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OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARKMERCED INVESTORS LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE PARKMERCED DEVELOPMENT PROJECT

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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARKMERCED INVESTORS LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE PARKMERCED DEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this _____ day of ___________, 2011, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and PARKMERCED INVESTORS, LLC, a Delaware limited liability company, its permitted successors and assigns (the "**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the San Francisco Administrative Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Determination of Public Benefits. The City has determined that as a result of the development of the Project Site in accordance with this Agreement, the Basic Approvals and the Implementing Approvals, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. These public benefits to be provided by Developer at its cost include, without limitation:

A.1 One-for-one replacement of 1,538 rent-controlled dwelling units currently existing on the Project Site that will be demolished by Developer as part of the Project (the "**Existing Units**") with new rent-controlled units (*i.e.*, units that are subject to the provisions of the San Francisco Rent Ordinance), each with the same or greater number of bedrooms and bathrooms as the Existing Unit being replaced (each, a "**Replacement Unit**" and collectively, the "**Replacement Units**"). Although none of the Existing Units have a washing machine or dryer, each Replacement Unit will have a washing machine, a dryer and a dish washer installed by Developer before occupancy. All Existing Tenants shall be entitled to relocate to a Replacement Unit of approximately similar or greater size and with the same or greater number of bedrooms and bathrooms as their Existing Unit in the manner further described in Article 4 of this Agreement;

A.2 The non-applicability of certain provisions of the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 *et seq.*; the "**Costa-Hawkins Act**"), and Developer's waiver of any and all rights under the Costa-Hawkins Act and the Ellis Act (California Government Code section 7060 et seq.; the "**Ellis Act**") and any other laws or regulations so that (i) each Replacement Unit will be subject to rent control and other provisions protecting tenants under the City's Rent Ordinance, and (ii) each BMR Unit will be subject to the City's BMR Unit requirements as set forth in Planning Code section 415;

A.3 Relocation by Developer of Existing Tenants from their Existing Units to the Replacement Units, with an initial rent and pass through charges equal to the rent and pass through charges charged to the Existing Tenant for his or her Existing Unit at the time of relocation to the Replacement Unit, with the right to remain in the Replacement Unit for an unlimited term subject to the eviction rules, procedures and protections set forth in the San Francisco Rent Ordinance, and with no pass through charges added to rent of the Replacement Unit for the capital costs of the Project;

A.4 Construction of two new transit stations, relocation of an existing transit station, and construction of a new alignment for the SFMTA light rail "M" Oceanview that will leave 19th Avenue at Holloway Avenue and proceed through the neighborhood core in Parkmerced as further described in the Transportation Plan, each integrated into the SFMTA transit system, and the provision of a free (to Project residents and employees) low emissions shuttle bus from Parkmerced to the Daly City BART station and to the Stonestown retail center;

A.5 Reconfiguration of the street grid within the Project Site to conform to the City's Better Streets design guidelines, including the realignment of existing streets and the creation of new publicly-owned streets and privately-owned but publicly-accessible streets that accommodate bicycles, pedestrians and motor vehicles;

A.6 Improvement and reconfiguration of streets and intersections on the periphery of the Project Site to improve access and safety for all modes of transportation;

A.7 Creation and implementation of a Transportation Demand Management ("**TDM**") program (including, but not limited to, transit pass subsidies for residents of and employees in the Project Site) to facilitate and encourage the use of transportation modes other than the private automobile, to minimize the amount of automobile traffic originating from Parkmerced and to improve traffic flow on adjacent roadways such as 19th Avenue and Brotherhood Way, as further described in the Transportation Plan;

A.8 Reconfiguration of the existing open space at Parkmerced to provide more usable open spaces and related public benefits such as a new park, athletic fields, an organic farm, walking and bicycling paths, and community gardens;

A.9 Construction of a series of bioswales, ponds, and other natural filtration systems to capture and filter stormwater runoff from buildings and streets in accordance with the Infrastructure Plan and the Sustainability Plan. The filtered stormwater will either percolate into the groundwater that feeds the Upper Westside Groundwater Basin and Lake Merced or (if appropriate permits are obtained) be released directly into Lake Merced. This feature of the Project will reduce the amount of stormwater flows directed to the Oceanside Water Pollution Control Plant and help reduce the chance of combined sewage overflows to the ocean; and,

A.10 Zoning of a parcel within the Project Site that does not principally permit any use except a school, which may be publicly or privately owned and operated.

