

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

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JEFFER MANBLS, BUTLER & MITCHELL, LLP
TWO EMBARCADERO CENTER, 5TH FL
SAN FRANCISCO, CA 94111
ATTN DAVID P CINLOTTA



San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC- 2015-K062374-00

Acct 28-SFCC Board of Supervisors
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CONSENT AND SUBORDINATION AGREEMENT

THIS CONSENT AND SUBORDINATION AGREEMENT RESULTS IN THE LIEN OF A DEED OF TRUST AND RELATED DOCUMENTS ON PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME LATER INSTRUMENTS AND AGREEMENTS AS EXPRESSLY SET FORTH HEREIN

THIS CONSENT AND SUBORDINATION AGREEMENT dated as of February 2 2015 (this **Agreement**) is made by and between (i) UNIVERSAL PARAGON CORPORATION a Delaware corporation (together with its successors and assigns the **Lender**) (ii) VISITACION DEVELOPMENT LLC a California limited liability company (the **Owner**) and (iii) THE CITY AND COUNTY OF SAN FRANCISCO CALIFORNIA a municipal corporation (the **City** and the **Lender** the **Owner** and the **City**, collectively, the "**Parties**")

RECITALS

A PROPERTY The Owner is the fee owner of the approximately 15 acre site located in the southeast quadrant of San Francisco California, commonly referred to as Visitacion Valley (a neighborhood bounded approximately to the north and west by McLaren Park and the Excelsior and Crocker Amazon districts to the east by the Caltrain tracks, and to the south by the San Francisco/San Mateo County line and the City of Brisbane), and more particularly described in **Exhibit A** attached hereto (the "**Property**")

B LOANS The Lender has made two loans (together, the **Loans**) to the Owner in the respective original principal amounts of \$17,752,402 and \$6,561,248 which are secured respectively, by (i) the **[Deed of Trust]** dated October 3, 2008 made by the Owner as trustor in favor of FIRST AMERICAN TITLE INSURANCE COMPANY (the "**Trustee**"), as trustee for the benefit of the Lender as beneficiary encumbering Parcels 1 through 6 of the Property and recorded in the Official Records of San Francisco County, California (the "**Official Records**") on October 10, 2008, as Document No 2008 1664333 in Reel J747, at Image 0022 and (ii) the **[Deed of Trust]** dated October 3, 2008 made by the Owner as trustor in favor of the Trustee as trustee for the benefit of the Lender as beneficiary encumbering Parcels 7 through 10 of the Property and recorded in the Official Records on October 10, 2008 as Document No 2008 1664334 in Reel J747 at Image 0023 (those two deeds of trust together the **Deeds of Trust** and the Deeds of Trusts together with all documents and instruments executed by the Owner and delivered to the Lender at its request in connection with the Loans including all notes and loan

agreements all amendments modifications renewals supplements replacements, future advances and extensions of any or all of such documents and all rights and privileges of the Lender or its successors thereunder, collectively the **Loan Documents**)

C DEVELOPMENT AGREEMENT The City and the Owner are concurrently with this Agreement, entering into a development agreement affecting the Property (the **Development Agreement**) The Development Agreement is to be recorded in the Official Records on the same date as this Agreement The Parties recognize the mutual benefit of the Development Agreement to the Owner the Lender, and the City and wish to ensure that (i) the Development Agreement will remain in effect and run with the land encumbering the Property for the benefit and burden of all future owners of the Property and the City (ii) it be and remain superior to the Loan Documents and (iii) any action by the Lender under the Loan Documents, including any foreclosure of the Deeds of Trust, will not adversely affect or terminate the Development Agreement

D MEMORIALIZATION The Development Agreement is conditioned upon the consent and subordination that are set forth in this Agreement and the City and the Owner would not be willing to enter into the Development Agreement without this Agreement

AGREEMENT

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows

1 CONSENT The Lender hereby consents to the Development Agreement and all of the terms and conditions of the Development Agreement The Lender will have the benefit of all of the mortgagee protection provisions set forth in Section 11.9 and any other provisions benefitting a mortgagee of the Development Agreement

