Records of the City and County of San Francisco immediately following, and subject only to, the deposit into the Trust Account at the Closing of all funds due from the Closing.

2.04 Payment of Purchase Price

The Purchase Price shall be deposited into the Trust Account no later than the scheduled date for Close of Escrow as set forth in the Schedule of Performance, Attachment 4, and shall be deposited by the Developer into escrow in cash or immediately available funds no later than forty-eight (48) hours prior to the scheduled Close of Escrow date. The Successor Agency shall deposit the Grant Deed into Escrow no later than twenty-four (24) hours prior to the scheduled Close of Escrow date.

2.05 Taxes and Assessments

Ad valorem taxes and assessments levied, assessed or imposed from and after close of Escrow shall be the responsibility of Developer.

2.06 Access and Entry by Developer to the Site/Permit to Enter

(a) Successor Agency shall furnish Developer copies of existing surveys, environmental reports, inspection reports, and any other writings or data pertaining to the physical condition of the Site which are in Agency's possession or control, and shall assist the Developer in getting any such reports or data from the TJPA.

(b) Prior to conveyance of the fee title interest in the Site, Developer and its representatives shall have the right of access to and entry upon the Site, from time to time and at all reasonable times, for the purpose of obtaining data and making surveys and tests, including site tests and soil borings, necessary to carry out the purposes of this Agreement; provided, however, that Developer shall have been granted access to the Site by the entity holding title to the Site at the time access is requested, through the granting of access by the TJPA or obtaining a Permit to Enter from the Successor Agency substantially in the form of Attachment 7, and provided to the Successor Agency appropriate indemnities and insurance as specified in the Permit to Enter, or any other indemnities and insurance as reasonably required by the TJPA, as applicable.

(c) Developer shall obtain one Permit to Enter, if requested by the relevant entity holding title, for all periods of activity undertaken by Developer pursuant to this Agreement, which permit shall be for a period of time which reasonably will permit Developer to complete the activities for which access and entry is authorized. Successor Agency agrees to issue a Permit to Enter upon (A) request by Developer; (B) the passage of such time as is reasonably necessary for Successor Agency to insure removal of people and property from the area of Developer's entry upon the Site. Developer will comply with any indemnity and insurance requirements as specified in the Permit to Enter, Attachment 7.

2.07 Conditions Precedent to Conveyance

(a) Conditions to Developer's Obligations. The following are conditions to Developer's obligations with respect to the conveyance of the Site and the construction of the Improvements thereon, to the extent not expressly waived by Developer:

(i) Successor Agency shall not be in default of its obligations under the terms of this Agreement;

(ii) Successor Agency shall have performed all obligations hereunder required to be performed by Successor Agency prior to the date specified for conveyance of the Site to Developer in the Schedule of Performance, including, without limitation, those set forth in Section 2.08;

(iii) The Title Company is prepared to issue the Title Policy to Developer in form reasonably acceptable to Developer in accordance with Section 2.03(c);

(iv) This Agreement shall not have been previously terminated pursuant to any other provision hereof;

(v) Successor Agency shall have delivered to Developer and the Title Company all instructions and documents to be delivered by Successor Agency at close of Escrow pursuant to the terms and provisions hereof; and

(vi) On or before the close of escrow, Successor Agency shall have executed, acknowledged and deposited with the Title Company the Grant Deed for the Site in the form of Attachment 10;

(vii) Successor Agency shall have instructed the Title Company to consummate the Escrow as provided in Section 2.02;

(viii) Casual carpool pick up location shall have been relocated from its current location on Beale Street, adjacent to the Site.

(b) Conditions to Successor Agency's Obligations. The following are conditions to the Successor Agency's obligations with respect to the conveyance of the Site to the extent not expressly waived by Successor Agency;

(i) Developer shall not be in default of its obligations under the terms of this Agreement;

(ii) Developer shall have performed all obligations hereunder required to be performed by Developer prior to the date of such conveyance, including, without limitation, those required of Developer as set forth in this Section 2.07 and in Section 2.08;

(ii) Successor Agency shall have received and approved all items referred to in Section 2.08(a), to the extent therein provided;

(iii) Successor Agency shall have approved, as provided in Section 2.08, the evidence of equity capital and mortgage financing of the Improvements by Close of Escrow as provided in the Schedule of Performance;

(v) Developer shall have instructed the Title Company to consummate the Escrow as provided in Section 2.02;

(vi) Developer shall have furnished certificates of insurance or duplicate originals of insurance policies as required by this Agreement; and

(vii) The California Department of Finance shall have issued a Final and Conclusive Determination for the Transbay Transit Center Redevelopment Project, or provided other written approval, that the Implementation Agreement and other enforceable obligations authorize the Successor Agency to take the actions required under this Agreement.

2.08 Submission of Evidence of Financing and Project Commitments

(a) No later than the time specified in the Schedule of Performance for submission of evidence of financing subject to the provisions of Section 4.02, which time shall not be less than 45 days before closing (unless a different time is specified below or in the Schedule of Performance), Developer shall submit the following to Successor Agency for review and approval for the Market-Rate Project:

(i) A statement in a form satisfactory to the Successor Agency sufficient to demonstrate that Developer has adequate funds or will have adequate funds upon the funding of the bona fide commitments and is committing such funds to the Construction Costs of the Improvements.

(ii) A construction contract, with a bondable general contractor reasonably satisfactory to the Successor Agency, for the construction of the Improvements.

(iii) A statement in a form satisfactory to the Successor Agency, in consultation with MOH, setting forth a budget of the total estimated construction costs of the Block 6 Affordable Project prepared by, or with the assistance of, a licensed, bondable general contractor.

(b) Successor Agency will notify Developer, as applicable, in writing of its approval or disapproval of any of the foregoing documents within fifteen (15) days of submission of such documents to the Successor Agency, unless some other time period is specified in the Schedule of Performance or

elsewhere in this Agreement. The Successor Agency shall not unreasonably withhold such approval. Failure of Successor Agency to notify the Developer of its approval or disapproval of a document or submission within said periods of time shall entitle the Developer to a time extension for the approval of such document or submission until the later of (i) the date of approval by the Successor Agency, or (ii) fifteen (15) days after the Successor Agency provides written reasons for a disapproval. In the event the Parties are unable to resolve any differences with respect to the adequacy of any of the documentation or evidence of financing require by this Section 2.08, the Parties shall resolve the dispute as follows:

Any disputes concerning the interpretation of the requirements under this section 2.08(b), and specifically whether the documentation provided by the Developer satisfies the requirements of Section 2.08, shall be decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question arose but in no event after the time the claim, dispute or other matter in question would be barred by the applicable statute of limitations. The arbitrator appointed to conduct the arbitration (the "**Arbitrator**") shall schedule a hearing date no later than thirty (30) days after the demand is filed and issue a decision within fifteen (15) days after the date of the hearing. The parties shall not have the right to engage in pre-arbitration discovery. All documents that the Parties shall rely on during the arbitration hearing shall be provided as required by the Arbitrator. Each party shall be responsible for 50% of the Arbitrator fees and administrative costs of the American Arbitration Association. The arbitrator shall issue a written decision, which shall be based on California law and shall include findings of fact and conclusions of law. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the arbitrator's decision may be vacated or corrected pursuant to CCP Section 1286.2 or 1286.6 for any such error. The award rendered by the Arbitrator shall be final and not subject to appeal, except the parties shall have the right of appeal if permitted by California Code of Civil Procedure Sections 1285 through 1287.6, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Nothing contained in this Section shall restrict either party for seeking temporary equitable relief in court pending resolution of the arbitration. Notwithstanding the above, the Successor Agency may waive completion of the arbitration process to ensure that the conveyance of the Site can occur no later than October 1, 2013.

2.09 Conveyance of Title to the Site and Delivery of Possession

Subject to the provisions of Section 2.06, and provided that Developer is not then in default under the terms of this Agreement, pursuant to Section 8.01, the conditions to Successor Agency's obligations and the conditions to Developer's obligations with respect to the Site have been satisfied or expressly waived, and Developer has paid to Successor Agency all sums due hereunder at the times when due, then Successor Agency shall convey to Developer, and Developer shall accept the conveyance of, the fee simple interest in the Site (or portions thereof as described in Section 2.03(d)), in the Approved Title Condition, on the date specified for close of Escrow in the Schedule of Performance.

ARTICLE 3 - SITE CONDITION; HAZARDOUS MATERIALS INDEMNIFICATION

3.01 Prior to Conveyance/Site "As Is"

(a) Successor Agency shall convey the Site in its present, "AS IS" condition, free of any leases or occupants (with the exception of the AC Transit Lease based on agreement between the Developer and AC Transit to extend such lease time until a date certain prior to construction) and shall not prepare the Site for any purpose whatsoever (except AC Transit Lease extension if such extension is granted) prior to conveyance to Developer. So long as there is no material adverse change in the condition of the Site after the Effective Date, Developer agrees to accept the Site in "AS IS" condition at the close of Escrow in the Approved Title Condition.

(b) Developer acknowledges that neither Successor Agency, City, or TJPA, nor any employee, representative or agent of Successor Agency, City or TJPA, has made any representation or warranty, express or implied, with respect to the Site, and it is agreed that Successor Agency makes no representations, warranties or covenants, express or implied, as to its physical condition; as to the condition of any improvements; as to the suitability or fitness of the land; as to any Environmental Law, or otherwise affecting the use, value, occupancy or enjoyment of the Site; or as to any other matter whatsoever; it being expressly understood that the Site is being sold in an "AS IS" condition. The provisions of this Section 3.01, as with the other provisions of this Agreement, shall survive the close of Escrow and shall not merge into the Grant Deed delivered to Developer at close of Escrow.

(c) Developer will be given the opportunity to investigate the Site fully, using experts of its own choosing.

(d) After close of Escrow, Developer, at its sole cost and expense, shall comply with all provisions of Environmental Law applicable to the portion of the Site owned by Developer and all uses, improvements and appurtenances of and to the portion of the Site owned by Developer, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action or other remediation that may be required pursuant to any Environmental Law, and Successor Agency, City, and the TJPA and their respective members, officers, agents and employees, shall have no responsibility or liability with respect thereto.

(e) Any costs associated with the security, maintenance/repair, and demolition of any existing structures on the Site are the sole and absolute responsibility of the Developer.

3.02 Hazardous Materials Indemnification

(a) Developer and Affordable Developer shall each indemnify, defend and hold Successor Agency, the City and the TJPA, and their respective members, officers, agents and employees (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") harmless from and against any losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (A) such Party's violation of any Environmental Law, or (B) any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from such Party's portion of the Site, occurring after the date of Conveyance, except where such violation, Release or threatened Release, or condition was at any time caused by the gross negligence or intentional misconduct of the Indemnified Party seeking indemnification. Notwithstanding anything to the contrary in this Agreement, Developer shall not be liable

for the actions or omissions of the Affordable Developer or for Hazardous Substance-related damages attributable to the Affordable Developer's portion of the Site.

(b) For purposes of this Section 3.02, the term "Hazardous Substance" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. §9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code §§25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code §25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances that occur naturally on the Site.

(c) The term "Environmental Law" shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Agreement.

(d) For purposes of this Section 3.02, the term "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance).

3.03 Risk of Loss

After close of Escrow, all risk of loss with respect to any improvements on the Site shall be borne by Developer; provided that Agency shall assign to Developer at closing any unexpended insurance proceeds and any uncollected claims and rights under insurance policies covering such loss, if any.

ARTICLE 4 - CONSTRUCTION OF IMPROVEMENTS

4.01 The Improvements

The improvements on the Site, as further described in the Scope of Development in Attachment 5 shall include (a) a market-rate project consisting of 409 residential units on the Block 6 Tower, Podium 1, and Townhouse parcels; (b) an affordable project with approximately 70 residential units on the Block 6 Podium 2 parcel; (c) streetscape improvements, including the construction of Clementina Alley; (d) ground-floor retail spaces on Folsom Street; (e) shared mid-block open space; and (f) off-street parking in a shared underground garage (collectively, the "Improvements" or the "Project"). The items described in clauses (a) and (c) – (f) constitute the "Market-Rate Improvements" and the item described in clause (b) constitutes the "Affordable Improvements".

4.02 Developer's and Affordable Developer's Construction Obligations

(a) Developer shall construct, or cause to be constructed, the Market-Rate Improvements, and Affordable Developer shall construct, or cause to be constructed, the Affordable Improvements (subject to Section 4.02(b) below) on the Site within the times and in the manner set forth herein and in the Schedule of Performance and Scope of Development, as such dates may be extended from time to time as provided herein.

(b) Developer shall direct the development process for Block 6, as described in this paragraph, including but not limited to forming and hiring the design and construction teams in compliance with applicable laws, rules, regulations and Successor Agency and MOH policies; providing the design team with the Development Program, information and timely decisions to facilitate creation of a design responsive to the Project requirements; causing the securing of all necessary public approvals and permits; providing clarification to the general contractor and prime contractors regarding construction scope to facilitate construction in conformance with the Project Approval Documents; approving and processing necessary or owner-initiated changes to the work; administering the draw process to pay consultants and contractors in a timely and well-documented manner; coordinating with pertinent public agencies throughout design and construction to secure required approvals, including Certificates of Occupancy; monitoring the progress of the Project; and monitoring and facilitating the leasing and property management activities to open the buildings in a manner that optimizes their occupancy and ongoing success within the financial goals of the Project. If sufficient funding is not secured to construct the Block 6 Affordable Project by the Commencement Date for construction of the Market-Rate Project, Developer shall have no obligation to direct the development process for the Block 6 Affordable Project and Affordable Developer shall then be responsible for directing the development process for the Block 6 Affordable Project.

(c) Developer shall be responsible for payment of the Affordable Housing Fee as set forth in Section 9.03, including a payment of $14,000,000 for the Block 6 Affordable Project. Affordable Developer shall be responsible for securing sufficient funding, in addition to the Affordable Housing Fee, to construct the Block 6 Affordable Project. Neither the Successor Agency nor MOH shall be responsible for any cost over-runs associated with the Block 6 Affordable Project. Affordable Housing Developer shall be responsible for completion of the Block 6 Affordable Project. If the Block 6 Affordable Project is compliant with all funding requirements of the California Debt Limit Allocation Committee, the California Tax Credit Allocation Committee and MOH and does not receive funding or if there is no bond or tax credit financing or equivalent source available in California for affordable housing projects by the close of Escrow of the Market -Rate Project, then the Affordable Housing Developer must apply again for all available rounds of the financing described above within one year of start of construction on the Market -Rate Project.

(d) Developer and Affordable Developer shall each construct, or cause to be constructed, the Improvements in accordance with Section 4.02(a) and (b) above and with applicable provisions of the San Francisco Building Code and Administrative Bulletin AB-093, excepting that the Improvements shall be constructed to a Leadership in Energy and Environmental Design Gold standard or Green Point rated standard of 125 as committed in the proposal submitted by the Developer in response to the RFP.

4.03 Compliance with Project Approval Documents and Law

Developer and Affordable Developer shall each construct its respective Improvements in compliance with the Project Approval Documents approved by the Successor Agency (as defined in the Design Review and Document Approval Procedures (the "DRDAP"), Attachment 6) or such similar documents as reasonably required by the City, as applicable, and in compliance with all applicable local, state and federal laws and regulations, including all laws relating to accessibility for persons with disabilities.

4.04 Compliance with Redevelopment Requirements/City Requirements

The Project Approval Documents shall be in compliance with: (i) this Agreement, including the Scope of Development and (ii) to the extent applicable the Redevelopment Plan the Project

Area Declaration of Restrictions, the Development Controls, the Streetscape Plan, and the DRDAP. The Redevelopment Plan, the Declaration of Project Restrictions, the Declaration of Site Restrictions, the Development Controls, the Streetscape Plan, the DRDAP, and this Agreement, including the Scope of Development, are sometimes for convenience referred to as "Redevelopment Requirements."

4.05 Preparation of Project Approval Documents/Approval of Architect

(a) The Project Approval Documents shall be prepared by or signed by an architect (or architects) licensed to practice architecture in and by the State of California. A California licensed architect shall coordinate the work of any associated design professions, including engineers and landscape architects. In any event:

(i) A California licensed architect shall inspect all construction to certify that all construction has been built based on the design standards in the drawings and specifications as submitted by the architect and as included in the Project Approval Documents;

(ii) A California licensed structural and civil engineer shall review and certify all final foundation and grading design.

(b) The architect(s) for the Improvements shall certify that the Improvements have been designed in accordance with all local, state and federal laws and regulations relating to accessibility for persons with disabilities.

4.06 Submission of Project Approval Documents

Developer and Affordable Developer shall each prepare and submit their respective Project Approval Documents to the applicable regulatory authority for review and approval in accordance with the Scope of Development and at the times established in the Schedule of Performance.

4.07 Scope of Successor Agency Review/Approval of Developer's Construction

(a) Successor Agency's review and approval of Developer's and Affordable Developer's Project Approval Documents is limited to (i) a determination of their compliance with (A) the Redevelopment Requirements, including the Scope of Development, and (B) the Mitigation Measures referred to in Section 9.01 [if any]; (ii) urban design issues, including implementation of the Agency urban design objectives; and (iii) architectural design including, but not limited to, landscape design, including materials, plantings selection and irrigation, site planning, the adequacy of utilities for servicing the Site, exterior and public area signs and public art work, if any.

(b) No Successor Agency review is made or approval given as to the compliance of the Project Approval Documents with any building codes and standards, including building engineering and structural design, or compliance with building codes or regulations, or any other applicable state or federal law or regulation relating to construction standards or requirements, including, without limitation, compliance with any local, state or federal law or regulation related to the suitability of the Improvements for use by persons with disabilities.

(c) Successor Agency's review and approval or disapproval of Project Approval Documents as heretofore provided in this Section shall be final and conclusive. Successor Agency shall act in good faith in its review and approval process. Successor Agency will not disapprove or require changes subsequently (except by mutual agreement) in, or in a manner which is inconsistent with, matters which it has approved previously.

4.08 Construction Schedule

(a) Developer and Affordable Developer, under the direction of Developer pursuant to Section 4.02(b) of this DDA, shall each commence, prosecute and complete the construction and development of its respective Improvements within the times specified in the Schedule of Performance or within such extension of such times as may be granted by Agency for Developer or Affordable Developer performance as provided by this Agreement. The "Commencement Date" for construction of Improvements means the date specified in the applicable written notification from Developer and Affordable Developer to the Successor Agency of the date of commencement of construction of the applicable Improvements, which date shall be based upon either (i) the date of commencement of construction identified in the Developer's or Affordable Developer's contract/agreement with its general contractor, or (ii) the date identified in a notice to proceed issued by Developer or Affordable Developer and/or its architect to the general contractor.

4.09 Cost of Developer Construction

The cost of developing the Site and construction of all Improvements thereon shall be borne solely by Developer and the Affordable Developer, as may be applicable to their respective Improvements, except as otherwise provided in this Agreement.

4.10 Issuance of Building Permits

(a) Developer and Affordable Developer, as applicable to their respective Improvements and subject to Section 4.02(b) of this DDA, shall have the sole responsibility for obtaining all necessary building permits and shall make application for such permits directly to the Central Permit Bureau of the City. When applicable, the Successor Agency shall reasonably and expeditiously cooperate with Developer and Affordable Developer, as applicable, in its efforts to obtain such permits, at no cost or expense to Successor Agency. Prior to commencing construction of any portion of the Improvements, Developer and Affordable Developer shall have each obtained the requisite building permits. From and after the date of its submission of any such application, such Party shall diligently prosecute such application.

(b) Developer and Affordable Developer are advised that the Central Permit Bureau forwards all site and building permits to Successor Agency, when applicable, for Successor Agency approval of compliance with Redevelopment Requirements. Successor Agency shall use its best efforts to complete such review within 10 days or less. Successor Agency's review of the Project Approval Documents does not include any review of compliance thereof with the requirements and standards referred to in Section 4.07(c) above, and Successor Agency shall have no obligations or responsibilities for such compliance. Successor Agency evidences its approval by signing the permit and returning the permit to the Central Permit Bureau for issuance directly to Developer or Affordable Developer, as applicable. Approval of a site permit or any intermediate permit, however, is not approval of compliance with all Redevelopment Requirements necessary for a building permit. It is the intent of the Developer and the Affordable Developer to use the Site Permit process.

4.11 Times for Construction

Each of Developer and Affordable Developer, subject to Section 4.02(b) of this DDA, agrees for itself, and its successors and assigns to or of the Site or any part thereof, promptly to begin and diligently prosecute to completion the redevelopment of its applicable portion of the Site through the construction of the applicable Improvements thereon in accordance with the provisions of this Agreement,

and that such construction shall in any event commence and thereafter be diligently pursued and shall be completed no later than the dates specified in the Schedule of Performance, unless such dates are extended or otherwise as provided herein.

Should Completion of Construction of the applicable Improvements, as defined in Section 1.09, not commence or be complete by the dates specified in the Schedule of Performance for reasons other than allowable delays per Section 4.14 or 8.07, the Developer or Affordable Developer, as applicable, will be required to pay to the Successor Agency the estimated property tax increment that would otherwise be due to the San Francisco Office of the Assessor-Recorder ("Assessor-Recorder"). Specifically, any taxes that would have been due to the Assessor-Recorder if the applicable portion of the Project had commenced or been completed by the dates specified in the Schedule of Performance shall be paid to the Successor Agency until issuance of the Final C of O. The Developer or Affordable Developer, as applicable, shall not receive a credit or any kind with the Assessor-Recorder for any payments to the Successor Agency made for property made pursuant to this Section 4.11.

4.12 Construction Signs and Barriers

Developer and Affordable Developer shall provide appropriate construction barriers and construction signs and post the signs on the Site during the period of construction in conformance with Planning Code Section 604(e). The size, design and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Successor Agency, if applicable, for approval before installation, which approval shall not be unreasonably withheld and shall otherwise comply with applicable laws.

4.13 Notice of Termination – Issuance

(a) After Completion of Construction of the applicable Improvements, as defined in Section 1.09, meaning the Successor Agency has received from the Developer or Affordable Developer, as applicable, a copy of the Final C of O issued by DBI for the Improvements, upon such Party's request, Successor Agency shall issue to Developer and Affordable Developer, in recordable form, a duly executed Notice of Termination in the form of Attachment 12 ("Notice of Termination") which results in the termination of this Agreement ("Agreement Termination"). If a Final C of O for the Market-Rate Project is issued prior to a Final C of O for the Block 6 Affordable Project, the Successor Agency agrees to issue a partial Notice of Termination for the Market-Rate Project. The Notice of Termination (or partial Notice of Termination, if applicable) shall be a conclusive determination of Completion of Construction of the applicable Improvements in accordance with this Agreement and the full performance of the agreements and covenants contained in this Agreement and in the Grant Deed with respect to the obligation of the Developer and Affordable Developer, and its successors and assigns, to construct the applicable Improvements.