B. Code Authorization. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code section 65865, the City adopted Chapter 56 of the San Francisco Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement with a private developer pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

C. Property Subject to this Agreement. The real property subject to this Agreement is the approximately 152-acre site located in the Lake Merced District in the southwest corner of San Francisco and is generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue, and Serrano Drive to the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west. The Project Site is located at 3711 19th Avenue on Assessor's Blocks and Lots 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001 (the "**Project Site**"). The Project Site is generally diagrammed on Exhibit A attached hereto and more particularly described on Exhibit B attached hereto. Developer owns fee title to the Project Site, subject to the rights of [_____________] (the "**Existing Lender**"). On or before the Effective Date, the Existing Lender and City shall have entered into a consent and subordination agreement satisfactory to both.

D. Permitted Development; Intent of the Parties. The Project is a long-term mixed-use development program to comprehensively replan and redesign the Project Site. The Project will, upon implementation, increase residential density, provide a neighborhood core with new commercial and retail services, reconfigure the street network and public realm, improve and enhance the open space amenities, modify and extend existing neighborhood transit facilities, and improve utilities within the Project Site. Developer intends to retain approximately half of the existing apartments as part of the Project. The remaining half would be demolished over time and replaced with the Replacement Units. Approximately 5,679 net new residential units would be added to the Project Site over time. In total, upon completion of the Project, there will be up to 8,900 residential units on the Project Site (1,683 existing-to-be-retained units + 1,538 newly constructed Replacement Units + 5,679 newly constructed units = 8,900 units). The Project Site would also be developed with a mixed-use residential and commercial development with accessory parking and loading, as more particularly described in Article 3 below. The Parties wish to ensure appropriate development of the Project Site, to provide for the replacement of the 1,538 rent-controlled units and tenant amenities in the residential structures currently existing on the Project Site and proposed to be demolished, and to protect the tenants of the existing residential structures from displacement due to the proposed development of the

Project Site. The Parties acknowledge that this Agreement is entered into in consideration of the respective burdens and benefits of the Parties contained in this Agreement.

E. Compliance with All Legal Requirements. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code section 21000 *et seq.*; "**CEQA**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable laws and regulations. This Agreement does not limit the City's obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding the Project. The City agrees to rely on the FEIR, to the greatest extent possible in accordance with applicable laws, in all future discretionary actions relating to the Project; *provided*, *however*, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Implementing Approvals to the extent that such additional environmental review is required by CEQA.

F. Project's Compliance with CEQA. The Final Environmental Impact Report ("**FEIR**") prepared for the Project and certified by the Planning Commission on ___________, together with the CEQA Findings adopted concurrently therewith (the "**CEQA Findings**"), comply with CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The FEIR thoroughly analyzes the Project and Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. The information in the FEIR has been considered by all City departments that have reviewed and approved this Agreement.

G. Public Review. The Project has been presented and reviewed by the Parkmerced community and other stakeholders in over 250 public meetings, including those held before the Planning Commission, the SFMTA Board of Directors, the SFPUC Commission, the Board of Supervisors, and in other local forums.

H. Planning Commission Hearing and Findings. On ____________, 2011 the Planning Commission held a public hearing on this Agreement, duly noticed and conducted pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Commission made the CEQA Findings and adopted the Mitigation Measures, and determined that the Project and this Agreement are, as a whole and taken in their entirety, consistent with the objectives, policies, general land uses and programs specified in the General Plan and the Planning Principles set forth in Section 101.1 of the Planning Code (together, the "**General Plan Consistency Findings**"). With respect to any Implementing Approval that includes a proposed change to the Project, the City agrees to rely on the General Plan Consistency Findings to the greatest extent possible in accordance with applicable laws; *provided*, *however*, that nothing shall prevent or limit the discretion of the City in connection with any Implementing Approvals that, as a result of amendments to the Basic Approvals, require new or revised General Plan consistency findings.

I. Board of Supervisors Hearing and Findings. On ______________, 2011 the Board, having received the Planning Commission's final recommendation, held a public hearing on this Agreement, duly noticed and conducted pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by

CEQA and approved this Agreement, incorporating by reference the General Plan Consistency Findings.