2 SUBORDINATION, RELIANCE The encumbrance of the Development Agreement as it may be amended from time to time pursuant to the terms of this Agreement, together with the encumbrance of any Assignment and Assumption Agreement Recorded Restrictions or other instruments or agreements recorded against the Property pursuant to the terms of the Development Agreement (collectively, the "**Development Agreement Documents**"), are and will at all times be prior and superior to the lien of the Loan Documents and the Loan Documents are and will at all times be subject and subordinate to the encumbrance of the Development Agreement Documents The Lender intentionally subordinates the lien of the Loan Documents in favor of the Development Agreement Documents and understands that in reliance upon and in consideration of this Agreement the Owner and the City are entering into the Development Agreement and would not enter into the Development Agreement without this Agreement

3 NONDISTURBANCE During the term of the Development Agreement the Lender agrees (i) except as may be required by applicable law the City may not be named or joined in any foreclosure, trustee's sale or other proceeding to enforce the Loan Documents (ii) enforcement of the Loan Documents will not terminate the Development Agreement or disturb or interfere with the City's rights or obligations under the Development Agreement and

(iii) the rights of the City under the Development Agreement will not be adversely affected or disturbed in any manner by any foreclosure, trustee's sale or other proceeding instituted or action taken under or in connection with the Loan Documents or if the Lender takes possession of the Property or any portion thereof pursuant to any provision of either Deed of Trust or otherwise except as expressly provided herein or in the Development Agreement. The City may not to interfere in any manner with the Lender's exercise of its rights and remedies.

4 ASSUMPTION OF DEVELOPMENT AGREEMENT If during the term of the Development Agreement any interest of the Owner is transferred by reason of any foreclosure trustee's sale, or other proceeding for enforcement of the Loan Documents the successor to the Owner must to receive the Owner's rights and benefits under the Development Agreement, enter into an Assignment and Assumption Agreement in accordance with and as required by the terms of the Development Agreement, provided the form of the Assignment and Assumption Agreement (i) may be modified to eliminate the execution by the foreclosed upon Owner and other changes agreed to by the City and that successor instead and (ii) must include all of the same requirements and provisions in a written assumption agreement between that successor and the City in a form approved by the City (each an **Assumption Agreement**) It is the intention of the Parties that the City have and maintain direct contractual privity with each Developer under the Development Agreement, as further described in the Development Agreement (all references to Developer in this Agreement mean the Developer as defined in the Development Agreement) Accordingly to receive rights and benefits under the Development Agreement each successor owner of some or all of the Property must enter into an Assignment and Assumption Agreement or an Assumption Agreement as set forth above, which is subject to the City's consent in accordance with Article 11 of the Development Agreement. If a successor owner fails to enter into an Assignment and Assumption Agreement as set forth in the Development Agreement (or the modified Assumption Agreement as set forth above), then the City will have the remedies as set forth in Article 12 of the Development Agreement provided that (i) the City will not have the right to terminate the Development Agreement against the Lender by virtue of the Lender's failure to enter into an Assumption Agreement for a period of up to 18 months following the Lender's acquisition of the Property recognizing that the Lender may be a short term owner of the Property and will likely seek to transfer the Property to another developer within that 18 month period (ii) the Lender will have no right to construct improvements or receive the other rights or benefits afforded to the Developer under the Development Agreement (other than as set forth in Section 11.9 of the Development Agreement) without first entering into an Assumption Agreement with the City and (iii) if the Lender wishes to perform construction or receive other rights and benefits of the Developer under the Development Agreement then the Lender must enter into an Assumption Agreement as set forth above.