(b) Agency's issuance of any Notice of Termination does not relieve Developer, Affordable Developer or any other person or entity from any City requirements or conditions to occupancy of such Improvements, which requirements or conditions shall be complied with separately.

4.14 Right to Reconstruct the Improvements in the Event of Casualty

In the event that its Improvements are destroyed by casualty prior to the issuance of the Notice of Termination, the Developer or Affordable Developer, as applicable, shall have the right to rebuild the applicable Improvements substantially in conformity with the approved Project Approval Documents, subject to changes necessary to comply with the applicable building code, and in the event the

Redevelopment Requirements are no longer in effect, the planning code, and other local requirements then in effect for the Site.

4.15 Provisions Surviving Completion of Construction

The following provisions shall survive the Agency's issuance of the Notice of Termination, and shall also be incorporated into the Declaration of Site Restrictions, Attachment 13, and the Grant Deed, Attachment 10:

(a) All requirements contained in Section 5.01 of this Agreement;
(b) All requirements contained in Section 5.02 of this Agreement; and
(c) All requirements contained in Section 5.04 of this Agreement.

4.16 Access to Site – Successor Agency

From and after delivery of possession of the Site to Developer, upon reasonable prior notice to Developer, the Successor Agency, the City and their respective representatives will have the right to enter upon the Site at reasonable times, with 48 hour prior notice, at no cost or expense to the Successor Agency or the City, during normal business hours, during the period of construction of the Improvements to the extent necessary to carry out the purposes of this Agreement, including inspecting the work of construction of the Improvements. Developer will have the right to have an employee, agent or other representative of Developer accompany the Successor Agency, the City and their representatives at all times while they are present on the Site. The Successor Agency, the City and their respective representatives will exercise due care in entering upon and/or inspecting the Site, and will perform all entry and inspection in a professional manner and so as to preclude any damage to the Site or Improvements, or any disruption to the work of construction of the Improvements. The Successor Agency, the City and their respective representatives will abide by any reasonable safety and security measures Developer or its general contractor imposes.

4.17 No Changes Without Approval

For the period during which the Redevelopment Plan and Declaration of Restrictions are in effect, neither Developer, Affordable Developer nor any successor or assign may make or permit any change in the uses permitted under Section 5.02 of this Agreement or any Change in the Improvements (as defined below), unless the express prior written consent for the change in uses or any Change in the Improvements has been requested and obtained from the Successor Agency; and if obtained, upon any terms and conditions the Successor Agency reasonably requires. The Successor Agency's approval may be granted or withheld in its reasonable discretion. "Change in the Improvements" is defined as any alteration, modification, addition and/or substitution of or to the Site or the Improvements that affects: (a) the density of development; (b) the extent and nature of the open space on the Site from that certified by the Agency as complete in accordance with this Agreement; (c) the exterior design (to the extent material); (d) the exterior materials (to the extent material); and/or (e) the exterior color (to the extent material). For the purposes of this Section, "exterior" also includes the roof of the Improvements. The Agency's approval will not be unreasonably withheld.

4.18 Off-Site Infrastructure and Improvements Damage

In addition to the indemnification provisions contained in Section 12.01 of this Agreement, Developer and Affordable Developer further agree to repair fully and/or replace to the satisfaction of the Successor Agency, any damage to the off-site infrastructure and improvements within the Project Area, including streets, sidewalks, curbs, gutters, drainage ditches, fences and utility lines lying within or adjacent

to the Site resulting from work performed by or for such Party in the development of the Site as set forth herein. Developer, Affordable Developer or their respective general contractors, before commencement of such off-site work, shall secure this obligation with a $250,000 bond or insurance in form acceptable to the Successor Agency, or other security acceptable to the Agency, such as a personal guaranty. Developer and Affordable Developer expressly acknowledge and agree that its liability under this provision is not limited to the amount of the bond or insurance.

4.19 Insurance Requirements

(a) Without in any way limiting Developer's or Affordable Developer's indemnification obligations under this Agreement, and subject to approval by the Successor Agency of the insurers and policy forms, each of Developer and Affordable Developer shall obtain and maintain, or cause to be obtained and maintained at no cost to the Successor Agency, the following insurance during the Term, unless otherwise provided in this Agreement.

(b) Minimum Scope. Coverage must be at least as broad as:

~~(i) Insurance Services Office Commercial General Liability coverage~~ (occurrence form CG 00 01 01) or other form approved by the Successor Agency.

(ii) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01 – "any auto") or other form approved by the Successor Agency.

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

(iv) Professional Liability Insurance: Developer and Affordable Developer must require that all architects, engineers, and surveyors for the Project have liability insurance covering their negligent acts, errors and omissions. Developer and Affordable Developer must provide the Successor Agency with copies of consultants' insurance certificates showing such coverage.

(v) Property Insurance: Property Insurance: Special form coverage against direct physical loss to the Project, excluding earthquake or flood, during the course of construction and following completion of construction.

(c) Minimum Limits. Developer and Affordable Developer must maintain limits no less than:

(i) General Liability: $2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this development or the general aggregate limit must be twice the required occurrence limit.

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

(iii) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employers Liability limits of $1,000,000 for bodily injury by accident and $1,000,000 per person and in the annual aggregate for bodily injury by disease.

(iv) Professional Liability: $2,000,000 each occurrence and in the annual aggregate covering all negligent acts, errors and omissions of Developer's and Affordable Developer's respective architects, engineers and surveyors. Developer and Affordable Developer shall respectively assure that these minimum limits are maintained for no less than ten (10) years beyond the completion of construction.

(v) Property Insurance: During the course of construction, builder's risk insurance in the full completed value of the Project. Following completion of construction, full replacement value of the Project with no coinsurance penalty provision.

(d) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions over $25,000 must be declared to and approved by the Agency. In the event such deductibles or self-insured retentions are in excess of $25,000, at the option of the Successor Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Successor Agency, the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees; or the Developer or Affordable Developer, as applicable, shall procure a financial guarantee satisfactory to the Successor Agency guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(e) Other Insurance Provisions.

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

(i) General Liability and Automobile Liability Coverage:

a. Additional Insureds: "The Successor Agency to the San Francisco Redevelopment Agency, the City, the TJPA and their respective commissioners, members, officers, agents, and employees" shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Developer and Affordable Developer; products and completed operations of such Party, premises owned, occupied or used by such Party; and automobiles owned, leased, hired or borrowed by or on behalf of such Party. The coverage shall contain no special limitations on the scope of protection afforded to the Successor Agency, the City and County of San Francisco and their respective Commissioners, members, officers, agents or employees.

b. Primary Insurance: For any claims related to this Project, Developer's and Affordable Developer's insurance coverage must be primary insurance as respects to the Agency, the City, the TJPA and their respective commissioners, members, agents, and employees. Any insurance or self-insurance maintained by the Agency, the City and their respective commissioners, members, agents, officers or employees must be in excess of the applicable Party's insurance and will not contribute with it.

c. Reporting Provisions: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, the City, the TJPA and their respective commissioners, members, officers, agents or employees.

d. Severability of Interests: Developer's and Affordable Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(ii) Builder's Risk (Course of Construction) Insurance: Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall contain the following provision:

a. Successor Agency shall be named as loss payee as its interest may appear.

(iii) All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to Agency, except in the event of suspension for nonpayment of premium, in which case ten (10) days' notice shall be given.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII or as otherwise approved by the Successor Agency.

(g) Verification of Coverage. Developer and Affordable Developer must furnish the Successor Agency with certificates of insurance and with original endorsements effecting coverage required by this Article 5.18. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Agency before work commences. The Successor Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

(h) Contractor, Subcontractors and Consultants Insurance. Developer and Affordable Developer shall cause its general contractor and all subcontractors and consultants to maintain workers compensation, automobile liability, and commercial general liability insurance in the amounts and in accordance with the requirements listed above, as applicable, unless otherwise approved by the Agency's Risk Manager. Developer and Affordable Developer must furnish Agency with general contractor's, architects' and engineers' certificates of insurance and original endorsements effecting coverage required by this Article 4.19(h).

ARTICLE 5 - COVENANTS AND RESTRICTIONS

5.01 Covenants

Developer expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to the portion of the Site owned by Developer and any Improvements constructed or to be constructed thereon, or any part thereof, or alterations or changes thereto, and in addition to any other term, covenant and condition of this Agreement, Developer and all such successors and assigns and all persons claiming under or through it, shall use, devote, operate and maintain the portions of the Site owned by Developer and the Improvements thereon, and every part thereof, only and in strict accordance with the provisions of this Article 5. The provisions hereof are contained in the Grant Deed, Attachment 10, and Declaration of Site Restrictions, Attachment 13.

5.02 General Restrictions

The Site and the Improvements thereon shall be devoted only to the uses permitted by (i) the Redevelopment Plan and (ii) the Project Area Declaration of Restrictions.

5.03 Restrictions Before Completion

Prior to the Successor Agency's issuance of the Notice of Termination, the Site shall be used only for the continuation of the lease between the TJPA and with AC Transit, if desired by Developer, or construction of the Improvements in accordance with this Agreement, including, but not limited to the Scope of Development, Attachment 5.

5.04 Nondiscrimination

(a) There shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or Affordable Developer or any occupant or user of the Site in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, and Developer or Affordable Developer itself (or any person or entity claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Site or any part thereof, nor shall Developer or any occupant or user of the Site or any transferee, successor, assign or holder of any interest in the Site or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation, including, without limitation, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or others of the Site.

(b) Developer or Affordable Developer itself (or any person or entity claiming under or through it) further agrees and covenants that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site nor shall the Developer or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed.

(c) Notwithstanding the above, Developer shall not be in default of its obligations under this Section 5.05 where there is a judicial action or arbitration involving a bona fide dispute over whether Developer is engaged in discriminatory practices and Developer promptly acts to satisfy any judgment or award against Developer, and provided further that the operation of a religious school shall not be deemed a violation of this Section.

(d) The covenants of this Section 5.03 shall run with the land, and any transferee, successor, assign, or holder of any interest in the Site, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, mortgage or otherwise, and whether or not any written instrument or oral agreement contains the foregoing prohibitions against discrimination, shall be bound hereby and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above.

5.05 Effect, Duration and Enforcement of Covenants

(a) It is intended and agreed, and the Grant Deed shall expressly provide, that the covenants provided in this Article 5 shall be covenants running with the land and that they shall be, in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement itself, to the fullest extent permitted by law and equity,

(i) binding for the benefit and in favor of Successor Agency, as beneficiary, as to all covenants set forth in this Article 5; the United States, as beneficiary, as to the covenants provided in Section 5.04; and the owner of any other land or of any interest in any land in the Project Area (as long as such land remains subject to the land use requirements and restrictions of the Redevelopment Plan and the Project Area Declaration of Restrictions), as beneficiary, as to the covenants provided in Sections 5.02 and 5.04; and their respective successors and assigns; and

(ii) binding against Developer, its successors and assigns to or of the Site and any Improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of the Site or the Improvements thereon or any part thereof. It is further intended and agreed that the covenants provided in this Article 5 shall remain in effect subject to the termination provisions of Section 5.06(c) without limitation as to time, and the covenants in Section 5.02 shall remain in effect for the respective duration of the Redevelopment Plan and the Project Area Declaration of Restrictions; provided, however, that such agreements and covenants shall be binding on Developer itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Site or part thereof.

(b) In amplification, and not in restriction, of the provisions of the preceding Sections, it is intended and agreed that Successor Agency and the United States and their respective successors and assigns, as to the covenants provided in this Article 5 of which they are stated to be beneficiaries, shall be beneficiaries both for and in their own right and also for the purposes of protecting the interest of the community and other parties, public or private, and without regard to whether Successor Agency or the United States has at any time been, remains, or is an owner of any land or interest therein to which, or in favor of which, such covenants relate. Successor Agency and the United States and their respective successors and assigns shall have the right, in the event of any of such covenants of which they are stated to be beneficiaries, to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach of such covenants to which it or any other beneficiaries of such covenants may be entitled including, without limitation, restraining orders, injunctions and/or specific enforcement, judicial or administrative. These rights and remedies are in addition to, and not in derogation of, the rights and remedies of the Successor Agency set forth in this Article 5.

(c) As stated above, the covenants contained in this Article 5 (except for those contained in Sections 5.02 shall remain in effect without limitation as to time; provided, however, that if Successor Agency becomes the fee owner of the Site or any portion thereof, whether voluntarily or involuntarily, through the Successor Agency's Exclusive Right to Repurchase by operation of law or by reason of the conditions subsequent contained in the Grant Deed to the Site (which conditions terminate upon Agreement Termination) then the covenants contained in this Article 5 (except those contained in Section 5.04, the Redevelopment Plan and the Project Area Declaration of Restrictions, if still in effect) shall terminate and be of no further force or effect as to the Site or the portion thereof of which Successor Agency has become the fee owner.

(d) The conveyance of the Site by Successor Agency to Developer is made and accepted upon the express covenants contained in this Article 5 and provided further, that those covenants contained in Sections 5.01, 5.02 and 5.04 survive the Agreement Termination and shall be provided for in the Grant Deed and the Declaration of Site Restrictions.

(e) Developer shall be entitled to notice and shall have the right to cure any breach or violation of all or any of the foregoing in accordance with Article 8.

5.06 After Agreement Termination

The provisions contained in Sections 5.02 and 5.04 shall not be affected by the Agreement Termination.

ARTICLE 6 – ANTI-SPECULATION, ASSIGNMENT, AND TRANSFER PROVISIONS

6.01 Representation as to Developer

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

6.02 Prohibition Against Transfer of the Site, the Improvements and the Agreement

Subject to the terms of Article 7 and the transfers described in Section 2.03(d), before the Agreement Termination, Developer or Affordable Developer shall not make or create or suffer to be made or created any total or partial sale, conveyance, mortgage, encumbrance, lien, assignment, option to acquire, any trust or power, or transfer in any other mode or form, of this Agreement, the applicable portion of the Site or the Improvements thereon, or any part thereof, or interest therein, or permit any significant change in the ownership of the Developer to occur or contract or agree to do any of the same (collectively a "Transfer") without the prior written approval of Successor Agency (the "Successor Agency Approval"), which shall not be unreasonably withheld. However, Developer may, without prior written approval of the Successor Agency, (a) permit a change in the ownership of the Developer or affiliate prior to Agreement Termination, by contracting to include or remove capital partners to the development venture, so long as the Developer, Affordable Developer, or its affiliate at all times retains a majority ownership interest in the Agreement, the Site or Improvements thereon or (b) assign its rights and obligations under this Agreement to a joint venture entity in which Developer or its affiliate is a member or partner.

Furthermore, in the event prior to the commencement of construction the Developer incurs a land loan which is secured by the Site, the Successor Agency Approval for such land loan will not be issued until the Developer provides the Successor Agency with a guaranty in an amount not to exceed the excess, if any, of the outstanding amount of such land loan over the fair market value of the Site as of the date the Successor Agent acquires title to the Site from the Developer pursuant to the Exclusive Right to Repurchase under Section 8.02; provided, however, that such guaranty shall have no force and effect unless and until the Successor Agency acquires title to the Site from the Developer pursuant to the Exclusive Right to Repurchase under Section 8.02.

Provided further, that the Developer agrees that any future leases for any portion of the Site will include a provision that allows for the termination of the lease by the Successor Agency subsequent to its exercise of its Exclusive Right of Repurchase and subject to any notice requirements (not to exceed 30 days) under the lease.

6.03 Effect of Violation

(a) In the event that, contrary to the provisions of this Agreement, a Transfer does occur, in addition to all other remedies provided herein or by law, including, but not limited to, termination of this Agreement, Agency, as provided in Section 8.02(a) shall have an Exclusive Right to Repurchase prior to Developer commencement of construction of the Improvements.

(b) In the absence of specific written approval by Agency, and except to the extent set forth in this Agreement, no Transfer shall be deemed to relieve Developer or any other party from any obligations under this Agreement or deprive Agency of any of its rights and remedies under this Agreement or the Grant Deed.

ARTICLE 7 - MORTGAGE FINANCING: RIGHTS OF HOLDERS

7.01 Mortgagee

For purposes of this Agreement, the term "Mortgagee" shall singly and collectively include the following: (a) a mortgagee or beneficiary under a deed of trust concerning all or any portion of the Site, and (b) any insurer or guarantor of any obligation or condition secured by a mortgage or deed of trust concerning all or any portion of the Site.

7.02 Required Provisions of Any Mortgage

Developer agrees to have any Mortgage provide that the Holder shall give notice to Successor Agency in writing by registered or certified mail of the occurrence of any default by Developer under the Mortgage, and that Successor Agency shall be given notice at the time any Holder initiates any Mortgage foreclosure action. In the event of any such default, Successor Agency shall have the right to cure such default, provided that Developer is given not less than ten (10) days' prior notice of Successor Agency's intention to cure such default. If Successor Agency shall elect to cure such default, Developer shall pay the cost thereof to Successor Agency upon demand, together with the interest thereon at the maximum interest rate permitted by law, unless (i) Developer cures such default within such 10- day period, or (ii) if curing the default requires more than ten (10) days and Developer shall have commenced cure within such ten (10) days after such notice, Developer shall have (A) cured such default within thirty (30) days or such greater time period as may be allowed by Holder after commencing compliance, or (B) obtained from the Holder a written extension of time in which to cure such default. Developer also agrees to have any Mortgage provide that such Mortgage is subject to all of the terms and provisions of this Agreement.

7.03 Address of Holder

No Holder shall be entitled to exercise the rights set forth in this Article 7 unless and until written notice of the name and address of the Holder shall have been given to Successor Agency, notwithstanding any other form of notice, actual or constructive.

7.04 Holder's Right to Cure

If Developer shall create a Mortgage on the Site in compliance with the provisions of this Article 7, then so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Successor Agency, upon serving Developer any notice of default or any other notice under the provisions of or with respect to this Agreement, shall also serve a copy of such notice upon any Holder at the address provided to the Successor Agency pursuant to this Agreement, and no notice by Successor Agency to Developer hereunder shall affect any rights of a Holder unless and until a copy thereof has been so served on such Holder;

(b) Any Holder, in case Developer shall be in default hereunder, shall have the right to remedy, or cause to be remedied, such default within the later to occur of (i) one hundred twenty (120) days

following the date of Holder's receipt of the notice referred to in Section 7.04(a) above, or (ii) one hundred twenty (120) days after the expiration of the period provided herein for Developer to remedy or cure such default, and Successor Agency shall accept such performance by or at the insistence of the Holder as if the same had been timely made by Developer.

(c) Any notice or other communication which Successor Agency shall desire or is required to give to or serve upon the Holder shall be in writing and shall be served in the manner set forth in Section 12.03, addressed to the Holder at the address provided for in this Agreement.

(d) Any notice or other communication which Holder shall give to or serve upon Successor Agency shall be deemed to have been duly given or served if sent in the manner and at Successor Agency's address as set forth in Section 12.03, or at such other address as shall be designated by Successor Agency by notice in writing given to the Holder in like manner.

(e) Notwithstanding anything to the contrary contained herein, the provisions of this Article 7 shall inure only to the benefit of the Holders under Mortgages which are permitted hereunder.

7.05 Application of Agreement to Mortgagee's Remedies

No provision of this Agreement shall limit the right of any Mortgagee to foreclose or otherwise enforce any mortgage, deed of trust or other encumbrance upon the Site, nor the right of any Mortgagee to pursue any remedies for the enforcement of any pledge or lien upon the Site; provided, however, that in the event of a foreclosure sale under any such mortgage, deed of trust or other lien or encumbrance or sale pursuant to any power of sale contained in any such mortgage or deed of trust, or other lien or encumbrance, the purchaser or purchasers and their successors and assigns and the Site shall be, and shall continue to be, subject to all of the conditions, restrictions and covenants herein provided for, subject to §7.04, but not any past due obligations of Developer. In no event shall Mortgagee be in default of any such future obligations provided for in this Agreement until at least 120 days after the date of the transfer of title, plus any cure periods provided for hereunder.

7.06 No Obligation to Construct Improvements or Pay Money Damages

The Mortgagee, including without limitation any Mortgagee who obtains title to the Site or any part thereof as a result of foreclosure proceedings or action in lieu thereof (but not including any other party who thereafter obtains title to the Site or any part thereof from or through such Mortgagee or any purchaser at a foreclosure sale other than the Mortgagee), shall in no way be obligated by the provisions of the Agreement to either pay money damages or other consideration to the Successor Agency, or to construct or complete, nor shall any covenant or any other provision in the Redevelopment Plan, the Project Area Declaration of Restrictions, or any other document, instrument or plat whatsoever be construed to so obligate such Mortgagee; provided, however, that nothing in this Agreement shall be construed to permit or authorize such Mortgagee to devote the Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or authorized in the Redevelopment Plan, the Project Area Declaration of Restrictions, and this Agreement.

7.07 Accommodation of Mortgagees

The Successor Agency is obligated to act reasonably in all dealings with Mortgagees, to make reasonable accommodations with respect to the interests of Mortgagees, and to agree to reasonable amendments to this Agreement as reasonably requested by a prospective mortgagee.

ARTICLE 8 - DEFAULTS AND REMEDIES

8.01 Developer Default

The occurrence of any one of the following events or circumstances shall constitute an Event of Default by Developer under this Agreement thirty days after Developer's receipt of written notice from the Successor Agency of the alleged default and opportunity to cure. Notwithstanding anything to the contrary in this Agreement, for the avoidance of doubt, no Event of Default, as included in Section 8.01A, by Affordable Developer shall authorize or permit the Successor Agency to exercise any remedies against Developer, and Developer shall have no obligations or liabilities for an Event of Default by Affordable Developer.