J. Enacting Ordinance. On _____________, 2011, the Board adopted Ordinance No. ___________, approving this Agreement and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on ______________, 2011. The following land use approvals, entitlements, and permits relating to the Project were approved by the Board concurrently with this Agreement: the General Plan amendment (Board of Supervisors Ord. No. ___________), the Planning Code text amendment (Board of Supervisors Ord. No. ______________), the Zoning Map amendment (Board of Supervisors Ord. No. ________________; the "**Zoning Map Amendment**"), the Coastal Zone Permit (Board of Supervisors Ord. No. ___________), and the Parkmerced Plan Documents.

Now therefore, incorporating the foregoing recitals, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

1.1 Incorporation of Preamble, Recitals and Exhibits. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

1.2 Definitions. In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.2.1 "**Acceptance Period**" shall have the meaning set forth in Section 4.4.4(b).

1.2.2 "**Adjoining Landowners**" shall have the meaning set forth in Section 3.6.9(e).

1.2.3 "**Administrative Code**" shall mean the San Francisco Administrative Code.

1.2.4 "**Affiliated Project**" shall have the meaning set forth in Section 4.2.2.

1.2.5 "**Affiliate**" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, "control" shall mean the ownership of more than fifty percent (50%) of the equity interest in such entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

1.2.6 "**Agency Design Standards**" shall have the meaning set forth in Section 2.4.

1.2.7 "**Agreement**" shall have the meaning set forth in the preamble paragraph.

1.2.8 "**Alternate Community Improvement**" shall have the meaning set forth in Section 3.6.4.

1.2.9 "**Assignment and Assumption Agreement**" shall have the meaning set forth in Section 11.3.1.

1.2.10 "**Basic Approvals**" shall mean the following land use approvals, entitlements, and permits relating to the Project that were approved by the Board concurrently with this Agreement: the General Plan amendment (Board of Supervisors Ord. No. ___________), the Planning Code text amendment (Board of Supervisors Ord. No. ______________), the Zoning Map amendments (Board of Supervisors Ord. No. ________________), the Coastal Zone Permit (Board of Supervisors Ord. No. _______________), and the Parkmerced Plan Documents, all of which are incorporated by reference into this Agreement.

1.2.11 "**BMR Requirement**" shall have the meaning set forth in Section 4.2.1.

1.2.12 "**BMR Units**" shall mean inclusionary affordable units required by the City's Inclusionary Affordable Housing Program, as set forth in Planning Code section 415 *et seq*.

1.2.13 "**Board of Supervisors**" or "**Board**" shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.14 "**Building Code**" shall mean the San Francisco Building Code.

1.2.15 "**Building Vacancy Date**" shall have the meaning set forth in Section 4.4.4(b).

1.2.16 "**Caltrans**" shall have the meaning set forth in Section 3.6.1.

1.2.17 "**CC&Rs**" shall have the meaning set forth in Section 3.5.3.

1.2.18 "**CEQA**" shall have the meaning set forth in Recital E.

1.2.19 "**CEQA Findings**" shall have the meaning set forth in Recital F.

1.2.20 "**CEQA Guidelines**" shall mean California Code of Regulations, title 14, section 15000 *et seq.*

1.2.21 "**CFD**" shall have the meaning set forth in Section 3.8.

1.2.22 "**Chapter 56**" shall have the meaning set forth in Recital B.

1.2.23 "**Chapter 83**" shall have the meaning set forth in Section 6.6.1.

1.2.24 "**City**" shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors. The City's approval of this Agreement will be evidenced by the signatures of the Planning Director and the Clerk of the Board of Supervisors. Any other City Agency's approval will be evidenced by its written consent, which will be attached to and be a part of this Agreement, but a City Agency's failure to consent to this Agreement will not cause this Agreement to be void or voidable. The Parties understand and agree that City Agencies are not separate legal entities, and that the City may dissolve a City Agency and/or transfer jurisdiction or responsibilities from one City Agency to another City Agency. With respect to commitments made by a City Agency under this Agreement, the City shall keep Developer informed of any jurisdictional transfer or change in the City Agency that will be responsible, as the successor agency, for such commitment.

1.2.25 "**City Agency**" or "**City Agencies**" shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over any Development Phase on the Project Site, or any Community Improvement or Public Improvement located on or off the Project Site, including the City Administrator, Planning Department, DBI, MOH, OEWD, SFMTA, SFPUC, DPW, SFFD, and the Rent Board, together with any successor City agency, department, board, or commission.

1.2.26 "**City Attorney's Office**" shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.27 "**City Costs**" shall mean the actual and reasonable costs incurred by a City Agency in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in Section 8.3, but excluding work and fees covered by Processing Fees.