5 LENDER NOT LIABLE FOR ACTS OF OWNER The Lender, which is acting only as a lender to the Owner will not be liable for among other things breaches by the Owner under the Development Agreement or claims that the City may have against the Owner under the Development Agreement that occur or arise before the date that the Lender acquires ownership of the Property by foreclosure or otherwise. However nothing in this Agreement is intended to or is to be deemed to affect (i) the City's rights or remedies against any Developer under the Development Agreement for any act omission or breach of the Development Agreement by that Developer or (ii) the City's right, if any to terminate the Development Agreement based upon a breach of the Development Agreement by any such Developer in accordance with the terms of

the Development Agreement subject to the cure rights and mortgagee protection provisions set forth in Section 11.9 and Article 12 of the Development Agreement

6 FUTURE AMENDMENTS The City and the Owner agree that they may not amend Sections 11.1 or 11.9 of the Development Agreement or make any other modifications to the Development Agreement that materially affect the rights of the Lender under the Development Agreement without the Lender's prior written consent

7 OWNER DEFAULTS So long as either Deed of Trust encumbers any or all of the Property, (i) the City shall send a copy of any notice of default under the Development Agreement to the Lender at the address of the Lender specified by Section 9 below at the same time that notice or statement is sent to the Owner under the Development Agreement provided the City's failure to do so will not limit or affect any rights the City has against the Owner (but in any event, the Lender will have not less than the time provided in Section 11.9.4 of the Development Agreement to cure or commence a cure (as the case may be) from the date of the Lender's receipt of that default notice to cure or commence to cure the Owner's default to protect the Lender's rights and interests in the Property) and (ii) the Lender shall send a copy of any notice of default under the Loan Documents to the City at the address of the City specified by Section 9 below at the same time that notice or statement is sent to the Owner under the Loan Documents provided the Lender's failure to do so will not limit or affect any rights the Lender has against the Owner

8 ATTORNEYS FEES In the event that any legal action or proceeding is commenced to interpret or enforce the terms of or obligations arising under this Agreement or to recover damages for the breach hereof the Party prevailing in any such action or proceeding will be entitled to recover from the non prevailing Party all reasonable attorneys fees costs and expenses incurred by the prevailing Party in connection therewith For purposes of this Agreement, reasonable fees of attorneys of the City's Office of the City Attorney or the Lender's in-house counsel will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the services were rendered who practice in the City and County of San Francisco California, in law firms with approximately the same number of attorneys as employed by the City's Office of the City Attorney

9 NOTICES Any notice or communication required or authorized by this Agreement must be in writing and may be delivered personally or by registered or certified mail, return receipt requested or overnight carrier Notice whether given by personal delivery, registered or certified mail or overnight carrier will be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent Any Party may at any time, upon written notice to the other Parties designate any other person or address in substitution of the person and address to which notices or communications are to be given Such notices or communications must, unless so changed be given at their addresses set forth below

To the Lender

Universal Paragon Corporation
150 Executive Park Boulevard Suite 1150
San Francisco California 94134
Attention Michael Ho
Chief Financial Officer

with a copy to

Jeffer Mangels Butler & Mitchell LLP
Two Embarcadero Center Fifth Floor
San Francisco California 94111
Attention David P Cincotta, Esq

To the City

San Francisco Planning Department
1650 Mission Street Suite 400
San Francisco, California 94102
Attention John Rahaim
Director of Planning

with a copy to

Office of the City Attorney of San Francisco
City Hall Room 234
1 Dr Carlton B Goodlett Place
San Francisco, California 94102
Attention Dennis J Herrera Esq
City Attorney

To the Developer

Visitacion Development LLC
150 Executive Park Boulevard Suite 1150
San Francisco California 94134
Attention Jonathan Scharfman
Managing Member

with a copy to

Jeffer Mangels Butler & Mitchell LLP
Two Embarcadero Center Fifth Floor
San Francisco California 94111
Attention David P Cincotta Esq

10 CHOICE OF LAW This Agreement is to be governed by and construed in accordance with the laws of the State of California and the Charter of the City and County of San Francisco without regard to their respect choice of laws principles

11 MODIFICATIONS This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the Parties or their respective successors in interest

12 COUNTERPARTS This Agreement may be signed and delivered in any number of counterparts, each of which when so signed and delivered will be deemed to be an original and all of which counterparts taken together will constitute but one and the same instrument Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to form one document which may be recorded