(a) Developer suffers or permits a Transfer to occur; or (b) Developer allows any other person or entity (except Developer's authorized representatives) to occupy or use all or any part of the Site in violation of the provisions of this Agreement, and such event or condition shall not have been cured within thirty (30) days following the date of written demand to cure by Successor Agency to Developer;

(b) Developer fails to pay real estate taxes or assessments on the applicable portion of the Site when due or places any mortgages, encumbrances or liens upon the applicable portion of the Site or the Improvements thereon or any part thereof in violation of this Agreement, and such event or condition shall not have been cured within thirty (30) days following the date of written demand to cure by Successor Agency to Developer;

(c) Developer fails to commence promptly, or after commencement fails to prosecute diligently to completion (as evidenced by a T C of O), the construction of the Market-Rate Improvements within the times set forth in the Schedule of Performance, Attachment 4, or abandons or suspends construction of the Market-Rate Improvements for more than one hundred eighty (180) consecutive days, and such failure, abandonment or suspension continues for a period of (i) thirty (30) days following the date of written notice thereof from Successor Agency as to an abandonment, suspension or failure to commence construction; or (ii) one hundred eighty (180) days following the date of written notice thereof from Successor Agency as to a failure to complete construction within the time set forth in the Schedule of Performance, Attachment 4;

(d) Developer causes or permits a default as defined in and occurring under any other agreement between Successor Agency and Developer and fails to cure the same in accordance with such other agreement, provided that Successor Agency's remedies for a default under the other agreement between Successor Agency and Developer shall be limited to the remedies respectively set forth therein;

(e) Developer fails to pay any other amount required to be paid hereunder, other than the Purchase Price for the Site, and such failure continues for a period of thirty (30) business days following the date of written notice thereof from Successor Agency;

(f) Developer does not accept conveyance of the Site (or applicable portion thereof) in violation of this Agreement upon tender by Successor Agency pursuant to this Agreement, and such failure continues for a period of fifteen (15) business days following the date of written notice from Successor Agency, provided that if such period goes beyond October 1, 2013 the Developer is in default;

(g) Developer is in default under the Successor Agency's Equal Opportunity Program, Attachment 9; provided, however, that any rights to cure and Successor Agency's remedies for any default under the Successor Agency's Equal Opportunity Program shall be only as set forth in the Successor Agency's Equal Opportunity Program, Attachment 9;

(h) Developer fails to obtain a Building Permit or Site Permit with foundation and excavation addenda, as the case may be, and all other necessary permits for the Improvements to be constructed on the Site within the periods of time specified in this Agreement or the Schedule of Performance, except as may be extended due to actions or requirements of the Department of Building Inspection, and such failure continues for a period of thirty (30) days following the date of written notice thereof from Successor Agency;

(i) Developer does not submit all Project Approval Documents as required by this Agreement within the periods of time respectively provided therefor in this Agreement and the Schedule of Performance, and Developer does not cure such default within thirty (30) days following the date of written demand from Successor Agency;

(j) Developer defaults in the performance of or violates any covenant, or any part thereof, set forth in Section 4.04(b), Article 5 or in the Grant Deed, and such default or violation continues for a period of thirty (30) days after the date of written demand to cure from Successor Agency to Developer; or in the case of a default which is not cured within thirty (30) days, Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time. The language of this paragraph shall not be construed to limit the right of the Developer to contest, under the terms of this Agreement, the allegation of default in the performance or violation of any covenant, or any part thereof, set forth in Article 5 or in the Grant Deed.

(k) Developer fails to perform any other agreements or obligations on Developer's part to be performed under this Agreement, and such failure continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within thirty (30) days after the date of written demand by Successor Agency to Developer to perform such agreement or obligation, or in the case of a default not susceptible of cure within thirty (30) days, Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time including, without limitation, any obligations set forth in Sections 8.01(c), 8.01(j), and 8.01(k).

8.01A Affordable Developer Default

The occurrence of any one of the following events or circumstances shall constitute an Event of Default by Affordable Developer under this Agreement thirty days after Affordable Developer's receipt of written notice from the Successor Agency of the alleged default and opportunity to cure.

(a) Affordable Developer suffers or permits a Transfer to occur; or (b) Affordable Developer allows any other person or entity (except Affordable Developer's authorized representatives) to occupy or use all or any part of the Block 6 Affordable Air Space Parcel in violation of the provisions of this Agreement, and such event or condition shall not have been cured within thirty (30) days following the date of written demand to cure by Successor Agency to Affordable Developer;

(b) Affordable Developer fails to pay real estate taxes or assessments on the Block 6 Affordable Air Space Parcel when due or places any mortgages, encumbrances or liens upon the Block 6 Affordable Air Space Parcel or the Affordable Improvements thereon or any part thereof in violation of this Agreement, and such event or condition shall not have been cured within thirty (30) days following the date of written demand to cure by Successor Agency to Affordable Developer;

(c) Affordable Developer fails to commence promptly, or after commencement fails to prosecute diligently to completion (as evidenced by a Temporary C of O), the construction of the

Affordable Improvements within the times set forth in the Schedule of Performance, Attachment 4, or abandons or suspends construction of the Affordable Improvements for more than one hundred eighty (180) consecutive days, and such failure, abandonment or suspension continues for a period of (i) thirty (30) days following the date of written notice thereof from Successor Agency as to an abandonment, suspension or failure to commence construction; or (ii) one hundred eighty (180) days following the date of written notice thereof from Successor Agency as to a failure to complete construction within the time set forth in the Schedule of Performance, Attachment 4;

(d) Affordable Developer causes or permits a default as defined in and occurring under any other agreement between Successor Agency and Affordable Developer and fails to cure the same in accordance with such other agreement, provided that Successor Agency's remedies for a default under the other agreement between Successor Agency and Affordable Developer shall be limited to the remedies respectively set forth therein;

(e) Affordable Developer does not accept conveyance of the Block 6 Affordable Leasehold Estate in violation of this Agreement upon tender by Successor Agency pursuant to this Agreement, and such failure continues for a period of fifteen (15) business days following the date of written notice from Successor Agency;

(f) Affordable Developer is in default under the Successor Agency's Equal Opportunity Program, Attachment 9; provided, however, that any rights to cure and Successor Agency's remedies for any default under the Successor Agency's Equal Opportunity Program shall be only as set forth in the Successor Agency's Equal Opportunity Program, Attachment 9;

(g) Affordable Developer fails to obtain a Building Permit or Site Permit and all other necessary permits for the Affordable Improvements to be constructed on the Block 6 Affordable Air Space Parcel within the periods of time specified in this Agreement or the Schedule of Performance, except as may be extended due to actions or requirements of the Planning Department, the Planning Commission, or the Department of Building Inspection, and such failure continues for a period of thirty (30) days following the date of written notice thereof from Successor Agency. ;

(h) Affordable Developer does not submit all Project Approval Documents as required by this Agreement within the periods of time respectively provided therefor in this Agreement and the Schedule of Performance, and Affordable Developer does not cure such default within thirty (30) days following the date of written demand from Successor Agency;

(i) Affordable Developer defaults in the performance of or violates any covenant, or any part thereof, set forth in Article 5 or in the Grant Deed, and such default or violation continues for a period of thirty (30) days after the date of written demand to cure from Successor Agency to Affordable Developer; or in the case of a default which is not cured within thirty (30) days, Affordable Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time. The language of this paragraph shall not be construed to limit the right of the Affordable Developer to contest, under the terms of this Agreement, the allegation of default in the performance or violation of any covenant, or any part thereof, set forth in Article 5 or in the Grant Deed.

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

cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time including, without limitation, any obligations set forth in Sections 8.01A(c), 8.01A(j), and 8.01A(k).

Notwithstanding the foregoing, any act or omission by Affordable Developer that would otherwise constitute an Event of Default under this Section 8.01A that is a direct result of or solely attributable to an act or omission by Developer, including but not limited to failure by Developer to (i) deliver the garage podium upon which the Affordable Improvements are to be built in a good and workmanlike manner in accordance with the Project Approval Documents, and (ii) fulfill Developer's responsibilities as described in Section 4.02(b) shall not be an Event of Default by Affordable Developer, and Affordable Developer shall have no liability therefor.

8.02 Remedies of Successor Agency

Upon the occurrence of an Event of Default by the Developer, the Successor Agency shall have the remedies set forth below.

(a) Exclusive Right of Repurchase. Following Close of Escrow and transfer of the Site to the Developer, in the event Developer does not commence construction as required under the Schedule of Performance set forth in Attachment 4, the Successor Agency shall have an exclusive right to repurchase the Site from the Developer for the lesser of the Purchase Price or fair market value (the "Exclusive Right of Repurchase"). This Exclusive Right of Repurchase shall terminate when the Developer has commenced construction of the Improvements, per the Schedule of Performance. Fair market value shall be determined through an appraisal process ("Appraisal Process") followed by the issuance of a request for proposals to be issued by the Successor Agency. In addition to a purchase price, the request for proposals shall also include an affordable housing fee to satisfy the Inclusionary Housing Requirement, as contemplated in Article 9. The Appraisal Process shall be as follows:

i. Each party shall, at their own expense, designate a real estate broker with at least ten (10) years' experience in leasing comparable commercial properties in the San Francisco market. If either party fails to designate their real estate broker as set forth in this subparagraph within twenty-one (21) days after Successor Agency delivers written notice to Developer of its exercise of the right to repurchase under this Section, then the real estate broker selected by the other party shall act alone and his/her determination shall be binding.

ii. The two (2) real estate brokers selected by the parties (the "**Party Brokers**") shall each select a similarly qualified, independent real estate broker, whose expenses shall be shared equally by Developer and Successor Agency (the "**Neutral Broker**"). If the Neutral Broker cannot be agreed to by the parties, then the American Arbitration Association, or any successor organization, shall select the Neutral Broker in accordance with its rules and procedures and subject to California law regarding the selection of arbitrators. The parties shall jointly share the fees charged by the American Arbitration Association.

iii. The Party Brokers selected by the parties shall, after soliciting, accepting and reviewing such information and documentation as they may deem necessary and appropriate, including that submitted by either party, within thirty (30) days after appointment, prepare a statement of what they consider the fair market value of the Site.

iv. Once the two (2) Party Brokers reach their conclusions, then the Neutral Broker shall select the purchase price that he or she determines to be closest to the actual fair market value, without averaging or otherwise compromising between the two values, and the amount so calculated being the purchase price shall be binding on the parties.

Following the Appraisal Process and determination by the parties as to the fair market value of the Site, the Successor Agency shall issue a request for proposals for the site and shall require a minimum bid of the lesser of 90% of the fair market value ("FMV") or the Purchase Price to qualify as a potential purchaser of the site. Repurchase of the Site shall occur after the Successor Agency has received payment ("Repurchase Payment") from the new developer selected through a request for proposals issued by the Successor Agency. The Repurchase Payment delivered to developer shall be the lesser of 90% of the FMV of the Site as determined by the Appraisal Process or the Purchase Price. Upon repurchase, the Successor Agency shall also refund the full amount of the Affordable Housing Fee paid to MOU at the Close of Escrow, as defined in Article 9, less any predevelopment expenses for the Affordable Project paid by the Successor Agency or MOH after Close of Escrow.

To exercise its rights under this Subsection, Successor Agency shall deliver to Developer a written notice of default, notifying the Developer of the Successor Agency's intent to (i) exercise its Exclusive Right of Repurchase and (ii) record the Notice of Exclusive Right of Repurchase on the Site, attached as Attachment 11. In the event of Successor Agencies exercise of this right, the City shall within 30 days refund the entire Affordable Housing Fee as defined in Article 9, less any predevelopment expenses for the Affordable Project paid by the Successor Agency or MOH after Close of Escrow.

(b) Retain Good Faith Deposit. Developer shall forfeit any right to reimbursement of the Good Faith Deposit or application of the Good Faith Deposit to the Purchase Price in the case of an Event of Default by Developer.

(c) Other Remedies. The Successor Agency shall be entitled to exercise all remedies permitted by law or at equity, excluding specific performance.

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

8.03 Additional Remedies of Successor Agency

The remedies provided for herein are in addition to and not in limitation of other remedies including, without limitation, (i) those provided in the Grant Deed and elsewhere in violation of the covenants set forth in Article 5; (ii) the remedies set forth in the Equal Opportunity Program; and (iii) the remedies set forth in the Prevailing Wage Provisions.

8.04 Successor Agency Default

The occurrence of any one of the following events or circumstances shall constitute an Event of Default by the Successor Agency under this Agreement:

(a) Successor Agency fails to convey the Site (or portions thereof) to Developer or Affordable Developer in violation of this Agreement, pursuant to Section 2.06, and such failure continues for a period of ten (10) days following the date of written notice thereof from Developer; or

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

8.05 Remedies of Developer

For an Event of Default by the Successor Agency hereunder, the Developer shall have the following remedies:

(a) Limitation on Damages. The Successor Agency shall not be liable to Developer for damages caused by any default by Successor Agency, or to expend money to cure a default by Successor Agency, except as provided in subparagraph (e) below, subject to the limitations contained in subparagraph (d) below.

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

(c) Other Remedies. Subject to subparagraphs (b) and (e), Developer shall be entitled to exercise all other remedies permitted by law.

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

(e) Successor Agency Liability. Successor Agency shall be liable for return of the Good Faith Deposit prior to conveyance, but Successor Agency shall have no liability for money except as provided in this Section 8.05(e).

8.06 Rights and Remedies Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law, in equity or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such rights or remedies shall not preclude the exercise by such parties of any other or further rights or remedies for the same or any other default or breach by the other party. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement shall be effective beyond the particular obligation of the other party or condition to its own obligation expressly waived and to the extent thereof, or a waiver in respect to any other rights of the party making the waiver or any other obligations of the other party.

8.07 Force Majeure/Extensions of Time

(a) Force Majeure. For the purposes of any of the provisions of this Agreement, neither Successor Agency nor Developer, as the case may be, nor any successor in interest (the "Delayed

Party", as applicable) shall be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of another party, in the event of Force Majeure. "Force Majeure" means events that cause enforced delays in the Delayed Party's performance of its obligations hereunder due primarily to causes beyond the Delayed Party's control, including, but not limited to, acts of God or of a public enemy, acts of Government, fires, floods, epidemics, quarantine restrictions, freight embargoes, inability to obtain supplies or materials or reasonably acceptable substitute supplies or materials (provided that Developer has ordered such materials on a timely basis), unusually severe weather, archeological finds on the Site, substantial interruption of work because of labor disputes, administrative appeals, litigation and arbitration (provided in each such case that Developer proceeds with due diligence to resolve any dispute that is the subject of such action), or delays of subcontractors due to any of these causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of Successor Agency or Developer shall be extended for the period of the enforced delay; provided, however, that within thirty (30) days after the beginning of any such enforced delay, the party seeking the benefit of the provisions of this Section shall have first notified the other party thereof in writing, stating the cause or causes thereof and requesting an extension for the period of the enforced delay. Force Majeure shall not apply prior to the close of Escrow to any (i) obligations of Developer, or (ii) conditions to Successor Agency's performance that Developer must satisfy; provided, however, delays caused by administrative appeals, litigation or arbitration may be claimed as Force Majeure for a total period not to exceed six (6) months.

(b) Extension by Successor Agency. Successor Agency may extend the time for Developer's performance of any term, covenant or conditions of this Agreement or permit the curing of any default upon such terms and conditions as Successor Agency determines appropriate; provided, however, that any such extension or permissive curing of any particular default shall not release any of Developer's obligations nor constitute a waiver of Successor Agency's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

(c) Extension of Time by the Executive Director. The Executive Director of the Successor Agency may extend the date for Developer's performance of any item set forth in the Schedule of Performance from time to time, without the necessity for further Successor Agency Commission action, so long as all such extensions of any particular item do not exceed a total of twelve (12) months from the original dates in the Schedule of Performance; provided, however, that any such extension shall not release any of Developer's obligations nor constitute a waiver of Successor Agency's rights with respect to any other term, covenant or condition of this Agreement.

8.08 Other Rights and Remedies

The rights and remedies provided to Successor Agency and Developer in this Article 8 are in addition to and not in derogation of other rights and remedies found in this Agreement and in the Grant Deed, but not set forth in this Article 8, but in no event shall (i) Successor Agency have any liability for money or to expend money except as provided in Section 8.05(e).

8.09 General

(a) Subject to the limitations thereon contained in this Agreement, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the terms of this Agreement. Such legal actions shall be instituted in the Superior Court of the City and County of San Francisco, State of California, and any other appropriate court in that City and County or, if appropriate, in the Federal District Court in San Francisco, California.

(b) In the event that any legal action is commenced by Developer against Successor Agency, service of process on Successor Agency shall be made by any legal service upon the Executive Director of Successor Agency, or its counsel, or in such other manner as may be provided by law. In the event that any legal action is commenced by Successor Agency against Developer, service of process on Developer shall be made by personal service upon the Developer at the address provided for Section 1.02 or at such other address as shall have been given to Successor Agency by Developer pursuant to Section 12.03 of this Agreement, or in any other manner as may be provided by law, and shall be valid whether made within or without the State of California.

ARTICLE 9 - SPECIAL TERMS, COVENANTS AND CONDITIONS

9.01 Mitigation Measures

The Developer and Affordable Developer, subject to Section 4.02(b) of this DDA, agree that the construction and subsequent operation of all or any part of the Improvements shall be in accordance with the mitigation measures set forth in the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Final Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") and included as Attachment 8, Mitigation Measures. Additionally, the Developer and Affordable Developer shall provide, to the entity, or entities, specified in Attachment 8, any required reports detailing the mitigation measures implemented by the Developer, Affordable Developer and/or their contractors at the Site during demolition and construction of the Improvements until completion of construction, and through operation of the Improvements as applicable. As appropriate, these mitigation measures shall be incorporated by the Developer and Affordable Developer into any contract for the construction or operation of the Improvements.

9.02 Proposed Districts

(a) Community Benefit District. The Improvements shall be subject to the provisions of the proposed Rincon Hill Community Benefit District, once established, in order to help finance community services and the maintenance of public improvements in the Project Area.

(b) Mello-Roos Community Facilities District. The Improvements shall be subject to the provisions of the proposed Transbay Center District Plan Mello-Roos Community Facilities District ("CFD"), once established, to help pay the costs of constructing the new Transbay Transit Center. The special tax rate has not been determined, but will be equivalent to a tax of 0.55% on total assessed value, above the standard property tax rate.

(c) District Energy. It is the City's intent to establish an energy efficient district heating network within the Transbay neighborhood to help achieve its Climate Change Action Plan and carbon reduction goals. Accordingly, Developer shall design and construct the Market-Rate Project with a hydronic heating system in a manner that is compatible with and maximizes the benefits of such a district utility system if and when it becomes available. At the time the Developer is ready for issuance of the site permit by DBI, if the City has not established a plan for the district heating network identifying the capacity, location and physical connection of proposed utilities to the Project in sufficient detail to allow the Project to be designed to connect to and utilize the district heating network, there shall be no further obligations of the Developer under this section.

9.03 Affordable Housing Requirements

(a) Affordable Housing Fee

Per Section 5027.1 of the California Public Resource Code and the Implementation Agreement, 35% of all the housing built in the Project Area shall be affordable to persons and families with very-low, low-, or moderate-incomes. The Redevelopment Plan proposed to meet this requirement in two way: (1) 15% of units constructed in all new market-rate housing developments within the Project Area containing more than 10 units must be affordable to qualifying persons and families (the "Inclusionary Housing Requirement"); and (2) the balance of the affordable housing units necessary to meet the 35% requirement will be provided in stand-alone affordable housing projects.

The Inclusionary Housing Requirement for the Market-Rate Project shall be satisfied by the Block 6 Affordable Project and the Block 7 Affordable Project (collectively, the "Affordable Projects"). The Developer shall pay a subsidy in the amount of TWENTY FOUR MILLION THREE HUNDRED THOUSAND DOLLARS AND 00/100 ($24,300,000) to help fund the cost of constructing the Affordable Projects (the "Affordable Housing Fee"). The Affordable Housing Fee shall be allocated as follows: 1) $14,000,000 (or $200,000 per unit) for the Block 6 Affordable Project (the "Block 6 Affordable Housing Fee"); and (2) $10,300,000 for the Block 7 Affordable Housing Project (the "Block 7 Affordable Housing Fee").

The Developer shall pay the Affordable Housing Fee (less the Predevelopment Fees, defined below) to Successor Agency in one lump sum, in cash or immediately available funds, at or prior to the close of Escrow (as defined in Section 2.02). The Developer and the Affordable Developer shall ensure that the Affordable Projects comply with all Successor Agency and MOH policies, as determined by the Successor Agency in consultation with MOH, related to the financing, development and operation of affordable housing.

Other than the obligations of Developer to construct that portion of the Market-Rate Improvements (including the podium and shared underground garage) required for Affordable Developer to be able to construct the Block 6 Affordable Project, and Developer's obligations to assist Affordable Developer in the construction of the Block 6 Affordable Project as set forth in Section 4.02(b), upon payment of the Affordable Housing Fee, Developer shall be deemed to have fully satisfied all applicable affordable housing requirements and obligations, including but not limited to any requirements for the creation of on-site or off-site affordable housing, or payment of any fees, whether required by the San Francisco Municipal Code, including the San Francisco Planning Code, or any of the Redevelopment Requirements as defined in this Agreement.

In the event this Agreement terminates for any reason at any time following the payment of the Affordable Housing Fee but before the start of construction, the Successor Agency shall refund to the Developer the full TWENTY FOUR MILLION THREE HUNDRED THOUSAND DOLLARS AND 00/100 ($24,300,000), less any predevelopment fees that were paid prior to Close of Escrow by Developer to Affordable Developer, and less any predevelopment expenses for the Affordable Project paid by the Successor Agency or MOH after Close of Escrow, within 30 days of written notice of termination is delivered to the Successor Agency.

(b) Predevelopment Activities

To facilitate construction of the Affordable Projects concurrently with construction of the Market-Rate Project, the Developer shall fund predevelopment activities for the Affordable Projects as follows: (1) an amount not to exceed THREE MILLION DOLLARS AND 00/100 ($3,000,000) for

completion of predevelopment activities for the Block 6 Affordable Project; and (2) an amount not to exceed TWO MILLION DOLLARS AND 00/100 for completion of predevelopment activities for the Block 7 Affordable Project (collectively, the "Predevelopment Fees"). Predevelopment activities shall include, but are not limited to, financing, design, entitlement, and permitting.

The Developer shall pay the Predevelopment Fees directly to the Affordable Developer, as requested by the Affordable Developer. Within 30 days of the Effective Date of this Agreement, the Developer and Affordable Developer shall provide reasonable documentation of any such payments made to the Affordable Developer between December 6, 2011 and the Effective Date to the Successor Agency or MOH, as directed by the Successor Agency, for its approval, which shall not be unreasonably withheld. The documentation shall include, but is not limited to, itemized invoices along with a draw summary including narrative and spreadsheet. Thereafter, the Developer and Affordable Developer shall provide such documentation to the Successor Agency or MOH, as directed by the Successor Agency, on a monthly basis for its approval, which shall not be unreasonably withheld. Prior to the close of escrow, the Successor Agency, in consultation with MOH, shall calculate the credit to be applied to the Affordable Housing Fee on the basis of the approved documentation received from the Developer.