1.2.28 "**Coastal Zone**" shall have the meaning set forth in the California Coastal Act (California Public Resources Code section 30000 *et seq.*).

1.2.29 "**Community Improvements**" shall mean any capital improvement or facility, on-going service provision or monetary payment, or any service required by the Basic Approvals and this Agreement for the public benefit that is not: (1) a Mitigation Measure for the Project required by CEQA; (2) a public or private improvement or monetary payment required by Existing Standards or Uniform Codes (including, for example, utility connections required by Uniform Codes, the payment of Impact Fees and Exactions, and Planning Code-required open space); (3) Stormwater Management Improvements; or (4) the privately-owned residential and commercial buildings constructed on the Project Site, with the exception of the fitness/community center and the school, which are Community Improvements and may be privately-owned. Furthermore, Community Improvements shall not include: (1) any units constructed by Developer or fee paid by Developer in compliance with the BMR Requirement, or (2) the

Replacement Units, which also provide the City with a negotiated benefit of substantial economic value and are subject to the provisions of Article 4 of this Agreement.

With the exception of Alternate Community Improvements, all Community Improvements required by the Basic Approvals and this Agreement are shown on the Phasing Plan. Section 3.5 of this Agreement sets forth the ownership and maintenance responsibilities of the City and Developer for the Community Improvements. Community Improvements include the following types of infrastructure or facilities:

(1) **Publicly-Owned Community Improvements.** These facilities are listed on Exhibit C attached hereto. Because these improvements shall be dedicated to and accepted by the City, they also fall within the definition of Public Improvements. They may be publicly-maintained or privately-maintained based on the specific terms of Section 3.5 of this Agreement.

(2) **Privately-Owned Community Improvements.** These are facilities or services, defined in Section 1.2.103 and listed on Exhibit C.

1.2.30 "**Complete**" and any variation thereof shall mean, as applicable, that (i) a specified scope of work has been substantially completed in accordance with approved plans and specifications, (ii) the City Agencies or Non-City Responsible Agencies with jurisdiction over any required permits have issued all final approvals required for the contemplated use, and (iii) with regard to any Public Improvement, (A) the site has been cleaned and all equipment, tools and other construction materials and debris have been removed, (B) releases have been obtained from all contractors, subcontractors, mechanics and material suppliers or adequate bonds reasonably acceptable to the City posted against the same, (C) copies of all as-built plans and warranties, guaranties, operating manuals, operations and maintenance data, certificates of completed operations or other insurance within Developer's possession or control, and all other close-out items required under any applicable authorization or approval have been provided, and (D) the City Agencies or Non-City Responsible Agencies have certified the work as complete, operational according to the approved specifications and requirements, and ready for its intended use, and the City has agreed to initiate acceptance of the Public Improvement.

1.2.31 "**Construction Contract**" shall have the meaning set forth in Section 6.13.

1.2.32 "**Contractor**" shall have the meaning set forth in Section 6.13.

1.2.33 "**Continuing Obligation**" shall have the meaning set forth in Section 3.6.3.

1.2.34 "**Cost Estimator**" shall have the meaning set forth in Section 3.6.8.

1.2.35 "**Costa-Hawkins Act**" shall have the meaning set forth in Recital A.2.

1.2.36 "**CPUC**" shall have the meaning set forth in Section 3.6.1.

1.2.37 "**DBI**" shall mean the San Francisco Department of Building Inspection.

1.2.38 "**Design Review Application**" shall have the meaning set forth in Section 3.3.1.

1.2.39 "**Design Review Approval**" shall have the meaning set forth in Section 3.3.1.

1.2.40 "**Developer**" shall have the meaning set forth in the preamble paragraph, and, subject to the provisions of Article 11, any and all Transferees (with respect to the rights and obligations under this Agreement that are Transferred to such Transferee).

1.2.41 "**Development Agreement Statute**" shall have the meaning set forth in Recital B.

1.2.42 "**Development Phase(s)**" shall have the meaning set forth in Section 3.3.2.

1.2.43 "**Development Phase Application**" shall have the meaning set forth in Section 3.4.4.

1.2.44 "**Development Phase Approval**" shall have the meaning set forth in Section 3.4.4.

1.2.45 "**Director**" or "**Planning Director**" shall mean the Director of Planning of the City and County of San Francisco.