13 SUCCESSORS, ASSIGNS This Agreement will inure to and bind the respective successors and assigns of the Parties

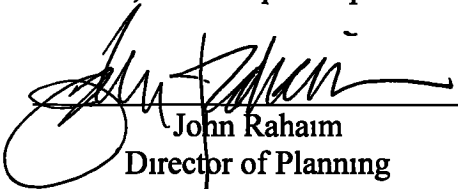
[Signatures on Following Page]

SIGNATURES

IN WITNESS WHEREOF, the Parties are signing this Agreement as of the date first written above

THE CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By  _____
John Rahaim
Director of Planning

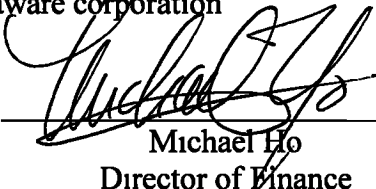
Approved as to form

Dennis J Herrera, City Attorney

By  _____
Deputy City Attorney

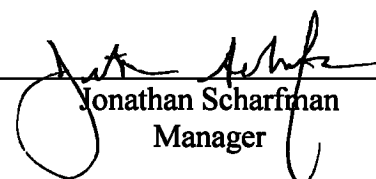
THE LENDER

UNIVERSAL PARAGON CORPORATION,
a Delaware corporation

By  _____
Michael Ho
Director of Finance

THE DEVELOPER

VISITACION DEVELOPMENT, LLC
a California limited liability company

By  _____
Jonathan Scharfman
Manager

[Signatures Must Be Notarized]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document


CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

State of California)
) ss
County of San Francisco)

On February 27, 2015 before me LENORE M ELKAROU a notary public in and for said State personally appeared John Rahaim who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in his ~~her/their~~ authorized capacity (ies) and that by his ~~her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

Signature 



(Seal)

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness accuracy or validity of that document

State of California

County of San Francisco

On 2-2-2015 before me Jane Steven McCarthy

DATE personally appeared JONATHAN DAVID SCHARFMAN NAME TITLE OF OFFICER E G JANE DOE NOTARY PUBLIC

NAME(S) OF SIGNER(S)

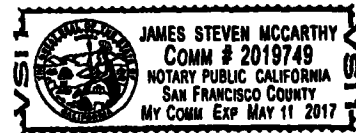
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

[Signature]
SIGNATURE OF NOTARY PUBLIC

(NOTARY SEAL)



OPTIONAL

Though the data below is not required by law it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

Managing Member
TITLE(S)

DESCRIPTION OF ATTACHED DOCUMENT

Consent and Subordination agreement
TITLE OR TYPE OF DOCUMENT

- PARTNER(S)
- LIMITED
- GENERAL

- ATTORNEY IN FACT
- TRUSTEE(S)

- GUARDIAN/CONSERVATOR
- OTHER

7

NUMBER OF PAGES

2 2 2015

DATE OF DOCUMENT

SIGNER IS REPRESENTING

NAME OF PERSON(S) OR ENTITY(IES)

VISITACION DEVELOPMENT LLC

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness accuracy or validity of that document

State of California

County of San Francisco

On 2 2 2015 before me James Steven McCarthy

DATE

NAME TITLE OF OFFICER E.G. JANE DOE NOTARY PUBLIC

personally appeared Michael Kwong Ho Ho

NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted executed the instrument

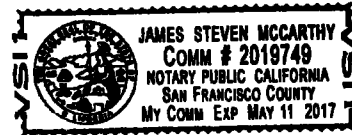
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

[Signature]

SIGNATURE OF NOTARY PUBLIC

(NOTARY SEAL)



OPTIONAL

Though the data below is not required by law it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER

DIRECTOR OF FINANCE

TITLE(S)

Consent and Subordinate agreement

TITLE OR TYPE OF DOCUMENT

- PARTNER(S)
- LIMITED
- GENERAL

- ATTORNEY IN FACT
- TRUSTEE(S)
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SIGNER IS REPRESENTING

NAME OF PERSON(S) OR ENTITY(IES)

SIGNER(S) OTHER THAN NAMED ABOVE