9.04 Streetscape Improvements

(a) Design and Construction; Reimbursement of Costs

The Developer shall complete or cause to be completed the design and construction of the Streetscape Improvements (as defined in Attachment 5, Scope of Development). The RFP stated that the Former Agency would reimburse the Developer for the cost of the Streetscape Improvements. The parties acknowledge that, due to the dissolution of the Former Agency, these funds are not currently available. Instead, the Successor Agency will work with the Interagency Plan Implementation Committee ("IPIC") to allocate revenue from the CFD to reimburse the Developer for the cost of the Streetscape Improvements. The CFD was approved as part of the Transit Center District Plan in August 2012. It is anticipated that the final legislation approving the CFD rate and method of apportionment will be approved by April 2013. The Developer or successor buyer will be reimbursed on an annual basis out of a portion of the CFD special tax paid by the Developer. The Developer or successor buyer shall continue to be reimbursed on an annual basis until the total reimbursement is equal to the cost of the Streetscape Improvements, up to a maximum of $2,250,000. The CFD special tax rate has not been determined, but will be equivalent to a tax of 0.55% of total assessed value, as stated in the Transit Center District Plan. The Developer or successor buyer shall be reimbursed by receiving an abatement of the portion of the special tax between an equivalent of 0.35% and an equivalent of 0.55% of total assessed value, until the aggregate of the abated tax amounts equals the total cost of the Streetscape Improvements, up to a maximum of $2,250,000. The Successor Agency is a member of IPIC and shall be responsible for drafting the CFD legislation to anticipate this allocation. The final reimbursement formula pursuant to this section, which shall be based on the final CFD special tax rate, is subject to approval by IPIC.

(b) Maintenance

The Developer shall maintain or cause to be maintained the Streetscape Improvements in compliance with the laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco. The Developer shall pay for all maintenance costs associated with Clementina Alley (as shown in the Streetscape Plan). The Developer shall pay eighty-five point nine percent (85.9%) of the maintenance costs for the Block 6 Streetscape Improvements, which is based on the residential square footage of the Market-Rate Project as a percentage of the residential square footage of the Project. The Affordable Developer shall pay the balance (14.1%) of the maintenance costs of the Block 6 Streetscape Improvements. Upon completion of the Block 7 Streetscape Improvements, the Developer

shall pay eighty five point nine percent (85.9%) of the maintenance costs for the Streetscape Improvements, and the Affordable Developer shall pay the balance (14.1%) of the costs.

9.05 Shared Open Space

(a) Design and Construction

The Developer shall complete or cause to be completed the design and construction of the Shared Open Space (as defined in Attachment 5, Scope of Development). The Developer shall pay eighty five point nine percent (85.9%) of the cost of the design and construction of the Shared Open Space, based on the residential square footage of the Market-Rate Project as a percentage of the residential square footage of the Project. The Affordable Developer shall pay the balance (14.1%) of the design and constructions costs related to the Shared Open Space.

(b) Maintenance

The Developer shall maintain or cause to be maintained the Shared Open Space in compliance with the laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco. The Developer shall pay eighty five point nine percent (85.9%) of the maintenance costs for the Shared Open Space, based on the residential square footage of the Market-Rate Project as a percentage of the residential square footage of the Project. The Affordable Developer shall pay the balance (14.1%) of the maintenance costs for the Shared Open Space.

9.06 Shared Underground Parking Garage

The Developer shall complete or cause to be completed the design and construction of the Garage (as defined in Attachment 5, Scope of Development). The Developer shall pay seventy one point four percent (71.4%) of the design, construction, and operation of the Garage, based on the number of parking spaces allocated to the Market-Rate Project (95) as a percentage of the total number of residential parking spaces in the Garage (133). The Developer shall be responsible for all costs associated with the design, construction, and operation of the Car Share Spaces (as defined in Attachment 5, Scope of Development).

The Affordable Developer shall be responsible for the balance (28.6%) of the design, construction, and operation costs related to the Garage. The Developer acknowledges and agrees that the Block 6 Affordable Project's share of designing and constructing the garage will be reimbursed by the Affordable Developer within 30 days of receipt of proof of actual payment of the construction costs of the Garage. The Developer further acknowledges and agrees that the any design and construction costs related to parking spaces for the Block 7 Affordable Housing Project will be reimbursed by the Successor Agency out of the Affordable Housing Fee within thirty (30) days of receipt of proof of actual payment of the construction costs of the Garage. (Note: Developer needs to provide costs estimates of any items to be reimbursed of the Affordable Housing Fee by the Successor Agency, so that the payments can be added to the Recognized Obligation Payment Schedule that is submitted to the Department of Finance).

ARTICLE 10 – SUCCESSOR AGENCY EQUAL OPPORTUNITY PROGRAM

Developer and Affordable Developer will comply with the Successor Agency's Equal Opportunity Program, as described in this Article 10 and in Attachment 9, and will submit all documents required pursuant to the policies included in Attachment 9 (the "Equal Opportunity Program"), pursuant to the Schedule of Performance, Attachment 4.

(a) Non-Discrimination

(i) Non-Discrimination in Benefits. Developer and Affordable Developer 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 with respect to its operations under this Agreement (i.e., providing services related to the Development project) elsewhere in the United States discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership had been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in the Successor Agency's Non-Discrimination in Contracts and Benefits Policy, adopted September 9, 1997, as amended February 4, 1998 as set forth in Attachment 9.

(ii) Elimination of Discriminatory Restrictions. Developer and Affordable Developer agree to take and to permit the Successor Agency to take all steps legally necessary or appropriate to remove restrictions against the Site, if any, that would violate any of the non-discrimination provisions of this Section, whether the restrictions are enforceable or not.

(b) Compliance with Minimum Compensation Policy and Health Care Accountability Policy. The Successor Agency finds that it has a significant proprietary interest in the Site that is being transferred to the Developer and Affordable Developer, pursuant to this Agreement. Developer and Affordable Developer will comply with the applicable provisions of the Successor Agency's Minimum Compensation Policy ("MCP"), Attachment 9, and Health Care Accountability Policy ("HCAP"), Attachment 9, adopted by Agency Resolution No. 168-2001 on September 25, 2001, as these policies may be amended from time to time (jointly, the "Policies"). The requirements of the Policies include the following:

(i) the payment of the "Minimum Compensation" specified in MCP Section 3 to all "Covered Employees," as defined under MCP Section 2.7, who work on the Project, who are employed by Developer, Affordable Developer, or by any of their subcontractors who enter into an "Included Subcontract" (as defined in Attachment 9).

(ii) the payment of one of the health care benefit options described in HCAP Section 3 as to all "Covered Employees," as defined under HCAP Section 2.7, who work on the Project, who are employed by Developer, Affordable Developer or by any of their subcontractors who enter into an "Included Subcontract" (as defined in Attachment 9).

(c) Small Business Enterprise and Workforce Agreements. Developer, Affordable Developer and the Successor Agency acknowledge that the Project will create employment opportunities at all levels, including opportunities for qualified economically disadvantaged small business enterprises, qualified economically disadvantaged Project Area residents and San Francisco residents. In recognition of these opportunities, Developer and Affordable Developer shall develop and implement the Small Business Enterprise Agreement described in Attachment 9, the Construction Workforce Agreement described in Attachment 9, and the Permanent Workforce described in Attachment 9 (the "Policies").

Notwithstanding the above, Developer, Affordable Developer and the Agency further acknowledge that the Developer and Affordable Developer will develop and implement all of the Policies described above with the understanding that:

1. The existing work force is not affected, and no existing employee needs to be replaced. Rather, the Permanent Workforce policy applies only to future employees, if any;

2. In the event of any future job opening, the Developer and Affordable Developer are entitled to set any employment qualifications it desires, in its sole discretion, including requirements related to the teacher qualifications, or any other job category, including, but not limited to, religious affiliations, to the extent such qualifications do not violate state or federal laws, including the California Fair Employment and Housing Act; and,

3. The Policies require the Developer and Affordable Developer to use good faith efforts to reach the employment opportunity goals and do not establish any required number of hires of qualified economically disadvantaged small business enterprises or qualified economically disadvantaged Project Area or San Francisco residents.

4. Developer shall utilize the Mayor's Office of Economic and Workforce Development - CityBuild for construction placement services to assist in achieving the Successor Agency's workforce goals and shall execute an agreement with CityBuild to fund CityBuild's staff costs for such services, up to a maximum of $83.33 per market-rate residential unit or $34,082 for 409 units.

(d) Prevailing Wages (Labor Standards). The Parties acknowledge that the development of the Project is a private work of improvement. Developer and Affordable Developer agree to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in Attachment 9 for construction work done at the Site prior to the issuance of the City's Final Certificate of Occupancy.

ARTICLE 11 – INTENTIONALLY DELETED

ARTICLE 12 - GENERAL PROVISIONS

12.01 Indemnification

Developer and Affordable Developer, as applicable, shall indemnify, defend, and hold harmless the Successor Agency, the City, the TJPA and their respective members, officers, agents and employees from and against any losses, costs, claims, damages, liabilities and causes of action (including reasonable attorney's fees and court costs) arising out of this Agreement, including with respect to any challenge to the entitlement of the Developer to undertake the program described in the Scope of Development, or in any way connected with the death of or injury to any person or damage to any property occurring on or adjacent to the applicable portion of the Site and directly or indirectly caused by any acts done thereon or any acts or omissions of Developer or Affordable Developer respectively, and their respective agents, employees or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities or causes of action (including reasonable attorneys' fees and court costs) due primarily to the gross negligence or willful misconduct of the person or party seeking to be indemnified (Agency or the City, as the case may be), or its respective agents, employees or contractors. Developer's obligations under this Section 12.01 shall survive Agency's recordation of the Notice of Termination as to any acts or omissions occurring prior to such recordation.

12.02 Provisions with Respect to Time Generally

All references in this Agreement to time limitations, including those in the Schedule of Performance, shall mean such time limitations as they may be extended pursuant to the terms of this Agreement.

12.03 Notices

Any notice, demand or other communication required or permitted to be given under this Agreement by either party to the other party shall be sufficiently given or delivered if transmitted by (i) registered or certified United States mail, postage prepaid, (ii) personal delivery, (iii) nationally recognized private courier services, or (iv) facsimile transmission, provided that, in such case, a confirming copy is sent by first class mail or pursuant to subsections (i), (ii) or (iii), in every case addressed as follows:

If to Agency:
Successor Agency to the San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attention: Executive Director

With a copy to:
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attention: Real Estate/Finance Team
Facsimile No.: (415) 554-4755

If to Developer:
Golub Real Estate Corp.
625 N. Michigan Avenue, # 2000
Chicago, IL 60611
Attention: Lee Golub
Facsimile No.: (312) 440-0809

With a copy to:
Andrew J. Junius
Reuben & Junius, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Facsimile No. (415) 399-9480

Stephen A. Cowan
DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, California 94105
Facsimile No. (415) 659-7500

If to Affordable Developer:
Mercy Housing California
PROVIDE ADDRESS

With a copy to:

Any such notice, demand or other communication transmitted by registered or certified United States mail, postage prepaid, shall be deemed to have been received forty-eight (48) hours after mailing (unless it is never delivered), and any notice, demand or other communication transmitted by personal delivery, facsimile transmission or nationally recognized private courier service shall be deemed to have been given when received by the recipient. Any party may change its address for notices under this Section 12.03 by written notice given to the other party in accordance with the provisions hereof.

12.04 Time of Performance

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

(b) A performance date which falls on a Saturday, Sunday or Agency holiday is automatically extended to the next Agency working day.

(c) Unless otherwise specified, whenever an action is required in response to a submission, request or other communication, the responding party shall respond within thirty (30) days.

12.05 Attachments/Recitals

All attachments and recitals to this Agreement are hereby incorporated herein and made a part hereof as if set forth in full.

12.06 Non-Merger in Deed

None of the provisions of this Agreement are intended to, or shall be, merged by reason of any deed transferring title to the Site from Agency to Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

12.07 Headings

Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The terms "Paragraph" and "Section" may be used interchangeably.

12.08 Successors and Assigns

This Agreement shall be binding upon and, subject to the provisions of Article 6, shall inure to the benefit of, the successors and assigns of Agency, Developer and any Holder and where the term "Developer", "Affordable Developer", "Agency" or "Holder" is used in this Agreement, it shall mean and include their respective successors and assigns, including as to any Holder, any transferee of such Holder or any successor or assign of such transferee.

12.09 Counterparts/Formal Amendment Required

(a) This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

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

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

12.10 Governing Law

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

12.11 Recordation

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

12.12 Estoppels

At the request of any party, the other Parties, within ten (10) days following such request, shall execute and deliver to the requesting Party a written statement in which such other Parties shall certify that this Agreement is in full force and effect; that this Agreement has not been modified or amended (or stating all such modifications and amendments); that no Party is in default under this Agreement (or setting forth any such defaults); that there are not then existing set-offs or defenses against the enforcement of any right or remedy of any Party, or any duty or obligation of the certifying Parties (or setting forth any such set-offs or defenses); and as to such other matters relating to this Agreement as the requesting Party shall reasonably request.

12.13 Attorneys' Fees

In the event that any Party brings a legal action to enforce rights under this Agreement against any other Party, the prevailing Party in any such proceeding will be entitled to recover its reasonable attorneys' fees and costs of the proceeding.

12.14 Further Assurances

Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Agreement.

12.15 No Personal Liability

(a) No member, official or employee of Agency shall be personally liable to Developer or Affordable Developer or any successor in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or Affordable Developer or successor or on any obligations under the terms of this Agreement.

(b) No officer, director, member, official or employee of owner or Developer or Affordable Developer shall be personally liable to Agency or the City or any successor in interest in the event of any default or breach by Developer or Affordable Developer or for any amount which may become due to Agency or the City or successor or on any obligations under the terms of this Agreement.

12.16 Effective Date

The Effective Date of this Agreement and the parties' rights and obligations hereunder shall be the date on which this Agreement is approved by the Successor Agency Commission. The

Successor Agency shall insert such date into the appropriate locations in this Agreement, but the failure to do so shall not in any way affect the enforceability of this Agreement.

ARTICLE 13 - REFERENCES AND DEFINITIONS

Additional Purchase Payment is defined in Section 1.05.
Affordable Developer is defined in Section 1.03.
Affordable Housing Air Space Parcel is defined in Section 2.03
Affordable Improvements is defined in Section 4.01
Agreement means this Disposition and Development Agreement.
Block 6 Affordable Housing Fee is defined in Section 9.03(a).
Block 7 Affordable Housing Fee is defined in Section 9.03(a).
Block 7 Affordable Project is defined in Recital Q
City means the City and County of San Francisco.
Completion of Construction of the Improvements is defined in Section 1.09(a).
Deed means the Grant Deed, as shown in Attachment 10.
DRDAP means the Design Review and Document Approval Procedures, as shown in Attachment 6.
Default by Agency is defined in Section 8.04
Default by Developer is defined in Section 8.01.
Effective Date is defined in Section 12.16.
Environmental Law is defined in Section 3.02(c).
Escrow is defined in Section 2.02.
Exclusive Right to Repurchase is defined in Section 8.02 (a), a form of which is shown on Attachment 11.
Final C of O is defined in Section 1.09(a).
Force Majeure is defined in Section 8.07(a)
Grant Deed means a grant deed in the form attached as Attachment 10.
Hazardous Substance is defined in Section 3.02(b).
Improvements is defined in the Scope of Development, Attachment 5.
Market-Rate Improvements is defined in Section 4.01
MOH is defined in Recital K
Notice of Termination is defined in Section 4.13
Permit to Enter is referred to in Section 2.06 and attached hereto as Attachment 7.
Project means the Improvements as defined in the Scope of Development, Attachment 5 and Section 4.01.
Project Area means the Transbay Redevelopment Project Area as described in the Redevelopment Plan.
Proposed Site Plan is attached as Attachment 2-B
Redevelopment Plan is defined in Recital B of this Agreement.
Redevelopment Requirements are defined in Section 4.04
Schedule of Performance is attached as Attachment 4.
Scope of Development is attached as Attachment 5.
Shared Open Space is defined in Attachment 5
Shared Underground Parking Garage is defined in Attachment 5
Site is defined in Section 1.04.
Site Plan is attached as Attachment 2-A.
Site Permit is defined in Section 4.10.
Streetscape Improvements is defined in Attachment 5
Term is defined in Section 1.09 (a).
Title Company is defined in Section 2.02(a).
Trust Account is defined in Section 2.03(f).

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Authorized by Successor Agency Resolution No.10-2013 adopted April 16, 2013

SUCCESSOR AGENCY

Successor Agency to the Redevelopment Agency of the City and County of San Francisco

By _____
Tiffany J. Bohee
Executive Director

DEVELOPER

Golub Real Estate Corp.

By _____
Its: MICHAEL NEUMAN
PRESIDENT + CEO

AFFORDABLE DEVELOPER

Mercy Housing California

By _____
Its:

Approved as to Form:

DENNIS J. HERRERA,
City Attorney

By _____
Heidi J. Gewertz
Deputy City Attorney

Project Manager Approval:

By _____
Michael J. Grisso
Senior Project Manager

CITY ACKNOWLEDGEMENT

Mayor's Office of Housing

By _____
Olson M. Lee
Director

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Authorized by Successor Agency Resolution No. 10-2013 adopted April 16, 2013

SUCCESSOR AGENCY

Successor Agency to the Redevelopment Agency of the City and County of San Francisco

By _____
Tiffany J. Bohee
Executive Director

Approved as to Form:

DENNIS J. HERRERA,
City Attorney

By _____
Heidi J. Gewertz
Deputy City Attorney

Project Manager Approval:

By _____
Michael J. Grisso
Senior Project Manager

CITY ACKNOWLEDGEMENT

Mayor's Office of Housing

By _____
Olson M. Lee
Director

DEVELOPER

Golub Real Estate Corp.

By _____
Its:

AFFORDABLE DEVELOPER

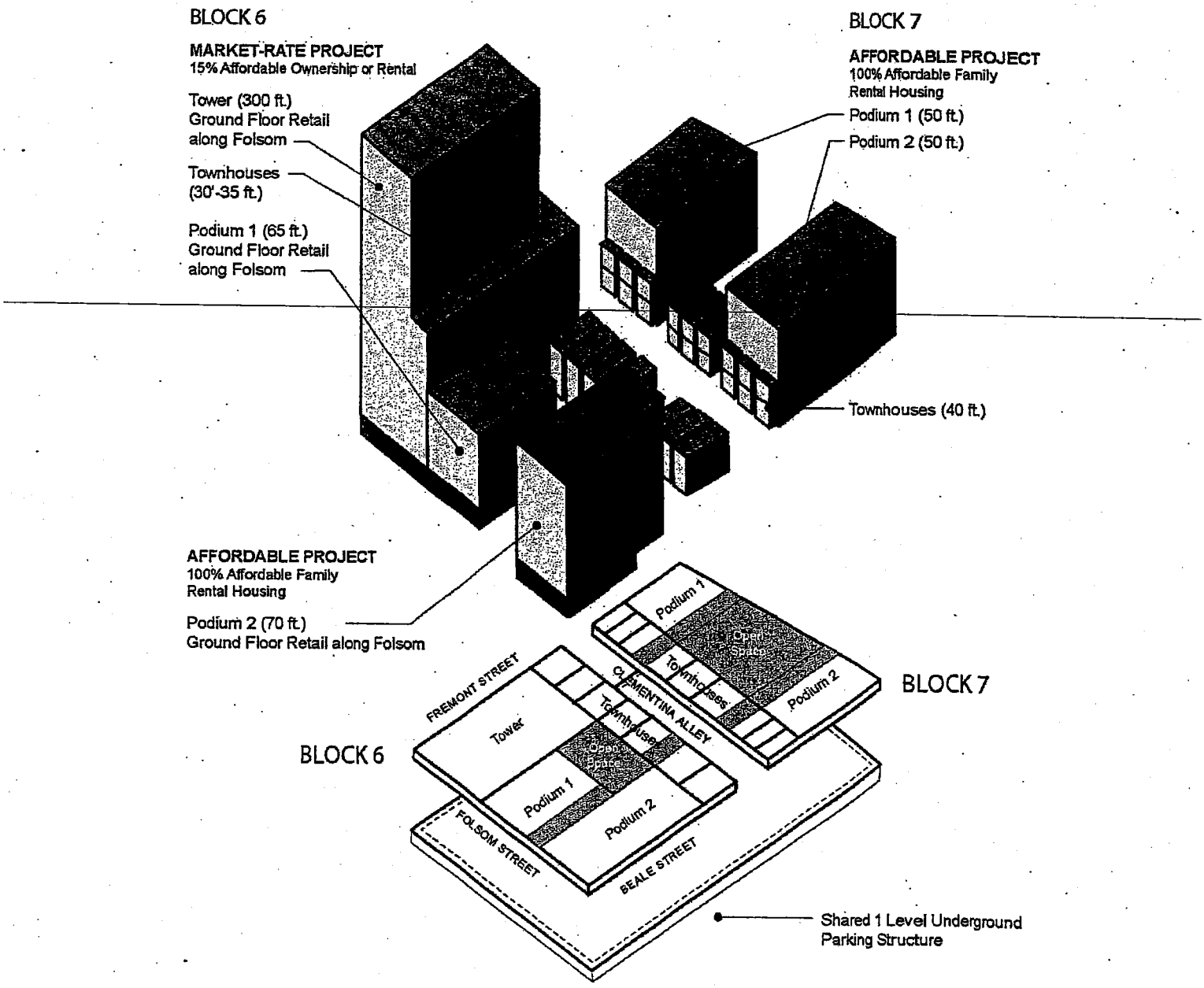
Mercy Housing California

By _____
Its: President

Transbay Block 6
Assessor's Block 3738 Lot 004

ATTACHMENT 1

Development Program



ATTACHMENT 2-A
Existing Site Parcel Plan

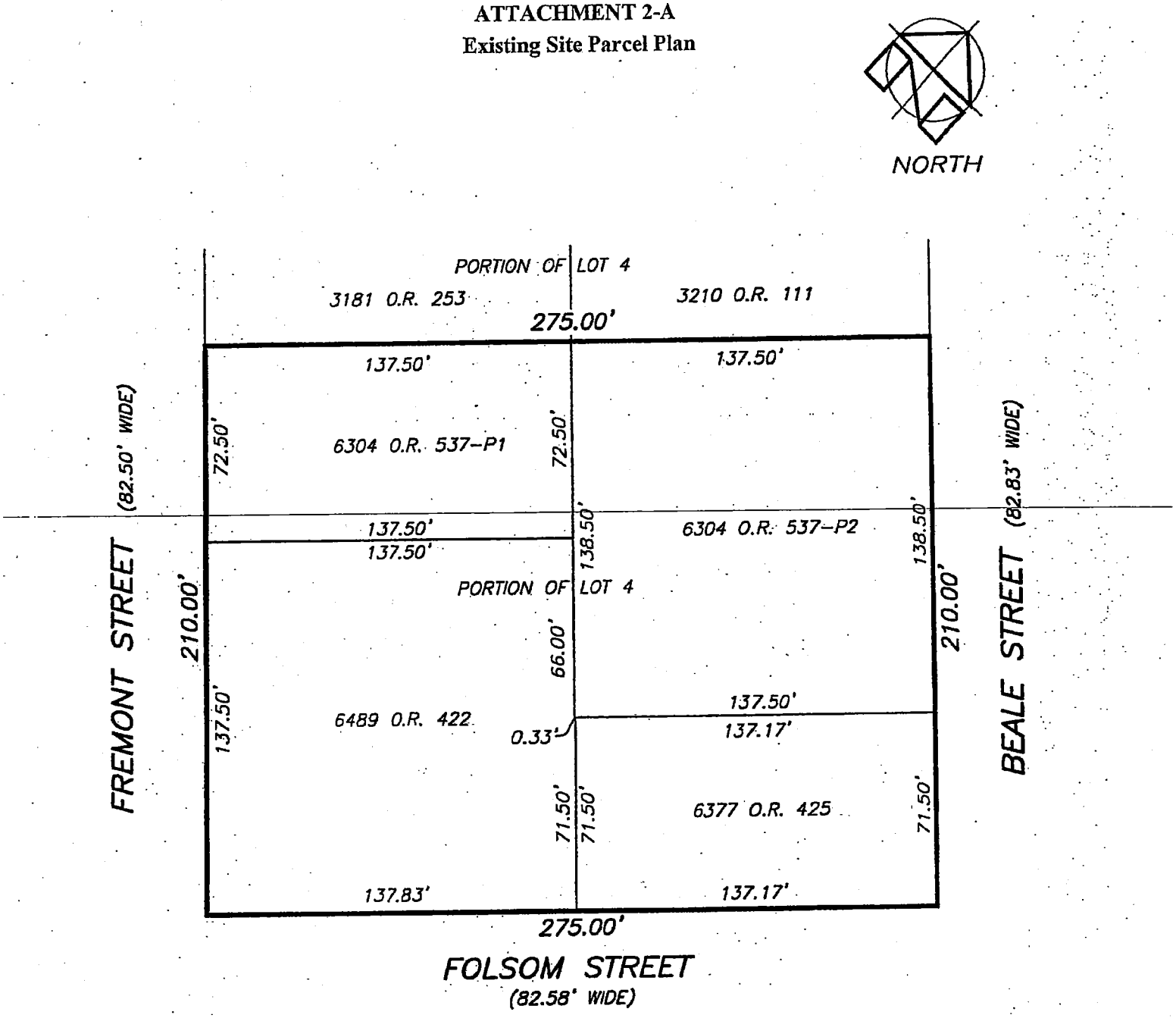


EXHIBIT 2A
EXISTING SITE PARCEL PLAN

ASSESSOR'S
BLOCK 3738
SAN FRANCISCO,
CALIFORNIA

BY JP	CHKD. BR	DATE 4-15-13	SCALE 1"=50'	SHEET 1 OF 1	JOB NO. S-8217

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-8217-LLA.DWG

ATTACHMENT 3-A

Site Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF San Francisco, COUNTY OF San Francisco, STATE OF California AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF FOLSOM STREET WITH THE NORTHEASTERLY LINE OF FREMONT STREET; THENCE ALONG SAID LINE OF FREMONT STREET NORTH 43°41'50" WEST 281.15 FEET TO A POINT DISTANT THEREON 269.167 FEET SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF HOWARD STREET; THENCE NORTH 46°18'10" EAST 137.50 FEET; THENCE NORTH 34°16'30" EAST 131.01 FEET; THENCE NORTH 43°41'50" WEST 12.70 FEET TO A LINE DRAWN SOUTH 46°18'10" WESTFROM A POINT ON THE SOUTHWESTERLY LINE OF BEALE STREET, DISTANT THEREON 229.167 FEET SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF HOWARD STREET; THENCE ALONG SAID LINE NORTH 46°18'10" EAST 9.39 FEET TO THE SOUTHWESTERLY LINE OF BEALE STREET; THENCE ALONG SAID LINE OF BEALE STREET SOUTH 43°41'50" EAST 321.15 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET; THENCE ALONG SAID LINE OF FOLSOM STREET SOUTH 46°18'10" WEST 275.02 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3738.

ALL BEARINGS, STREETS AND STREET LINES HEREINABOVE MENTIONED ARE

IN ACCORDANCE WITH THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY NO. 6428", FILED MAY 31, 2012 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, UNDER DOCUMENT NO. 20123423945, IN BOOK E OF SURVEY MAPS, AT PAGES 19 THROUGH 27, INCLUSIVE

THE ABOVE LEGAL IS SHOWN AS A CONVENIENCE ONLY AND HAS NOT BEEN CREATED OF RECORD

APN: Lot 4, Block 3738

Attachment 3-B

Proposed Site Legal Description

PARCEL A:

APN: LOT ___, BLOCK 3738 (PORTION OF FORMER OF APN: LOT 4, BLOCK 3738)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF FOLSOM STREET (82.50 FEET WIDE) WITH THE NORTHEASTERLY LINE OF FREMONT STREET (82.50 FEET WIDE); THENCE ALONG SAID LINE OF FREMONT STREET N 43°41'50" W 182.67 FEET; THENCE N 46°18'10" E 275.02 FEET TO THE SOUTHWESTERLY LINE OF BEALE STREET (82.50 FEET WIDE); THENCE ALONG SAID LINE OF BEALE STREET S 43°41'50" E 182.67 FEET TO SAID NORTHWESTERLY LINE OF FOLSOM STREET; THENCE ALONG SAID NORTHWESTERLY LINE S 46°18'10" W 275.02 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR?S BLOCK NO. 3738.

ALL DIMENSIONS, BEARINGS, STREETS AND STREET LINES HEREINABOVE MENTIONED ARE IN ACCORDANCE WITH RECORD OF SURVEY NO. 6428, FILED MAY 31, 2012, IN BOOK "E" OF SURVEY MAPS, PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

ATTACHMENT 4

Schedule of Performance

Task	Performance Date	Outside Date for Performance (must occur no later than date specified)
Schematic Design – Submission to Successor Agency	Complete.	---
DDA Effective Date	Date Successor Agency Commission approves the DDA.	[April 16, 2013]
Schematic Design – Approval by Successor Agency Commission	Approved concurrently with Successor Agency Commission approval of the DDA.	[April 16, 2013]
Developer Pays Negotiation Deposit	Within 5 days after the Effective Date.	[April 21, 2013]
Developer Pays Good Faith Deposit	Within 30 days after the Effective Date.	[May 16, 2013]
Developer Opens Escrow	At least 30 business days prior to Close of Escrow.	August 20, 2013
Evidence of Financing and Project Commitments – Submission to Successor Agency	Within 45 days prior to payment of purchase price and close of escrow.	August 17, 2013
Parties Submit Escrow Instructions	At least 15 business days prior to Close of Escrow.	September 10, 2013
Design Development Documents -- Submission to Successor Agency	Within 5 months after Effective Date.	September 16, 2013
Evidence of Financing and Project Commitments -- Approval by Successor Agency	Within 15 days after receipt of Evidence of Financing and Project Commitments.	September 1, 2013
Parties Submit Closing Documents to Escrow	At least 2 business days prior to Close of Escrow.	September 27, 2013
Developer Deposits Purchase Price into Escrow	No later than 48 hours prior to Close of Escrow.	September 29, 2013
Successor Agency Deposits Grant Deed into Escrow	No later than 24 hours prior to Close of Escrow.	September 30, 3013
Payment of Purchase Price and Close of Escrow	June 1, 2013	October 1, 2013
Design Development Documents – Approval by Successor Agency	Completeness check within 15 working days of submittal.	October 7, 2013
Design Development Documents – Approval by Successor Agency	Approval within 49 days from the date Design Development Documents are determined to be complete.	November 25, 2013
Final Construction Documents – Submission to Successor Agency.	Within 10 months after Effective Date.	January 16, 2014
Final Construction Documents – Approval by Successor Agency	Within 21 days after receipt of the Final Construction Documents from and approved by DBI and any other City agencies with jurisdiction.	February 6, 2014
Commencement of Construction	Within 24 months of Effective Date of DDA.	April 16, 2015
Completion of Construction	Within 48 months of Effective Date of DDA	April 16, 2017

ATTACHMENT 5

Scope of Development

I. Description of Improvements

The Block 6 Site will consist of three legal parcels totaling approximately 42,625 square feet parcel on Folsom Street between Fremont and Beale Street in the Transbay Redevelopment Project Area. The permitted uses and development standards pertaining to the Site are described in the Redevelopment Plan and Development Controls.

The Improvements are defined as follows:

A. Market-Rate Project.

1) Residential Tower Mid-Rise Buildings. The Developer shall construct, or cause to be constructed, a 32-story residential building on the Tower Parcel and an attached 6- story residential building on the Block 6 Podium 1 Parcel (as shown on the Development Program). The tower and attached mid-rise building will include approximately four hundred and two (402) market-rate units, a fitness center, a community room, outdoor amenity space, and retail space fronting Folsom Boulevard. The gross building area devoted to residential uses (excluding the parking level) will be approximately 361,983 square feet; the gross building area devoted to commercial uses will be approximately 7,900 square feet.

2) Townhouses. The Developer shall construct, or cause to be constructed, a 3-story townhouse building with seven (7)residential units on the Townhouse Parcel, as shown on the Development Program. The gross building area devoted to residential uses will be approximately 7,385 square feet.

The average size of the residential units in the Market-Rate Project will be approximately 714 square feet. Ninety seven (97) units, approximately 25% of the units, will be two bedroom units; the balance of the units will include sixty five (65)studio and junior one-bedroom units, and two hundred forty (240) one-bedroom and one-bedroom plus den units.

B. Block 6 Affordable Project. The Affordable Developer shall construct, or cause to be constructed, an 8-story residential building on the Block 6 Affordable Project Air Rights Parcel (as shown on the Development Program), which will be ultimately owned and operated by the Affordable Developer. The Block 6 Affordable Project building will include approximately seventy (70) affordable units, laundry facilities, a community room, and retail space fronting Folsom Boulevard. The average size of the residential units in the Affordable Project will be approximately 562 square feet. Fifty six (56) units, 80% of the total, shall be one bedroom units, and fourteen (14) units shall be two bedroom units.

The gross building area devoted to residential uses (excluding the parking level) will be approximately 52,937 square feet; the gross building area devoted to commercial uses will be approximately 2,207 square feet.

C. Shared Underground Parking Garage. The Developer shall construct, or cause to be constructed, an underground parking garage to be shared by the Market-Rate Project, the Block 6 Affordable Project, and the Block 7 Affordable Project (the "Garage"). The Garage will include the following: a) 92 spaces for the Market-Rate Project; b) 18 spaces for the Block 6 Affordable Project; c) 20 spaces for the Block 7 Affordable Project; d) 3 car sharing spaces (the "Car Share Spaces"); and 3) parking for approximately 207 bicycles. The Garage will be accessible to vehicles by way of a single ramp located at the east side of the Site off of Beale Street.

D. Shared Open Space. The Developer shall construct, or cause to be constructed, 3,600 square feet of open space on the Open Space Parcel (as depicted in the Development Program) and 6,700 gross square feet of open space on the northern border of Clementina Alley to be shared by residents of the Market-Rate and Affordable Projects (the "Shared Open Space").

E. Streetscape Improvements. The Developer shall construct, or cause to be constructed, the streetscape improvements for Block 6 and Block 7 as documented in the Streetscape Plan, as amended by the Folsom Street Schematic Design documents dated January 7, 2013 (the "Streetscape Improvements").

II. Planning Goals and Objectives

The following goals from Section 2.2 of the Redevelopment Plan apply to the Project. The Redevelopment Plan goals were established in conjunction with the Transbay Citizens Advisory Committee and members of the public at large. The goals set forth objectives that will direct the revitalization of the community. Together with the Development Controls and Design Guidelines and the Streetscape and Open Space Plan, these goals will guide the direction of all future development within the Project Area.

A1. Construct wider sidewalks throughout the Project Area as needed to facilitate easy pedestrian travel.
A2. Beautify streetscapes in accordance with the Development Controls and Design Guidelines.
A3. Improve street and sidewalk lighting along all streets and encourage private property owners to provide additional lighting elements to the streetscape.
A5. Increase the amount of street-level amenities such as street furniture, street trees, and public artwork to create a pleasant pedestrian experience.
A6. Ensure that new buildings have multiple residential entrances and/or retail at the street level to contribute to sidewalk activity, according to the Development Controls and Design Guidelines.
A7. Maintain existing alleys and walkways and create new pedestrian alleys and walkways to create a continuous network to connect streets, open spaces, and other activity centers.
B3. Facilitate pedestrian and vehicular access into and through large blocks and extend the pattern of small, mid-block streets that exists in the area.
B4. Discourage unnecessary private automobile use by encouraging developments that promote car sharing, shuttles, carpooling, public transit, car rental services, taxi service and other alternatives to the privately-owned automobile.
B6. Encourage unbundling of parking from commercial and residential units, and encourage lower parking requirements.
B7. Minimize the number of curb cuts in new developments and encourage common vehicular access

for adjacent sites, where feasible.

B8. Minimize interference to transit from vehicular access to buildings and truck loading zones.

C1. Create an open space network to serve the diverse needs of a mixed-use community including features such as plazas, playgrounds, recreation spaces, and softscaped areas.

C3. Fulfill the vision of the Downtown Area Plan of the San Francisco General Plan that almost everyone within the Project Area will be within 900 feet of a publicly accessible space, including small and privately owned spaces.

C5. Promote neighborhood serving retail establishments to provide residents and workers with immediate walking access to daily shopping needs.

C7. Encourage adequate public community services such as childcare, schools, and libraries.

C8. Promote the creation of a community facilities district to assist in funding streetscape and open space improvements and maintenance.

D1. Create a boulevard on Folsom Street from Second Street to the Embarcadero to serve as a pedestrian promenade while maintaining it as a vehicular route.

D2. Develop signage to identify the area as the gateway to the city from the new Transbay Terminal and the Bay Bridge.

D3. Encourage the installation of public art in streetscapes, open space, and commercial developments.

D4. Ensure proper tower spacing and height and bulk controls for large-scale development, according to the Development Controls and Design Guidelines.

D5. Ensure that high-rise buildings reflect high quality architectural and urban design standards.

E1. Create a mixture of housing types and sizes to attract a diverse residential population, including families and people of all income levels.

E2. Develop high-density housing to capitalize on the transit-oriented opportunities within the Project Area and provide a large number of housing units close to downtown San Francisco.

E3. Focus residential development along Folsom, Beale and Main Streets and design these streets as mixed-use residential corridors.

E4. Maximize housing development on the former Caltrans-owned properties according to the Development Controls and Design Guidelines in order to provide financial support to the new Transbay Terminal and Caltrain Downtown Extension through tax increment and land sale revenue.

III. Development Standards

All development on the Site shall comply with the Redevelopment Plan, the Development Controls and Design Guidelines, and the Streetscape and Open Space Plan (as amended by the Folsom Street Schematic Design documents dated XXXXX).

IV. Developer Responsibilities

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

A. All site preparation activities on the Site.

ATTACHMENT 6

Document Review and Approval Procedures

INTRODUCTION

This Transbay 6 & 7 **Design Review and Document Approval Procedure ("DRDAP")** sets forth the procedure for design submittals of the plans and specifications for the developments of Blocks 6 & 7 of Zone 1 of the Transbay Redevelopment Project Area ("Project Area") and their review and consideration for approval by the Office of Community Investment and Infrastructure ("OCII"), as Successor Agency to the former San Francisco Redevelopment Agency (the "Former Agency"). The development will include a mixed use residential and commercial project, new streets and streetscape designs, public and private open spaces, and other permanent structures, as well as potential interim uses. Other departments and agencies of the City and County of San Francisco ("City Agencies") will review plans and specifications for compliance with applicable City and County of San Francisco ("City") regulations.

REVIEW

Subdivision Map Review

The review and approval of Design and Construction Documents by OCII pursuant to this DRDAP are in addition to and do not waive the requirements for subdivision review and approval as specified in the Subdivision Map Act. The processing of a subdivision map may occur concurrently with or independently of a project approval.

Temporary and Interim Uses

OCII staff shall review applications for temporary and interim uses.

DOCUMENTS FOR PROJECT APPROVAL

Project Approval documents shall consist of three components or stages:

- Schematic Design Documents,
- Design Development Documents, and
- Final Construction Documents.

SCOPE OF REVIEW

OCII in consultation with the San Francisco Planning Department and the San Francisco Department of Building Inspection (DBI), and other City Agencies shall review and approve Schematic Design plans, Design Development Documents and Final Construction Documents, each as defined below, for conformity with any prior approvals, the Redevelopment Plan for the Project Area ("Redevelopment Plan") and accompanying Plan Documents, including but not limited to the Transbay Development Controls and

Design Guidelines ("Development Controls") and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan ("Streetscape Plan"). OCII's review shall include consideration of such items as the architectural design, site planning and landscape design as applicable and appropriate to each submittal. The applicant shall submit a report regarding compliance with the Mitigation Monitoring and Reporting Program previously adopted by the Former Agency pursuant to the California Environmental Quality Act (CEQA). The mitigation measures are a part of the Final Environmental Impact Statement/Environmental Impact Report for the Project Area (EIS/EIR). The mitigation measures are intended to reduce the major impacts of this development on the environment. OCII shall review such report to ensure compliance with the CEQA and the adopted Mitigation Monitoring and Reporting Program.

OCII PROCESS

Review by OCII

The redevelopment of Zone 1 of the Project Area established by the Redevelopment Plan and the Development Controls is a priority project for the City and OCII. OCII shall review all applications for project approvals as expeditiously as possible. OCII staff shall keep the applicant informed of OCII's review and comments, as well as comments by City Agencies, other government agencies, or community organizations consulted by OCII, and shall provide applicant opportunities to meet and confer with OCII and City staff prior to the Commission on Community Investment and Infrastructure ("CCII") hearing, to review the specific application for project approval.

Pre-Submission Conference(s)

Prior to filing an application for any project approval, the applicant or applicants may submit to OCII project review staff preliminary maps, plans, design sketches and other data concerning the proposed project and request a pre-submission conference. Within fifteen (15) days after the receipt of such request and material, OCII staff shall hold a conference with the applicant to discuss the proposed application.

Cooperation by Applicant

In addition to the required information set forth in Exhibit 1 attached hereto, the applicant shall submit materials and information as OCII staff may reasonably request which are consistent with the type of documents listed in Exhibit 1 and which are required to clarify a submittal provided pursuant to this DRDAP. Additionally, the applicant shall cooperate with, and participate in, design review presentations to the CCII and to the public through the Transbay Citizens Advisory Committee ("CAC").

COMMUNITY REVIEW OF DESIGN SUBMITTALS

OCII staff will provide the CAC, its designee, or successor, with regular updates on the design review process. Once a submittal is deemed complete, OCII staff will schedule CAC meetings to allow adequate review by CAC and community members before further approvals.
Before bringing Schematic Design proposals to the CCII for consideration, the Developer shall bring their design proposal before the CAC, its designee, or successor for a recommendation to the CCII. The Developer shall provide the CAC with sufficient presentation materials to fully describe design submittals, using the submission materials described in Exhibit 1 and/or other presentations materials as determined by OCII staff.

REVIEW OF SCHEMATIC DESIGN

Schematic Design Documents shall be submitted to the OCII for review and consideration. Schematic Design Documents shall relate to schematic design level of detail for a specific project.

Timing of OCII's Review

OCII staff shall review the Schematic Design for completeness and advise the applicant in writing of any deficiencies within seven (7) working days following receipt of the applicant's Schematic Design submittal. In the event OCII staff does not so advise the applicant, the application for Schematic Design shall be deemed complete. The time limit for OCII staff's review shall be within sixty (60) days from the date the Schematic Design has been determined to be complete. OCII shall take such reasonable measures necessary to comply with the time periods set forth herein.

The CCII shall review and approve, conditionally approve or disapprove the application for Schematic Design. If the CCII disapproves the Schematic Design in whole or in part, the CCII shall set forth the reasons for such disapproval in the resolution adopted by the CCII. If the CCII conditionally approves the Schematic Design, such approval shall set forth the concerns and/or conditions on which the CCCI is granting approval. If the CCII disapproves an application in part or approves the application subject to specified conditions, then, in the sole discretion of the CCII, the CCII may delegate approval of such resubmitted or corrected documents to OCII design review staff.

The applicant and OCII may agree to any extension of time necessary to allow revisions of submittals. OCII shall review all revisions as expeditiously as possible. If revisions are made within an existing review period, the revisions shall permit up to fifteen (15) days of additional review within the original timeframe of review or within a revised time frame of the extension agreed to by OCII and the applicant. If revisions made after an original design approval by the CCII, and the revisions are determined to be required to be resubmitted to the CCII, the CCII shall either approve or disapprove such resubmitted or corrected documents as soon as practicable.

Document Submittals

The applicant shall submit Schematic Design Documents, which plans shall include the documents and information listed in Exhibit 1 attached hereto. OCII staff may waive certain document submittal requirements if OCII staff determines such documents are not necessary for the specific application.

REVIEW OF DESIGN DEVELOPMENT DOCUMENTS

Design Development Documents shall be submitted for review and either approval, conditional approval, or disapproval by OCII architectural staff, following approval of the Schematic Design.

Scope of Review

OCII staff shall review the Design Development Documents for consistency with earlier approved documents, the Redevelopment Plan and other Plan Documents, including the Development Controls and the Streetscape Plan. Design Development Documents will relate to design development level of detail for a specific project. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

Timing of OCII's Review

OCII staff shall review the Design Development Documents for completeness and general consistency with the schematic design and shall advise the applicant in writing of any deficiencies within fifteen (15) working days after the receipt of the Design Development Documents. In the event OCII staff does not so advise the applicant, the Design Development Documents shall be deemed complete. The time limit for OCII staff's review shall be forty-nine (49) days from the date the Design Development Documents were determined to be complete. OCII staff shall take such reasonable measures necessary to comply with the time periods set forth herein. If the Design Development deviates significantly from the approved schematic design, does not meet the conditions outlined in the schematic approval, or extensive revisions or clarifications to the Design Development are required, the time limit may be extended at OCII Executive Director's discretion.

The applicant and OCII staff may agree to any extension of time necessary to allow revisions of submittals prior to a decision by OCII architectural staff. OCII architectural staff shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by OCII architectural staff and the applicant.

Document Submittals

The applicant shall submit Design Development Documents, which submittal shall include the documents and information listed in Exhibit 1 attached hereto. OCII staff may waive certain document submittal requirements if OCII staff determines such documents are not necessary for the specific application.

REVIEW OF FINAL CONSTRUCTION DOCUMENTS

OCII Review

Final Construction Documents will relate to the construction documents' level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents to their final form, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting. Final Construction Documents may be divided and submitted in accordance with an addenda schedule for the project approved in writing in advance by the City's Department of Building Inspection and OCII architectural staff or their designee. Provided the applicant's Final Construction Documents are delivered to OCII architectural staff concurrently with submittal to the Department of Building Inspection, Final Construction Documents shall be reviewed by OCII architectural staff within thirty (30) days following OCII staff's receipt of such documents from and approved by the Department of Building Inspection and any other appropriate City Agencies with jurisdiction. In the event that the applicant's Final Construction Documents are not delivered concurrently to OCII staff, OCII staff shall review the Final Construction Documents as expeditiously as possible.

Document Submittals

Documents submitted at this stage in the design review will relate to the construction documents level of detail for a specific project. The Final Construction Documents submittal shall include the information specified for the Design Development Documents in Exhibit 1 attached hereto.

OTHER CITY PERMITSCOMPLIANCE WITH OTHER LAWS

No OCII or CCII review will be made or approval given as to the compliance of the Design Development Documents or Final Construction Documents with any building codes and standards, including building engineering and structural design, or compliance with building codes or regulations, or any other applicable state or federal law or regulation relating to construction standards or requirements, including, without limitation, compliance with any local, state or federal law or regulation related to the suitability of the improvements for use by persons with physical disabilities.

OCII REVIEW OF CITY PERMITS

No demolition, new construction, tenant improvement, alteration, or signage permit shall be issued by the Department of Building Inspection unless OCII has reviewed and approved the permit application.

SITE PERMITS

~~The applicant may apply for a Site Permit and addenda from the Department of Building Inspection upon~~ OCII staff's determination that the Design Development Documents are approved or conditionally approved and generally consistent with the Schematic Design Documents. The applicant however may not obtain an approved Site Permit until the Design Development documents have been approved or conditionally approved by OCII staff. The Site Permit application can be submitted before the Final Construction Documents for the project have been completed and submitted for approval to OCII architectural staff and the Department of Building Inspection. Applicant may apply for a Site Permit after approval of the Schematic Design Documents but prior to approval of the Design Development Documents or the Final Construction Documents at its own risk.

Notwithstanding the foregoing, the applicant may also apply for City permits related to grading and excavation activities prior to OCII architectural staff's approval of the Design Development Documents, provided that OCII architectural staff approves such activities prior to issuance of any City permits. Grading and excavation are often the first two addenda to site permits.

Pursuant to such site permit process, the Final Construction Documents may be divided and submitted to the Department of Building Inspection in accordance with an addenda schedule for the project approved in writing in advance by OCII architectural staff and the Department of Building Inspection. Construction may proceed after the appropriate Site Permit addenda have been issued, including, for example, and without limitation, addenda for foundations, superstructure, and final building build-out. In no case shall construction deviate from, or exceed the scope of, the issued addenda.

MODIFICATIONS AND AMENDMENTS TO PROJECT APPROVAL

OCII staff may, by written decision, approve project applications which amend or modify the previously approved project, provided that OCII the following determinations are made:

(1) the project approval requested involves a deviation that does not constitute a material change;
(2) the requested project approval will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity of the project; and
(3) the granting of the project approval will be consistent with the general purposes and intent of

the Transbay Redevelopment Plan, Development Standards and Design Guidelines, and other Plan Documents.

In the event that OCII determines that the project application deviates materially from the project already approved by OCII, OCII may require submittal of an amended project application, as appropriate, for review by the CCII and City Agencies in accordance with the provisions herein.

Major amendments and modifications will be processed in accordance with this DRDAP.

GOVERNMENT REQUIRED PROVISIONS, CHANGES

OCII and the applicant acknowledge and agree that neither one will delay or withhold its review or approval of those elements of or changes in the Schematic Design, Design Development Documents or Final Construction Documents which are required by any City agency, including the City's Department of Building Inspection, the Fire Marshall, or any other government agency having jurisdiction; provided, however, that (i) the party whose review or approval is sought shall have been afforded a reasonable opportunity to discuss such element of, or change in, documents with the governmental authority requiring such element or change and with either the applicant's or OCII's architect, as the case may be, and (ii) the applicant or OCII shall have reasonably cooperated with the other and such governmental authority in seeking such reasonable modifications of such required element or change as the other shall deem necessary or desirable. The applicant and OCII each agrees to use its diligent, good faith efforts to obtain the other's approval of such elements or changes, and its request for reasonable modifications to such required elements or changes, as soon as reasonably possible.

ready for bidding. In addition, the applicant shall submit a presentation of all exterior color schedules including samples, if appropriate, and design drawings for all exterior signs and graphics prior to completed construction. OCII architectural staff and applicant shall continue to work to resolve any outstanding design issues, as necessary.

ATTACHMENT 7

Permit to Enter

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic ("**Successor Agency**") grants to _____ ("**Permittee**"), a non-exclusive permit to enter upon certain Successor Agency-owned or -leased real property (hereinafter referred to as the "**Permit Area**"), located at _____ upon the terms, covenants and conditions hereinafter set forth in this Permit to Enter ("**Permit**").

1. **Permit Area**: The Permit Area is more particularly shown on Attachment A hereto and made a part hereof. The Permit is non-exclusive and is subject to the rights of ingress and egress by the Successor Agency and others, who are authorized to access portions of the Permit Area.

2. **Interim Use**: The Permittee shall use the Permit Area to _____ ~~[describe permitted activities]~~ which is described elsewhere herein as the "**Interim Use.**" No uses other than those specifically stated herein are authorized hereby.

3. **Time of Entry**: Entry may commence, once the Permit is fully executed, on _____, at 8:00 a.m. Entry shall terminate on _____, at 5:00 p.m., unless earlier terminated by the Successor Agency's Executive Director under Section 11 hereof or earlier terminated by Permittee by cessation of activities/operations, or unless such time is extended by the Executive Director.

4. **Compensation to Successor Agency**: Permittee shall pay compensation to the Successor Agency:

YES ☐ NO ☐

If yes is checked, Permittee shall pay the Successor Agency:

☐ One cent ($ 0.01) per square foot per day for duration of the permit to enter or

☐ $_____ per day pursuant to Section 9 *Reduction or Waiver of Use Fee* of the Successor Agency's Permit to Enter Policy.

(Executive Director's initials authorizing fee reduction/waiver). _____
initials

5. **Indemnification:**

a. General Indemnification: Permittee shall defend, hold harmless and indemnify the Successor Agency, the City and County of San Francisco (the "City") and/or their respective commissioners, members, officers, agents and employees of and from any and all claims, demands, losses, costs, expenses, obligations, damages, injuries, actions, causes of action and liabilities of every kind, nature and description directly or indirectly, arising out of or connected with this Permit and any of the Permittee's operations or activities related thereto, and excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified or held harmless, and excluding any and all claims, demands, losses, costs, expenses, obligations, damages, injuries, action, causes of action or liabilities of any kind arising out of any Release (as defined in Section 6f below) or threatened release of any Hazardous Substance (as defined in Section 6d below), pollutant, or contaminant, or any condition of pollution, contamination, or nuisance which shall be governed exclusively by the provisions of Section 6c below. This section does not apply to contracts for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8

b. Indemnification By Design Professionals: This section applies to any design professional as defined in California Civil Code Section 2782.8 who is or will provide professional services as part of, collateral to, or affecting this Permit with the Permittee ("Design Professional"). Each Design Professional who will provide design services shall defend, hold harmless and indemnify the Successor Agency, the City and their respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional. It is expressly agreed and understood that the duty of indemnification pursuant to this section is to be interpreted broadly to the greatest extent permitted by law, including but not limited to California Civil Code Section 2782.8.

c. No Mechanics' Liens: Permittee shall not permit any mechanics' or other liens to be levied against the Permit Area for any labor or material furnished to Permittee or claimed to have been furnished to Permittee or to Permittee's agents or contractors in connection with the Interim Use and Permittee shall hold the Successor Agency free and harmless from any and all cost or expense connected with or arising from the Interim Use.

6. **Hazardous Material Acknowledgement and Indemnification:**

a. Hazardous Material Acknowledgement: Permittee recognizes that, in entering upon the Permit Area and performing the Interim Use under this Permit, its employees, invitees, subpermittees and subcontractors may be working with, or be exposed to substances or conditions which are toxic or otherwise hazardous. Permittee acknowledges that the Successor Agency is relying on the Permittee to identify and evaluate the potential risks involved and to take all appropriate precautions to avoid such risks to its employees, invitees, subpermittees and subcontractors. Permittee agrees that it is assuming full responsibility for ascertaining the existence of such risks, evaluating their significance, implementing appropriate safety precautions for its employees, invitees, subpermittees and subcontractors and making the decision on how (and whether) to enter upon the Permit Area and carry out the Interim Use, with due regard to such risks and appropriate safety precautions.

b. Proper Disposal of Hazardous Materials: Permittee assumes sole responsibility for managing, removing and properly disposing of any waste produced during or in connection with Permittee's entry and/or Interim Use of the Permit Area including, without limitation, preparing and executing any manifest or other documentation required for or associated with the removal, transportation and disposal of hazardous substances to the extent required in connection with the Permittee's activities hereunder.

c. Toxics Indemnification: Permittee shall defend, hold harmless and indemnify the Successor Agency, the City, and their respective commissioners, members, officers, agents and employees from and against any and all claims, demands, actions, causes of action or suits (actual or threatened), losses, costs, expenses, obligations, liabilities, or damages, including interest, penalties, engineering consultant and attorneys' fees of every kind, nature and description, resulting from any release or threatened release of a hazardous substance, pollutant, or contaminant, or any condition of pollution, contamination, or nuisance in the vicinity of the Permit Area or in ground or surface waters associated with or in the vicinity of the Permit Area to the extent that such release or threatened release, or condition is directly created or aggravated by the Interim Use undertaken by Permittee pursuant to this Permit or by any breach of or failure to duly perform or observe any term, covenant or agreement in this Permit to be performed or observed by the Permittee, including but not limited to any violation of any Environmental Law (as defined in Section 6e below); provided, however, that Permittee shall have no liability, nor any obligation to defend, hold harmless or indemnify any person for any claim, action, loss, cost, liability, expense or damage resulting from the discovery or disclosure of any pre-existing condition on or in the vicinity of the Permit Area; and provided further that Permittee shall be held to a standard of care no higher than the standard of care applicable to environmental and geotechnical professionals in San Francisco.

d. Hazardous Substances: For purposes of this Permit, the term "Hazardous Substance" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U. S. C. Section 9601(14), and in addition shall include, without limitation, petroleum, (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs" or "PCB"), PCB-containing materials, all hazardous substances identified at California Health & Safety Code Sections 25316 and 25281(d), all chemicals listed pursuant to California Health & Safety Code Section 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under applicable state or local law.

e. Environmental Laws: For purposes of this Permit, the term "Environmental Laws" shall include but not be limited to all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee and community right-to-know requirements, related to the Interim Use.

f. Release: For purposes of this Permit, the term "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance or pollutant or contaminant).

g. Soils Investigation: If the Interim Use under Section 2 of this Permit includes any soils investigations, then Permittee warrants as follows:

(1) If any soils investigation permitted hereby involves the drilling of holes having a diameter dimension that could create a safety hazard for persons, said holes shall during any drilling operations be carefully safeguarded and shall upon the completion of said drilling operations be refilled (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling.

(2) The Successor Agency has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Permit Area. Permittee has the sole responsibility to locate the same and to protect the same from damage. Permittee shall be solely responsible for any damage to utilities or damage resulting from any damaged utilities. Prior to the start of the Interim Use, the Permittee is advised to contact Underground Services Alert for assistance in locating existing utilities at (800) 642-2444. Any utility conduit or pipe encountered in excavations not identified by Underground Services Alert shall be brought to the attention of the Successor Agency's Engineer immediately.

(3) All soils test data and reports prepared based thereon, obtained from these activities shall be provided to the Successor Agency upon request and the Successor Agency may use said data for whatever purposes it deems appropriate, including making it available to others for use in connection with any development. Such data, reports and Successor Agency use shall be without any charge to the Successor Agency.

(4) Any hole drilled shall, if not refilled and compacted at the end of each day's operation, be carefully safeguarded and secured after the completion of each day's work, as shall the drilling work area and any equipment if left on the Permit Area.

7. **Insurance**: Permittee shall procure and maintain coverage for the duration of the Permit, including any extensions, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of Interim Use by the Permittee, its agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by the Permittee.

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

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

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

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

(4) Professional Liability Insurance appropriate to the Contractor's profession covering all negligent acts, errors and omissions.

b. Minimum Limits of Insurance: Permittee shall maintain limits no less than:

(1) General Liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

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

(3) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employer's Liability limits of $1,000,000 for bodily injury by accident and $1,000,000 per person and in the annual aggregate for bodily injury by disease.

(4) Professional Liability Insurance: $1,000,000 per claim and in the annual aggregate. If the Contractor's Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained by the Contractor for no less than three (3) years beyond completion of the Interim Use.

c. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Successor Agency. At the option of the Successor Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to the Successor Agency, the City and their respective Commissioners, officers, agents and employees; or the Permittee shall provide a financial guarantee satisfactory to the Successor Agency guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions:

(1) The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Successor Agency, the City and their respective Commissioners, officers, agents and employees are to be covered as insureds as respects: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Permittee; and liability arising out of the Interim Use performed by or on behalf of the Permittee.

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

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

(2) Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the Successor Agency, the City and their respective Commissioners, officers, agents and employees for losses arising from the Interim Use performed by the Permittee or for the Successor Agency.

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

e. Acceptability of Insurers: Insurance is to be placed with insurers with a current A. M. Bests' rating of no less than A:VII, unless otherwise approved by the Successor Agency's Risk Manager in writing.

f. Verification of Coverage: Permittee shall furnish the Successor Agency with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the Successor Agency. All certificates and endorsements are to be received and approved by the Successor Agency before the Interim Use commences. The Successor Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

g. Subpermittee: Permittee shall include all subpermittees as insureds under its policies or shall require each subpermittees to furnish separate insurance certificates and endorsements. All coverages for subpermittees shall be subject to all the requirements stated herein.

8. "As Is", Maintenance, Restoration, Vacating: The Permit Area is accepted "AS IS" and entry upon the Permit Area by Permittee is an acknowledgment by Permittee that all dangerous places and defects in said Permit Area are known to it and are to be made secure and kept in such secure condition by

Permittee. Permittee shall maintain the Permit Area so that it will not be unsafe, unsightly or unsanitary. Upon termination of the Permit, Permittee shall vacate the Permit Area and remove any and all personal property located thereon and restore the Permit Area to its condition at the time of entry. The Successor Agency shall have the right without notice to dispose of any property left by Permittee after it has vacated the Permit Area. Successor Agency makes no representations or warranties, express or implied, with respect to the environmental condition of the Permit Area or the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any Environmental Laws, and gives no indemnification, express or implied, for any costs of liabilities arising out of or related to the presence, discharge, migration or Release or threatened Release of the Hazardous Substance in or from the Permit Area.

9. **Compliance With Laws**:

a. Compliance with all Laws: All activities and operations of the Permittee and/or its agents, contractors or employees or authorized entries under this Permit shall be in full compliance with all applicable laws and regulations of the federal, state and local governments, including but not limited to mitigation measures, if any, which are attached hereto and made a part hereof as if set forth in full.

b. Nondiscrimination: The Permittee herein covenants for himself or herself and for all persons claiming in or through him or her that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, gender identity, marital or domestic partner status, disability (including AIDS or HIV status), national origin or ancestry in the use, occupancy or enjoyment of the Permit Area.

10. **Security of Permit Area:** There is an existing fence with gates around the Permit Area:

Yes ☐ No ☐

If "Yes" is checked above, Permittee shall maintain said fence in good condition and repair any damage caused by Permittee or as a result of the Interim Use. Permittee may relocate the fence as needed, provided that the fence is restored to its original condition upon termination of the permit. During the term of the permit, the Permittee shall keep the Permit Area secure at all times.

11. **Early Termination:** This Permit may be terminated by the Successor Agency in its sole discretion upon 24 hours' notice. Posting at the Permit Area shall be sufficient notice.

12. **Entry under Permittee Authority**: The Permit granted Permittee for the Permitted Activities/Operations as defined in Section 2 shall mean and include all subpermittees, agents and employees of the Permittee. In this regard, Permittee assumes all responsibility for the safety of all persons and property and any contents placed in the Permit Area pursuant to this Permit. All Interim Use performed in the Permit Area and all persons entering the Permit Area and all property and equipment placed therein in furtherance of the permission granted herein is presumed to be with the express authorization of the Permittee.

13. **Governing Law**: This Permit shall be governed by and interpreted under the laws of the State of California.

14. **Attorneys' Fees**: In any action or proceeding arising out of this Permit, the prevailing party shall be entitled to reasonable attorneys' fees and costs. For purposes of this Permit, the reasonable fees of attorneys of either party shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the attorney's services for either party were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the San Francisco City Attorney's Office.

15. **Supplementary Provisions:**

a. Is additional insurance required? Yes ☐ No ☐

Additional Insurance: If "Yes" is checked above, Permittee shall obtain additional insurance consisting of insurance protecting against loss or damage to real and personal property caused by fire, water, theft, ~~vandalism, malicious mischief or windstorm, and any other causes contained in standard policies of~~ insurance. Permittee shall supply such insurance in an amount of not less than the replacement value of the buildings and improvements on the Permit Area, evidenced by a policy of insurance and/or certificate attached hereto in the form and on the terms specified above and with the Successor Agency and the City as additional insured.

b. Is a fence and gate required? Yes ☐ No ☐

Fence and Gate: If "Yes" is checked above, the Permittee shall, at its expense, erect a fence (with gate) securing the Permit Area before entry on the Permit Area and shall maintain said fence and gate in good condition and repair during the Time of Entry as defined in Section 3. Said fence and gate erected by Permittee shall constitute the personal property of Permittee.

c. Is security personnel required? Yes ☐ No ☐

Security Personnel: If "Yes" is checked above, Permittee shall provide necessary security personnel at its own expense to prevent unauthorized entry into Permit Area during:

Daytime: Yes ☐ No ☐ Nighttime: Yes ☐ No ☐

d. Will subpermittees use the Permit Area? Yes ☐ No ☐

Subpermittees: If "Yes" is checked above, each Subpermittee shall execute this Permit by which execution each such Subpermittee agrees to all of the terms, covenants and conditions hereof. However, Subpermittees may be covered under Permittee's insurance in lieu of obtaining and maintaining separate insurance pursuant to Section 7(g). As additional Subpermittees are identified for various aspects of the Interim Use hereunder, they shall execute this Permit, if still valid, or a new permit to enter, before entering the Permit Area or commencing operations therein.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in triplicate as of the _____ day of _____, 2013.

PERMITTEE
[type of business entity]

By: _____
Name
Position

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO,
~~a local public entity~~

By: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, CITY ATTORNEY

By: _____
HEIDI J. GEWERTZ
DEPUTY CITY ATTORNEY

ATTACHMENT 8

Mitigation Measures

(provided under separate cover)

ATTACHMENT 9

Agency Equal Opportunity Program

Included in this Attachment 9:

1. Small Business Enterprise Agreement
2. Nondiscrimination in Contracts and Benefits
3. Minimum Compensation Policy
4. Healthcare Accountability Policy
5. Construction Workforce Agreement
6. Permanent Workforce Agreement
7. Prevailing Wages

Small Business Enterprise Agreement

The company or entity executing this Small Business Enterprise Agreement, by and through its duly authorized representative, hereby agrees to use good faith efforts to comply with all of the following:

I. PURPOSE. The purpose of entering into this Small Business Enterprise Program agreement ("**SBE Program**") is to establish a set of Small Business Enterprise ("SBE") participation goals and good faith efforts designed to ensure that monies are spent in a manner which provides SBEs with an opportunity to compete for and participate in contracts by or at the behest of the Successor Agency to the San Francisco Redevelopment Agency ("**Agency**") and/or the Agency-Assisted Contractor. A genuine effort will be made to give First Consideration to Project Area SBEs and San Francisco-based SBEs before looking outside of San Francisco.

II. APPLICATION. The SBE Program applies to all Contractors and their subcontractors seeking work on Agency-Assisted Projects on or after November 17, 2004 and any Amendment to a Pre-existing Contract.

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

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

A. Trainee Hiring Goal. In addition to the goals set forth above in Section III, there is a trainee hiring goal for architects, designers and other professional services consultants as follows:

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

IV. TERM. The obligations of the Agency-Assisted Contractor and/or Contractor(s) with respect to SBE Program shall remain in effect until completion of all work to be performed by the Agency-Assisted Contractor in connection with the original construction of the site and any tenant improvements on the site performed by or at the behest of the Agency-Assisted Contractor unless another term is specified in the Agency-Assisted Contract or Contract.

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

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

VII. **INCORPORATION.** Each contract between the Agency, Agency-Assisted Contractor or Contractor on the one hand, and any subcontractor on the other hand, shall physically incorporate as an attachment or exhibit and make binding on the parties to that contract, a true and correct copy of this SBE Agreement.

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

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

Agency-Assisted Contract means, as applicable, the Development and Disposition Agreement ("**DDA**"), Land Disposition Agreement ("**LDA**"), Lease, Loan and Grant Agreements, personal services contracts and other similar contracts, and Operations Agreement that the Agency executed with for-profit or non-profit entities.

Agency-Assisted Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed an Agency-Assisted Contract.

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

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

Receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts. If a concern has not been in business for three (3) years, the average weekly revenue for the number of weeks the concern has been in business is multiplied by 52 to determine its average annual receipts.

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

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

Contract means any agreement between the Agency and a person(s), firm, partnership, corporation, or combination thereof, to provide or procure labor, supplies or services to, for, or on behalf of the Agency.

Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed a Contract.

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

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

Project Area Small Business Enterprise means a business that meets the above-definition of Small Business Enterprise and that: (a) has fixed offices located within the geographical boundaries of a Redevelopment Project or Survey Area where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a Project Area or Survey Area business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in a Project Area or Survey Area for at least six months preceding its application for certification as a SBE; and (e) has a Project Area or Survey Area office in which business is transacted that is appropriately equipped for the type of business for which the enterprise

seeks certification as a SBE. Post office box numbers of residential addresses alone shall not suffice to establish a firms' location in a Project Area or Survey Area.

Project Area means an area of San Francisco that meets the requirements under Community Redevelopment Law, Health and Safety Code Section 33320.1. These areas currently include the Bayview Industrial Triangle, Bayview Hunters Point (Area B), Federal Office Building, Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, Transbay Terminal, Yerba Buena Center and Visitacion Valley.

San Francisco-based Small Business Enterprise means a SBE that: (a) has fixed offices located within the geographical boundaries of the City where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a San Francisco business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in the City for at least six months preceding its application for certification as a SBE; and (e) has a San Francisco office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers or residential addresses alone shall not suffice to establish a firm's status as local.

Small Business Enterprise (SBE) means an economically disadvantaged business that: is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; has average gross annual receipts in the three years immediately preceding its application for certification as a SBE that do not exceed the following limits: (a) construction--$14,000,000; (b) professional or personal services--$2,000,000 and (c) suppliers--$7,000,000; and is (or is in the process of being) certified by the Agency as a SBE and meets the other certification criteria described in the SBE application.
In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's three most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120s for Corporations). Once a business reaches the 3-year average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

Survey Area means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas currently include the Bayview Hunters Point Redevelopment Survey Area C.

IX. GOOD FAITH EFFORTS TO MEET SBE GOALS Compliance with the following steps will be the basis for determining if the Agency-Assisted Contractor and/or Consultant has made good faith efforts to meet the goals for SBEs:

A. Outreach. Not less than 30 days prior to the opening of bids or the selection of contractors, the Agency-Assisted Contractor or Contractor shall:

1. **Advertise**. Advertise for SBEs interested in competing for the contract, in general circulation media, trade association publications, including timely use of the ***Bid and Contract Opportunities*** newsletter published by the City and County of San Francisco Purchasing Department and media focused specifically on SBE businesses such as the ***Small Business Exchange***, of the opportunity to submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.

2. **Request List of SBEs**. Request from the Agency's Contract Compliance Department a list of all known SBEs in the pertinent field(s), particularly those in the Project and Survey Areas and provide written notice to all of them of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.

B. Pre-Solicitation Meeting. For construction contracts estimated to cost $5,000 or more, hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors for the purpose answering questions about the selection process and the specifications and requirements. Representatives of the Contract Compliance Department will also participate.

C. Follow-up. Follow up initial solicitations of interest by contacting the SBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work.

D. Subdivide Work. Divide, to the greatest extent feasible, the contract work into small units to facilitate SBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.

E. Provide Timely and Complete Information. The Agency-Assisted Contractor or Contractor shall provide SBEs with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Agency-Assisted Contractor or Contractor to give SBEs any information not provided to other contractors. This paragraph does require the Agency Assisted Contractor and Contractor to answer carefully and completely all reasonable questions asked by SBEs and to undertake every good faith effort to ensure that SBEs understand the nature and the scope of the work.

F. Good Faith Negotiations. Negotiate with SBEs in good faith and demonstrate that SBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.

G. Bid Shopping Prohibited. Prohibit the shopping of the bids. Where the Agency-Assisted Contractor or Contractor learns that bid shopping has occurred, it shall treat such bid shopping as a material breach of contract.

H. Other Assistance. Assist SBEs in their efforts to obtain bonds, lines of credit and insurance. (Note that the Agency has a Surety Bond Program that may assist SBEs in obtaining necessary bonding.) The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.

I. Delivery Scheduling. Establish delivery schedules which encourage participation of SBEs.

J. Utilize SBEs as Lower Tier Subcontractors. The Agency-Assisted Contractor and its Contractor(s) shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize SBEs as lower tier subcontractors.

K. Maximize Outreach Resources. Use the services of SBE associations, federal, state and local SBE assistance offices and other organizations that provide assistance in the recruitment and placement of SBEs, including the Small Business Administration and the Business Development Agency of the Department of Commerce. However, only SBEs certified by the Agency shall count towards meeting the participation goal.

L. Replacement of SBE. If during the term of this SBE Agreement, it becomes necessary to replace any subcontractor or supplier, the Agency's Contract Compliance Specialist should be notified prior to replacement due to the failure or inability of the subcontractor or supplier to perform the required services or timely delivery the required supplies, then First Consideration should be given to a certified SBE, if available, as a replacement.

X. ADDITIONAL PROVISIONS

A. No Retaliation. No employee shall be discharged or in any other manner discriminated against by the Agency-Assisted Contractor or Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Agreement.

B. No Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of an Agency-Assisted Contract or Contract. The Agency-Assisted Contractor or Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) or other protected class status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations.

C. Compliance with Prompt Payment Statute. Construction contracts and subcontracts awarded for $5,000 or more shall contain the following provision:

> "Amounts for work performed by a subcontractor shall be paid within ten (10) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq.* Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity."

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

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

XI. PROCEDURES

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

1. the nature of the contract, e.g. type and scope of work to be performed;

2. the dollar amount of the contract;

3. the name, address, license number, gender and ethnicity of the person to whom the contract was awarded; And

4. SBE status of each subcontractor or subconsultant.

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

C. **Good Faith Documentation**. If the 50% SBE Participation Goals are not met in each category (Construction, Professional Services and Suppliers), the Agency-Assisted Contractor or Contractor(s) shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Agency-Assisted Contractor's or Contractor's good faith efforts is not resolved at this meeting, the Agency-Assisted Contractor or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts ("**Submission**"):

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

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

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

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

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

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

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

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

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

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

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

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

E. Waiver. Any of the SBE requirements may be waived if the Agency determines that a specific requirement is not relevant to the particular situation at issue, that SBEs were not available, or that SBEs were charging an unreasonable price.

F. SBE Determination. The Agency shall exercise its reasonable judgment in determining whether a business, whose name is submitted by the Agency-Assisted Contractor or Contractor(s) as a SBE, is owned and controlled by a SBE. A firm's appearance in any of the Agency's current directories will be considered by the Agency as prima facie evidence that the firm is a SBE. Where the Agency-Assisted Contractor or Contractor(s) makes a submission the Agency shall make a determination, as to whether or not a business which the Agency-Assisted Contractor or Contractor(s) claims is a SBE is in fact owned and controlled by San Francisco-based SBEs. If the Agency determines that the business is not a SBE, the Agency shall give the Agency-Assisted Contractor or Contractor a Notice of Non-Qualification and provide the Agency-Assisted Contractor or Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a Submission, concerning its good faith efforts. If the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to Section XII.

G. Agency Investigation. Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Agency-Assisted Contractor or Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency shall give the Agency-Assisted Contractor or Contractor a written Notice of Non-Compliance setting forth its findings and recommendations. If the Agency-Assisted Contractor or Contractor disagree with the findings and recommendations of the Agency as set forth in the Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to this SBE Agreement.

XII. ARBITRATION OF DISPUTES.

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

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

C. **Parties' Participation**. The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Agency-Assisted Contractor or Contractor made an initial timely Demand for Arbitration pursuant to Section XII.B. above.

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

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

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

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

H. **Burden of Proof**. The burden of proof with respect to SBE status and/or Good Faith Efforts shall be on the Agency-Assisted Contractor and/or Contractor. The burden of proof as to all other alleged breaches by the Agency-Assisted Contractor and/or Contractor shall be on the Agency.

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

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

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

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Agency-Assisted Contract or this SBE Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Agency-Assisted Contract or this SBE Agreement, other than those minor modifications or extensions necessary to enable compliance with this SBE Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the SBE Program requirements in the Agency-Assisted Contract or this SBE Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this SBE Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

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

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

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

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

N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall

pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

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

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

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

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

Agency

Agency-Assisted Contractor

XIII. AGREEMENT EXECUTION

Note: If you are seeking Agency certification as a SBE, you should fill out the "Application for SBE Certification". If you are already an Agency certified SBE, you should execute the "SBE Eligibility Statement".

I, hereby certify that I have authority to execute this SBE Agreement on behalf of the business, organization or entity listed below and that it will use good faith efforts to comply with the Agency's 50% SBE Participation Goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true

and correct.

Signature _____ Date _____

Print Your Name _____ Title _____

Company Name and Phone Number

Nondiscrimination in Contracts and Benefits
Instructions

A. What is the Nondiscrimination in Contracts Policy?

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

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

B. What Successor Agency contracts are covered by the Policy?

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

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

You may not discriminate against:

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

D. What are prohibited types of discrimination?

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

- Race
- creed
- ancestry
- color
- religion
- national origin

- age
- sexual orientation
- marital status
- disability
- sex
- gender identity
- domestic partner status
- AIDS/HIV status

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

E. How are subcontracts affected?

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

F. Nondiscrimination in benefits for spouses and domestic partners

1. Who are domestic partners?

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

2. What is nondiscrimination in benefits?

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

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

3. Examples of benefits

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

G. Form required

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

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

H. Attachments

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

I. If your answers change

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

Nondiscrimination in Contracts and Benefits

Declaration Form

1. Nondiscrimination—Protected Classes

a. Is it your company/organization's policy that you will not discriminate against your employees, applicants for employment, employees of the Successor Agency to the San Francisco Redevelopment Agency (Successor Agency) or City and County of San Francisco (City), or members of the public for the following reasons:

• race	❑ Yes	❑ No
• color	❑ Yes	❑ No
• creed	❑ Yes	❑ No
• religion	❑ Yes	❑ No
• ancestry	❑ Yes	❑ No
• national origin	❑ Yes	❑ No
• age	❑ Yes	❑ No
• sex	❑ Yes	❑ No
• sexual orientation	❑ Yes	❑ No
• gender identity	❑ Yes	❑ No
• marital status	❑ Yes	❑ No
• domestic partner status	❑ Yes	❑ No
• disability	❑ Yes	❑ No
• AIDS or HIV status	❑ Yes	❑ No

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Successor Agency or the City?

❑ Yes ❑ No

If you answered "no" to any part of Question 1a or 1b, the Successor Agency or the City cannot do business with you.

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?

Yes ☐ No

☐

b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?

Yes ☐ No

☐

If you answered "no" to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered "yes" to Question 2a or 2b, continue to 2c.

c. If "yes," please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	☐	☐	☐
• Pension	☐	☐	☐
• Bereavement	☐	☐	☐
• Family leave	☐	☐	☐
• Parental leave	☐	☐	☐
• Employee assistance programs	☐	☐	☐
• Relocation and travel	☐	☐	☐
• Company discounts, facilities, events	☐	☐	☐
• Credit union	☐	☐	☐
• Child care	☐	☐	☐
• Other _____	☐	☐	☐
• Other _____	☐	☐	☐

If you answered "yes" to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

(1) Have you taken all reasonable measures? ☐ Yes ☐ No

(2) Do you provide a cash equivalent? ☐ Yes ☐ No

3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered "yes" to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated "yes" in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered "yes" to Question 2d(1) complete and attach form SFRA/CC-103, "Nondiscrimination in Benefits—Reasonable Measures Affidavit," which is available from the Successor Agency. You need not document your "yes" answer to Question 1a or Question 1b.

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 20_____, at _____, _____.
(City) (State)

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

(For General Correspondence) _____

Remittance Address: _____

(If different from above address) _____

Name of Signatory: _____ Title: _____

(Please Print)

Signature: _____

Phone Number: _____ Federal Tax ID Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____
(if known)

- ☐ Check here if your address has changed.
- ☐ Check here if your organization is a non-profit.
- ☐ Check here if your organization is a governmental entity.

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

Please return this form to: Successor Agency to the San Francisco Redevelopment Agency, One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103.

MINIMUM COMPENSATION POLICY DECLARATION

What the Policy does. The Successor Agency to the Redevelopment Agency of the City and County of San Francisco adopted the Minimum Compensation Policy (MCP), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to provide the following to their employees covered by the MCP on Agency contracts and subcontracts for services: For Commercial Business MCP the wage rate is $12.43. For Nonprofit MCP the wage rate is $11.03; 12 days' paid vacation per year (or cash equivalent); 10 days off without pay per year.

The Successor Agency may require contractors to submit reports on the number of employees affected by the MCP.

Effect on Successor Agency contracting. For contracts and amendments signed on or after September 25, 2001, the MCP will have the following effect:

- In each contract, the contractor will agree to abide by the MCP and to provide its employees the minimum benefits the MCP requires, and to require its subcontractors subject to the MCP to do the same.

- If a contractor does not provide the MCP minimum benefits, the Agency can award a contract to that contractor only if the contract is exempt under the MCP, or if the contract has received a waiver from the Agency.

What this form does. If you can assure the Successor Agency now that, beginning with the first Successor Agency contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same, this will help the Successor Agency's contracting process. The Successor Agency realizes that it may not be possible to make this assurance now.

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

For more information, the complete text of the MCP is available from the Successor Agency's Contract Compliance Department by calling (415) 749-2400.

Routing. Return this form to: Contract Compliance Department, Successor Agency to the San Francisco Redevelopment Agency, 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Successor Agency contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the MCP to our covered employees, and will ensure that our subcontractors also subject to the MCP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Company Name

Phone

HEALTH CARE ACCOUNTABILITY POLICY DECLARATION

What the Ordinance does. The Successor Agency to the San Francisco Redevelopment Agency adopted the San Francisco Health Care Accountability Policy (the "HCAP"), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to the Successor Agency, contractors and subcontractors that enter into leases with the Successor Agency, and parties providing services to tenants and sub-tenants on Successor Agency property to choose between offering health plan benefits to their employees or making payments to the Successor Agency or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the Oversight Board (2) pay the Successor Agency $3.00 per hour for each hour the employee works on the covered contract or subcontract or on property covered by a lease (but not to exceed $120 in any week) and the Successor Agency will appropriate the money for staffing and other resources to provide medical care for the uninsured, or (3) participate in a health benefits program developed by the Successor Agency.

The Successor Agency may require contractors to submit reports on the number of employees affected by the HCAP.

Effect on Successor Agency contracting. For contracts and amendments signed on or after September 25, 2001, the HCAP will have the following effect:

- in each contract, the contractor will agree to abide by the HCAP and to provide its employees the minimum benefits the HCAP requires, and to require its subcontractors to do the same.

- if a contractor does not provide the HCAP's minimum benefits, the Successor Agency can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received waiver; from the Successor Agency.

What this form does. If you can assure the Successor Agency now that, beginning with the first Successor Agency's contract or
amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same, this will help the Successor Agency contracting process. The Successor Agency realizes that it may not be possible to make this assurance now.

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

For more information, (1) see the complete text of the HCAP, available from the Successor Agency's Contract Compliance Department at: (415) 749-2400.

Routing. Return this form to: Contact Compliance Department, Successor Agency to the San Francisco Redevelopment Agency, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Successor Agency contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the HCAP to our covered employees, and will ensure that our subcontractors also subject to the HCAP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ _____

Signature Date

_____

Print Name

_____ _____

Company Name Phone

CONSTRUCTION WORK FORCE AGREEMENT

I. **PURPOSE.** The purpose of the Agency and the Developer/Affordable Developer entering into this Construction Work Force Agreement is to ensure participation of San Francisco residents and equal employment opportunities for minority group persons and women in the construction work force involved in constructing any of the phases upon the Site covered by the DDA.

II. **WORK FORCE GOALS.**

A. The goal set forth below is expressed as a percentage of each Contractor's total hours of employment and training by trade on the Site. The goal represents the level of San Francisco resident participation each Contractor should reasonably be able to achieve in each construction trade in which it has employees on the Site. The Owner agrees, and will require each Contractor (regardless of tier), to use its good faith efforts to employ San Francisco residents to perform construction work upon the Site at a level at least consistent with said goals.

B. Goal: ***50 percent*** participation of San Francisco residents in the total hours worked in the trade.

C. Amendments to the goals shall be prospective and go into effect 20 days after the Agency mails written notice of the amendments to the Developer/Affordable Developer. New goals shall not be applied retroactively.

D. Although paragraph B establishes a single goal for participation of San Francisco residents, each Contractor is required to provide equal employment opportunity and to take equal opportunity for all ethnic groups, both male and female, and all women, both minority and non-minority. Consequently, a Contractor may be in violation of this Construction Work Force Agreement if a particular ethnic group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goal for participation of San Francisco residents, the Contractor may be in violation if a specific ethnic group is underutilized.) If the Agency determines, after affording a Contractor notice and an opportunity to be heard, that the Contractor has violated its obligations under this paragraph, the Agency may set, for that Contractor, work force participation goals by particular ethnic group, e.g., Blacks, Latinos, etc.

E. Each Contractor is individually required to comply with its obligations under this Construction Work Force Agreement, and to make a good faith effort to achieve each goal in each trade in which it has employees employed at the Site. (See Section IV below.) The overall good faith performance by other contractors or subcontractors toward a goal does not excuse any covered Contractor's failure to make good faith efforts to achieve the goals.

F. The Contractor shall not use the goals or equal opportunity standards to discriminate against any person because of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

G. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS").

III. **INCORPORATION.** Whenever the Owner, the general contractor, any prime contractor, or any subcontractor at any tier subcontracts a portion of the work on the Site involving any construction trade, it shall set forth verbatim and make binding on each subcontractor which has a contract in excess of $10,000 the provisions of this Construction Work Force Agreement, including the applicable goals for San Francisco resident participation in each trade.

IV. **EQUAL OPPORTUNITY REQUIREMENTS.**

A. Each Contractor shall take specific equal opportunities to ensure equal employment opportunity ("EEO"). The evaluation of the Contractor's compliance with this Construction Work Force Agreement shall be based upon its good faith efforts to achieve maximum results from its actions. Each Contractor shall document these efforts fully, and shall implement equal opportunity steps at least as extensive as the following:

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at the Site. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment.

2. Provide written notification to CityBuild when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

3. Maintain a current file of the names, addresses and telephone numbers of each resident applicant and each resident referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

4. Provide immediate written notification to the Agency when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a resident sent or requested by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

5. Develop on-the-job training opportunities and/or participate in training programs, including apprenticeship, trainee and upgrading programs relevant to the Contractor's employment needs, especially those funded or approved by BAT or DAS. The Contractor shall provide notice of these programs to the sources compiled under Section IV.A.2 above.

6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at the Site.

7. Review, prior to beginning work at the Site and at least annually thereafter, the Contractor's EEO policy and equal opportunity obligations under the DDA and this Construction Work Force Agreement with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter. The Agency's contract compliance staff shall be invited to attend the meeting held prior to the beginning of work at the Site.

8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

9. Direct its recruitment efforts, both oral and written, to local minority group, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

10. Encourage present minority and female employees to recruit other minority group persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the Site and in other areas of a Contractor's work force.

11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

12. Conduct, at least annually, an inventory and evaluation of San Francisco resident personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training etc., such opportunities.

13. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.

14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the genders.

15. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and equal opportunity obligations.

B. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their equal opportunity obligations under Section IV.A.1 through 15. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section IV.A.1 through 15 provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minority group persons and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force composition, makes a good faith effort to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

V. ADDITIONAL PROVISIONS.

A. The failure by a union with which the Contractor has a collective bargaining agreement, to refer San Francisco residents shall not excuse the Contractor's obligations under this Construction Work Force Agreement.

B. A Contractor shall not enter into any subcontract with any person or firm that the Contractor knows or should have known is debarred from government contracts pursuant to Executive Order 11246.

C. No employee to whom the equal opportunity provisions of this Construction Work Force Agreement are applicable shall be discharged or in any other manner discriminated against

by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to Attachment 9 of the DDA or this Schedule.

D. Each Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the Contractor's EEO policy is being carried out.

VI. DOCUMENTATION AND RECORDS.

A. Submission of electronic certified payrolls. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a report providing the information contained in the Agency's Optional Form of payroll report for the week preceding the previous week on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors.

B. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a payroll report for the week preceding the previous week on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors and for certifying its accuracy.

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

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

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

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

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

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

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

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

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

ARBITRATION OF DISPUTES.

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

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

C. **Parties' Participation**. The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Owner made an initial timely Demand for Arbitration pursuant to Section V.B. above.

D. **Agency Request to AAA**. Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the

Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.

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

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

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

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

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

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

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

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

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party

to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Construction Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

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

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

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

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

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

arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

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

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

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

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

_____ Agency

_____ Owner

VI. PRECONSTRUCTION MEETING.

A. Prior to the commencement of construction, the general contractor, any prime contractor, or any subcontractor at any tier shall attend a preconstruction meeting convened by the Agency and to which outreach organizations are invited to review the reporting requirements, the prospective construction work force composition and any problems that may be anticipated in meeting the construction work force goal.

B. Any subcontractor at any tier, who does not attend such a meeting shall not be permitted on the job site. The Agency shall convene additional preconstruction meetings within 24 hours of the Contractor's request. The Contractor shall endeavor to include as many prospective subcontractors as possible at these meetings in order not to protract unduly the number of meetings.

C. Failure to comply with this preconstruction meeting provision may result in the Agency ordering a suspension of work by the prime contractor and/or the subcontractor until the breach has been cured. Suspension under this provision is not subject to arbitration.

VII. **TERM.** The obligations of the Owner and the Contractors with respect to their construction work forces, as set forth in Attachment 9 of this DDA and this Construction Work Force Agreement, shall remain in effect until completion of all work to be performed by the Owner in connection with the construction of any of the phases.

I, hereby certify that I have authority to execute this Construction Work Force Agreement on behalf of the business, organization or entity listed below and that it will use good faith efforts to comply with the Agency's Construction Work Force participation goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

_____ _____

Signature Date

_____ _____

Print Your Name Title

_____

Company Name and Phone Number

PERMANENT WORK FORCE AGREEMENT

I. **PURPOSE.** The purposes of the Agency and the Developer/Affordable Developer in entering into this Permanent Work Force Agreement are to ensure:

A. that San Francisco residents obtain ***50 percent*** of the permanent jobs in the work forces of the Owner and tenants at the Site.

B. that San Francisco residents are given first consideration for employment by the Owner and tenants for permanent employment at the Site.

II. **APPLICATION OF THIS SCHEDULE TO TENANTS.** The Developer shall include verbatim in its leases and require the incorporation verbatim in all subleases for space in the Site the provisions of this Permanent Work Force Agreement. The lease shall make the incorporated provisions binding on and enforceable by the Agency against the tenant to the same extent as these provisions are binding on and enforceable against the Developer; except that:

A. Unless agreed otherwise by the Agency, a tenant with ***26 or more*** employees shall submit its workforce plan through the Developer to the Agency not later than 90 days prior to hiring any permanent employees to work on the tenant's premises; rather than pursuant to the requirements set forth in Section V.B.

B. A tenant with 25 or less employees shall not be required to submit an workforce plan pursuant to Section IV, but instead shall undertake and document in writing the good faith efforts it made to meet the goals and first consideration in employment requirements set forth in Section III. The Agency's Contract Compliance Department shall determine if such a tenant has exercised good faith efforts.

C. A tenant with less than 25 employees shall submit to the Agency the reports required by Section VII of not later than 60 days after it opens for business and annually thereafter.

III. **GOALS AND OBJECTIVES.**

A. make good faith efforts to employ 50 percent of its work force at the Site in each job category from residents of the City and County of San Francisco.

B. as provided in Section IV.B.1, give first consideration for employment at the Site to residents of San Francisco.

IV. **PERMANENT WORKFORCE PLAN.**

A. The Developer and each tenant with more than 26 employees, whether or not it is a federal contractor, shall prepare and adopt a plan for its permanent work force at the Site.

B. The workforce plan shall contain the following:

1. Detailed procedures for ensuring that San Francisco residents who are equally or more qualified than other candidates obtain first consideration for employment. These procedures shall include specific recruiting, screening and hiring procedures (e.g., phased hiring) which ensure that qualified residents receive offers of employment prior to other equally or less qualified candidates. If a candidate(s) who is entitled to first consideration is not selected for the position, the Developer or tenant shall have the burden of establishing to the Agency and the arbitrator (if the matter is taken to arbitration), that the candidate who was selected was better qualified for the position than the candidate(s) who was entitled to first consideration.

2. Where it is a reasonable expectation that 10 percent or more of the employees in any job category will regularly work less than 35 hours per week, detailed procedures for ensuring that minority group persons, women, and San Francisco residents do not receive a disproportionate share of the part time work.

3. An agreement that not more than 15 percent of the positions in any job category will be filled by persons transferred from other facilities operated by the Developer, without the prior approval of the Agency. The Agency shall grant approval upon a showing that transfers in excess of 15 percent do not unreasonably interfere with the objective of creating new jobs for San Francisco residents and that such transfers further legitimate business needs of the Owner. Transfers shall be counted in determining if the Developer has met the employment goals for each ethnic group and women.

4. Where required by the Agency, detailed procedures for utilizing Outreach Organizations as meaningful referral sources for job applicants.

V. ARBITRATION OF DISPUTES.

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

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

Parties' Participation. The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Owner made an initial timely Demand for Arbitration pursuant to Section V.B. above.

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

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

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

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

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

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

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

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

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Permanent Work Force Agreement, or from

granting extensions or other modifications to existing contracts related to services covered by the Owner or this Permanent Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Permanent Work Force Agreement.

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

4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars ($50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Permanent Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

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

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

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

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

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

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

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

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

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

_____ _____

Agency Owner

VII. REPORTS.

A. The Owner and each tenant shall prepare, for its Site work force, reports for each job category which show by race, gender, residence (including if in the Western Addition Redevelopment Project Area A-2), and, where required by the Agency, by transfer/non-transfer and referral source:

1. Current work force composition;

2. applicants;

3. job offers;

4. hires;

5. rejections;

6. pending applications;

7. promotions and demotions; and

8. employees working, on average, less than 35 hours per week.

B. The reports shall be submitted quarterly to the Agency, unless otherwise required by the Agency. In this regard the Owner and each tenant agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, the Agency may require daily, weekly or monthly reports containing all or some of the above information. The Owner and each tenant further agrees that the above reports may not be sufficient for monitoring the Owner's or tenant's performance in all circumstances, that they will negotiate in good faith concerning additional reports, and that the arbitrator shall have authority to require additional reports if the parties cannot agree.

VIII. **TERM.** The obligations of the Owner and its tenants with respect to their permanent work forces as set forth in the DDA, and this Permanent Work Force Agreement, shall arise from the date the Owner or its tenants first assigns employees to the Site on a permanent basis and remain in effect for three years thereafter.

I, hereby certify that I have authority to execute this Permanent Work Force Agreement on behalf of the business, organization or entity listed below and that it will use good faith efforts to comply with the Agency's Permanent Work Force participation goals. I declare under penalty of perjury under the laws of

the State of California that the above statement is true and correct.

Signature	Date
Print Your Name	Title
Company Name and Phone Number	

PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

1. **Applicability**. These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Disposition and Development Agreement (DDA) between the Developer and the Agency of which this Attachment 9 and these Labor Standards are a part.

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

   (a) All specifications relating to the construction of the Improvements shall contain these Labor Standards and the Developer shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Developer shall supply the Agency with true copies of each contract relating to the construction of the Improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do shall be a violation of these Labor Standards.

   (b) Before close of escrow under the DDA and as a condition to close of escrow, the Developer shall also supply a written confirmation to the Agency from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.

3. **Definitions**. The following definitions shall apply for purposes of this Prevailing Wage Provisions:

   (a) "Contractor" is the Developer if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds $10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Improvements.

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

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

4. **Prevailing Wage**.

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

All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.

(b) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.

(c) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Developer that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §11.8. The Executive Director of the Agency may require the Developer to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §11.4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.

(d) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

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

(a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.

(b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.

(c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.

(d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:

1. The deduction is not otherwise prohibited by law; and

2. It is either:

   a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or

   b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and

3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and

4. The deduction shall serve the convenience and interest of the employee.

(e) Any authorized purchase of United States Savings Bonds for the employee.

(f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.

(h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments, provided that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

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

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

8. **Payrolls and Basic Records**.

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

(b) 1. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Developer acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.

2. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

(c) The Contractor shall make the records required under this §11.8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

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

10. **Equal Opportunity Program**. The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in this Attachment 9 of the DDA including the Construction Work Force Agreement and the Permanent Work Force Agreement. Any conflicts between the languages contained in these Labor Standards and Attachment 9 shall be resolved in favor of the language set forth in Attachment 9, except that in no event shall less than the prevailing wage be paid.

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

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

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

13. **Violation and Remedies.**

(a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.

(b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by §11.2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §11.8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Developer with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.

(c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Developer, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Developer shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Developer, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Developer fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the Improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Developer shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §11.14.

(d) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the Improvements provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.

(e) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

14. Arbitration of Disputes.

(a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.

(b) The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.

(c) The arbitration shall take place in the City and County of San Francisco.

(d) Arbitration may be demanded by the Agency, the Developer or the Contractor.

(e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Developer, or as appropriate to one or the other if the Developer or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §11.4) and copies of all notices sent or received by the Agency pursuant to §11.13. Such material shall be made part of the arbitration record.

(f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.

(g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision

requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.

(h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Developer shall pay the Contractor from money withheld.

(i) Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

15. **Non-liability of the Agency**. The Developer and each Contractor acknowledge and agree that the procedures hereinafter set forth for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the Improvements, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly the Developer, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

EQUAL OPPORTUNITY NON-DISCRIMI-NATION	The contractor must take equal opportunity to provide employment opportunities to minority group persons and women and shall not discriminate on the basis of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.
PREVAILING WAGE	You shall not be paid less than the wage rate attached to this Notice for the kind of work you perform.
OVERTIME	You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 8 a day or 40 a week, whichever is greater.
APPRENTICES	Apprentice rates apply only to employees registered under an apprenticeship or trainee program approved by the Bureau of Apprenticeship and Training or the California Division of Apprenticeship Standards.
PROPER PAY	If you do not receive proper pay, write Successor Agency to the San Francisco Redevelopment Agency 1 South Van Ness Avenue, Floor 5 San Francisco, CA 94103 or call Contract Compliance Specialist **George Bridges** at **415-749-2546**

ATTACHMENT 10

Form of Grant Deed

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

Golub Real Estate Corp.
c/o Andrew Junius
Reuben & Junius, LLP
One Bush Street, Suite 600
San Francisco, CA 94104

Assessor's Block___, Lot____
Commonly known as Transbay Blocks 6 and 7

Space Above This Line Reserved for Recorder's Use

GRANT DEED

The SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California, herein called "Grantor," acting to carry out a redevelopment plan under the Community Redevelopment Law of California, hereby **GRANTS** to **Golub Real Estate Corp., an Illinois Corporation,** herein called "Grantee," the following described real property situated in the City and County of San Francisco, State of California, hereinafter referred to as the "Property," which property is particularly described in Exhibit "A" attached hereto and made a part hereof. All capitalized terms used in this Grant Deed are either defined herein or are as defined in the Agreement, as defined below.

SUBJECT, however, to the Disposition and Development Agreement, between the Grantor and the Grantee, dated _____, 2013, which Agreement for Disposition is recorded concurrently with this Deed and, hereinafter referred to as the "Agreement," and the following conditions, covenants and restrictions:

(1) Grantee covenants and agrees for itself, and its successors and assigns to or of the Property or any part thereof that Grantee, and such successors and assigns, shall:

(i) Not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, ancestry, national origin, sex, marital status, or sexual orientation, age or disability in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or any improvements erected or to be erected thereon, or any part thereof, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or

segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees or vendees in the Property or any improvements erected or to be erected thereon, or any part thereof, and

(2) In the event of a default by the Grantee under Section 8.01 (c) of the Agreement (that is, that Grantee has failed to commence construction on the Site, the Grantor shall have an exclusive right to repurchase the Site from the Grantee (the "Exclusive Right of Repurchase), pursuant to Section 8.02(a)of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in duplicate this _____ day of _____, 2013.

Authorized by Successor Agency Resolution No. 10-2013, adopted April 16, 2013.

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

By:_____
Tiffany J. Bohee
Executive Director

APPROVED AS TO FORM:
DENNIS J. HERRERA, CITY ATTORNEY

By:_____

Heidi J. Gewertz
Deputy City Attorney

GRANTEE:

Golub Real Estate Corp.,
an Illinois corporation

By:_____

Its:

EXHIBIT "A"

Property Legal Description

ATTACHMENT 11

Form of Notice of Exclusive Right of Repurchase

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Real Estate & Development Services

Space Above This Line Reserved for Recorder's Use

Assessor's Block 3738, Lot 004
Commonly known as Transbay Blocks 6 and 7

NOTICE OF EXCLUSIVE RIGHT OF REPURCHASE

This NOTICE OF EXCLUSIVE RIGHT OF REPURCHASE is made pursuant to a Disposition and Development Agreement dated _____, 2013 and recorded on _____, 2013, in the Office of the Recorder of the City and County of San Francisco, as Instrument/File No. __-_____-__, Reel ____, Image ___ of the Official Records (the "DDA"), by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California (the "Agency"), and GOLUB REAL ESTATE CORP., an Illinois corporation (the "Owner"), which covered the development of certain real property situated in the City and County of San Francisco (the "City"), State of California, which property is particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"). The Agency and the Owner hereby serve notice as follows:

WITNESSETH:

WHEREAS, the Owner is the owner of the Property, and has granted the Agency an exclusive right of repurchase pursuant to Section 8.02 (a) of the DDA (the "Exclusive Right of Repurchase"), which entitles the Agency to have an Exclusive Right to Repurchase the Site (both as defined in the DDA) from the Owner upon Owner's default under Section 8.01 (c) of the DDA; and

WHEREAS, upon Owner's default under Section 8.01 (c) of the DDA, the Agency shall inform the Owner in writing of such default and exercise its Exclusive Right of Repurchase by immediately recording this Notice of Exclusive Right of Repurchase; and

WHEREAS, the Exclusive Right of Repurchase shall terminate, when the Owner has commenced construction on the Site per the Schedule of Performance in the DDA.

Nothing contained in this instrument shall modify in any other way any other provision of said DDA nor any other provisions of those documents incorporated in said DDA.

IN WITNESS HEREOF, the Agency and the Owner have executed this Notice of Exclusive Right of Repurchase this _____ day of _____, 2013.

Authorized by Successor Agency Resolution No. 10-2013, adopted, April 16, 2013

AGENCY:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic

APPROVED AS TO FORM:
DENNIS J. HERRERA, CITY ATTORNEY

By _____
Heidi J. Gewertz
Deputy City Attorney

By _____
Tiffany J. Bohee
Executive Director

OWNER:

GOLUB REAL ESTATE CORP.,
an Illinois corporation

By: _____

Its:

EXHIBIT "A"

Property Legal Description

ATTACHMENT 12

Form of Notice of Termination

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Real Estate & Development Services

Assessor's Block 3738, Lot 004
Commonly known as Transbay Blocks 6 and 7

Space Above This Line Reserved for Recorder's Use

NOTICE OF TERMINATION

This NOTICE OF TERMINATION is made pursuant to a Disposition and Development Agreement dated _____, 2013 and recorded on _____, 2013, in the Office of the Recorder of the City and County of San Francisco, as Instrument/File No. __-_____-__, Reel ____, Image ___ of the Official Records (the "DDA"), by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California (the "Agency"), and GOLUB REAL ESTATE CORP., an Illinois corporation (the "Owner"), which covered the development of certain real property situated in the City and County of San Francisco (the "City"), State of California, which property is particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"). The Agency and the Owner hereby serve notice as follows:

WITNESSETH:

WHEREAS, with respect to the above-described real property, the Owner has completed the construction of the Improvements as defined in the DDA; and

WHEREAS, with respect to the above-described real property, per Section 4.13 of the DDA, Owner has provided the Agency with copies of Final Certificates of Occupancy ("Final CofOs") for the Improvements as issued by the City's Department of Building Inspection; and

WHEREAS, per Section 4.13 of the DDA, the Agency is issuing to Owner, in recordable form, this Notice of Termination which confirms that the Agency has conclusively determined that the construction obligations of the Owner as specified in said DDA, have been fully performed and the Improvements completed in accordance therewith; and

WHEREAS, the Agency's issuance of this Notice of Termination does not relieve Owner, its successors and assigns, or any other person or entity from any and all City requirements or conditions to occupancy of any Improvements, which City requirements or conditions must be complied with separately; and

WHEREAS, per Section 4.07(b) of the DDA, the Agency's determination regarding said construction obligations is not directed to, and thus the Agency assumes no responsibility for, engineering or structural matters or compliance with City building codes and regulations or applicable state or federal law relating to construction standards; and

WHEREAS, per Article 5 the following provision survives the Agency's issuance of this Notice of Termination:

> Section 5.03, which requires the Owner to abide by the provisions contained in Section 5.03, Nondiscrimination.

NOW, THEREFORE, as provided for in Section 4.13 (a) in said DDA, the Agency and the Owner hereby agree to terminate the DDA (SAVE and EXCEPT for the Section of Articles 5 cited above), and which remaining portions of said DDA shall have no further force or effect on the Property.

Nothing contained in this instrument shall modify in any other way any other provision of said DDA nor any other provisions of those documents incorporated in said DDA.

IN WITNESS HEREOF, the Agency and the Owner have executed this Notice of Termination this _____ day of _____, 2013.

Authorized by Successor Agency Resolution No. 10-2013, adopted, April 16, 2013

APPROVED AS TO FORM:
Dennis J. Herrera

By _____
Heidi J. Gewertz
Deputy City Attorney

AGENCY:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic

By _____
Tiffany J. Bohee
Executive Director

OWNER:

GOLUB REAL ESTATE CORP.,
an Illinois corporation

By:_____

Its:

EXHIBIT "A"

Property Legal Description

NEED NEW LEGAL

ATTACHMENT 13

Form of Declaration of Site Restrictions

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Real Estate & Development Services

Assessor's Block 3738, Lot 004
Commonly known as Transbay Blocks 6 and 7

Space Above This Line Reserved for Recorder's Use

DECLARATION OF SITE RESTRICTIONS

The following are the Conditions, Covenants and Restrictions affecting Property (as hereinafter defined) of Golub Real Estate Corp., an Illinois corporation, the owner of that certain property comprised of two adjacent development sites connected by a proposed extension of Clementina Alley. Block 6 is a 42,625-square-foot parcel on Folsom Street between Fremont and Beale Streets, two blocks south of the future Transbay Transit Center. Block 7 is a 27,728-square-foot parcel located between Fremont and Beale Streets, immediately north of Block 6, , commonly known as Transbay Blocks 6 and 7, San Francisco, California, located within the Transbay Redevelopment Project Area in the City and County of San Francisco, State of California.

THIS DECLARATION OF SITE RESTRICTIONS ("Declaration") is made as of _____ day of _____ 2013, by the undersigned, hereinafter called the "Owner."

WITNESSETH:

WHEREAS, the Owner owns Lot 004 in Assessor Block 3738 (the "Property") in that certain Redevelopment Area in the City and County of San Francisco, State of California, covered by the Redevelopment Plan for the Transbay Redevelopment Project Area , filed in the Office of the Recorder of the City and County of San Francisco, State of California, as Document No. , filed on , hereinafter referred to as the "Plan" or the "Redevelopment Plan;" and

WHEREAS, the California Community Redevelopment Law requires that adequate safeguards be imposed so that the work of redevelopment will be carried out pursuant to the Redevelopment Plan, and provides for the retention of controls and the establishment of restrictions and covenants running with land sold or leased for private use; and

WHEREAS, for the purpose of providing adequate safeguards that the work of redevelopment will be carried out pursuant to the Redevelopment Plan and to ensure the best use and the most appropriate development and improvement of the property described in the Redevelopment Plan; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to guard against the erection thereon of poorly designed or proportioned structures; to ensure the highest and best development of said property; to encourage and secure the erection of attractive structures thereon, with appropriate locations on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain proper setbacks from streets and adequate free space between structures; and, in general, to provide adequately for a high type and quality of improvement on said property, and thereby to enhance the value of investments made by purchasers of building sites therein, the Owner is desirous of subjecting the real property hereinafter described to the covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of said property and for each owner thereof and shall inure to the benefit of said property and for each owner thereof and pass with said property and each and every parcel thereof and shall apply to and bind the successors in interest and any owner thereof.

NOW, THEREFORE, the Owner hereby declares that the real property described and referred to in Clause 1 hereof, is and shall be held, transferred, sold, and conveyed, subject to the covenants, conditions and restrictions, hereinafter set forth:

1. Property Subject to This Declaration

The real property which is, and shall be, held, conveyed, transferred and sold, subject to the covenants, conditions and restrictions with respect to the various portions thereof set forth in the various clauses and subdivisions of this Declaration is located in the City and County of San Francisco, State of California, and is more particularly described as all that certain real property situated in the City and County of San Francisco (the "City"), State of California, and is more particularly described in Exhibit "A" attached hereto and made a part hereof.

2. Incorporation of Redevelopment Plan by Reference

The Redevelopment Plan for the Transbay Redevelopment Project Area, was approved and adopted by the Board of Supervisors of the City and County of San Francisco on June 21, 2005 by Ordinance 124-05, and as amended by Ordinance No. 99-06 adopted on May 9, 2006, and copies of which have been filed in the Office of the Recorder of the City and County of San Francisco, State of California. Each and every term, condition, and provision set forth in said Plan is hereby incorporated by reference in and made a part of this Declaration of Restrictions with the same force and effect as though set forth in full herein.

3. Reviews of Plans

During the period when the Redevelopment Plan is in effect, all preliminary architectural and site plans and the final plans and specifications for the construction of buildings and improvements on the land shall be submitted to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

(hereinafter "Agency"), in duplicate, for review and approval. Those plans shall be in sufficient detail to enable the Agency to make a determination as to the compliance of the plans with these restrictions and with the Redevelopment Plan for the Project Area.

4. Maintenance

All buildings and improvements constructed in the Project Area shall be maintained in compliance with the laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco.

5. Nondiscrimination Provisions

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, national origin, ancestry, sex, age, gender identity, disability including AIDS or HIV status, marital or domestic partner status, or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises subject to this Declaration, nor shall any grantee or any claiming through him or her establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises described. All deeds, leases, subleases, or contracts shall contain or shall be deemed to contain a covenant by the grantee, and his or her heirs, executors, administrators and assigns to the above effect.

6. Land Use Restrictions

For the duration of the Redevelopment Plan, the Owner shall devote the Property and the Improvements thereon only to the uses permitted by the Disposition and Development Agreement between the Owner and the Agency (the "Agreement"), the Redevelopment Plan, and this Declaration of Site Restrictions The Property is zoned "Zone 1: Transbay Downtown Residential" in the Redevelopment Plan. The Developer intends to use the Site for development of a Market-Rate Project and an Affordable Housing Project (as defined in the Agreement and the details of which are contained in the Scope of Development, Attachment 5 to the Agreement. The uses contemplated in the Scope of Development are consistent with the Zone 1 requirements of the Redevelopment Plan.

7. General Provisions

a. Term

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them during the effective period of the Redevelopment Plan, which remains in effect until June 21,2035, as of the date this Declaration is executed; unless an instrument, describing property in the Transbay Project Area, has been recorded agreeing to change said covenants, provided, however, that covenants contained in Clause 5 hereof shall run in perpetuity and the covenants contained in Clause 6 hereof shall run until the expiration or termination of the Redevelopment Plan. These covenants shall be deemed automatically extended during the effective period of any extension of the Redevelopment Plan. After the expiration or termination of the Redevelopment Plan, the use and subsequent development or redevelopment of the Property will become subject to the City's land use ordinances and policies, including but not limited to the City's Planning Code.

b. Enforcement

In the event of any breach of any of the covenants contained herein, it shall be the duty of the Agency to

endeavor immediately to remedy such breach by conference, conciliation and persuasion. In the case of failure so to remedy such breach, or in advance thereof, if in the judgment of the Agency circumstances so warrant, said breach shall be enjoined or abated by appropriate proceedings brought by the Agency.

The Agency, on its own behalf or on behalf of any owner or owners, singly or collectively, or any real property in the Project Area covered by these restrictions, or any such owner or owners may, at any time, prosecute any proceedings in law or in equity in case of any violation or attempt to violate any of the covenants contained herein.

c. Variances

Where, owing to special conditions, a literal enforcement of these restrictions in regard to the physical standards and requirements as referred to in Clause II hereof would result in unnecessary hardship, involve practical difficulties, or would constitute an unreasonable limitation beyond the spirit and purposes of these restrictions, the Agency shall have the power upon appeal in specific cases to authorize such variation or modification of the terms of these restrictions as will not be contrary to the public interest and so that the spirit of these restrictions shall be observed and justice done, provided that in no instance will any adjustments be granted that will change the land use of the Redevelopment Plan. Other basic requirements of this Plan shall not be eliminated but adjustments thereof may be permitted, provided such adjustments are consistent with the general purposes and intent of the Redevelopment Plan.

d. Foreclosure and Enforcement of Liens

The provisions of this Declaration do not limit the rights of obligees to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance upon the property, or the rights of such obligees to pursue any remedies for the enforcement of any pledge or lien upon the property; provided, however, that in the event of a foreclosure sale under any such mortgage, deed of trust, or other lien or encumbrance or a sale pursuant to any power of sale contained in any such mortgage or deed of trust, the purchaser or purchasers and their successors and assigns, and the property, shall be and shall continue to be, subject to all of the conditions, restrictions, and covenants herein provided for.

e. Amendment

If at any time the Redevelopment Plan is amended in any manner as is now or hereafter permitted by law, this Declaration may be amended accordingly.

f. Dissolution

In the event that the Agency is dissolved or its designation changed by or pursuant to law prior to carrying out the Redevelopment Plan, its powers, duties, rights, and functions under this Declaration shall be transferred pursuant to any applicable provisions of such laws.

g. Separability of Provisions

If any provision of this Declaration of Site Restrictions or the application of such provision to any owner or owners or parcel of land is held invalid, the validity of the remainder of this Declaration of Site Restrictions and the applicability of such provision to any other owner or owners or parcel of land shall not be affected thereby.

EXHIBIT "A"

Property Legal Description

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

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

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

☒ 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee.

☐ 4. Request for letter beginning "Supervisor [ ] inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. [ ] from Committee.

☐ 7. Budget Analyst request (attach written motion).

☐ 8. Substitute Legislation File No. [ ]

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

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

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

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

Sponsor(s):

Supervisor Kim

Subject:

Resolution - Disposition and Development Agreement - 280 Beale Street

The text is listed below or attached:

See attached.

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

130794