1.2.46 "**DPW**" shall mean the San Francisco Department of Public Works.

1.2.47 "**Effective Date**" shall have the meaning set forth in Section 1.3.

1.2.48 "**Ellis Act**" shall mean California Government Code section 7060 *et seq*.

1.2.49 "**Enacting Ordinance**" shall have the meaning set forth in Recital J.

1.2.50 "**Event of Default**" shall have the meaning set forth in Section 12.3.

1.2.51 "**Excusable Delay**" shall have the meaning set forth in Section 10.2.2.

1.2.52 "**Existing Preschool Space**" shall have the meaning set forth in Section 3.13.

1.2.53 ~~1.2.52~~ "**Existing Lender**" shall have the meaning set forth in Recital C.

1.2.54 ~~1.2.53~~ "**Existing Standards**" shall have the meaning set forth in Section 2.1.

1.2.55 ~~1.2.54~~ "**Existing Tenant**" shall have the meaning set forth in Section 4.3.2.

1.2.56 ~~1.2.55~~ "**Existing Unit(s)**" shall have the meaning set forth in Recital A.1.

1.2.57 ~~1.2.56~~ "**Extension Period**" shall have the meaning set forth in Section 3.6.5.

1.2.58 ~~1.2.57~~ "**Federal or State Law Exception**" shall have the meaning set forth in Section 2.5.1.

1.2.59 ~~1.2.58~~ "**FEIR**" shall have the meaning set forth in Recital F.

1.2.60 ~~1.2.59~~ "**First Certificate of Occupancy**" shall mean the first certificate of occupancy (such as a temporary certificate of occupancy) issued by DBI for a portion of the building that contains residential units or leasable commercial space. A First Certificate of Occupancy shall not mean a certificate of occupancy issued for a portion of the residential or commercial building dedicated to a sales office or other marketing office for residential units or leasable commercial space.

1.2.61 ~~1.2.60~~ "**First Construction Document**" shall mean, with respect to any building, the first building permit issued for such building, or, in the case of a site permit, the first building permit addendum issued or other document that authorizes construction of the development project. Construction document shall not include permits or addenda for demolition, grading, shoring, pile driving, or site preparation work.

1.2.62 ~~1.2.61~~ "**Future Changes to Existing Standards**" shall have the meaning set forth in Section 2.2.1.

1.2.63 ~~1.2.62~~ "**General Plan Consistency Findings**" shall have the meaning set forth in Recital H.

1.2.64 ~~1.2.63~~ "**Gross Floor Area**" shall have the meaning set forth in Planning Code section 102.9.

1.2.65 ~~1.2.64~~ "**Horizontal Obligation**" shall have the meaning set forth in Section 12.3.

1.2.66 ~~1.2.65~~ "**Impact Fees and Exactions**" shall mean the fees, exactions and impositions charged by the City in connection with the development of the Project under the Existing Standards as of the Effective Date, as more particularly described on Exhibit E attached hereto, including but not limited to transportation improvement fees, water capacity charges and wastewater capacity charges, child care in-lieu fees, affordable housing fees, dedication or reservation requirements, and obligations for on-

or off-site improvements. Impact Fees and Exactions shall not include Mitigation Measures, Processing Fees, permit and application fees, taxes or special assessments, and water connection fees. Water connection fees shall be limited to the type of fee assessed by the SFPUC for installing metered service for each building or units within such building.

1.2.67 ~~1.2.66~~ "**Implementing Approval**" shall mean any land use approval, entitlement, or permit (other than the Basic Approvals, a Design Review Approval, or a Development Phase Approval) that are consistent with the Basic Approvals and that are necessary for the implementation of the Project or the Community Improvements, including without limitation, demolition permits, grading permits, site permits, building permits, lot line adjustments, sewer and water connection permits, encroachment permits, street improvement permits, certificates of occupancy, subdivision maps, and re-subdivisions. An Implementing Approval shall also mean any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Basic Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement, and that do not represent a Material Change to the Basic Approvals.

1.2.68 ~~1.2.67~~ "**Indemnify**" shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.69 ~~1.2.68~~ "**Infrastructure Plan**" shall mean the Parkmerced Infrastructure Plan, dated as of ______, as amended from time to time.

1.2.70 ~~1.2.69~~ "**Lease Termination Notice**" shall have the meaning set forth in Section 4.4.5(a).

1.2.71 ~~1.2.70~~ "**Losses**" shall have the meaning set forth in Section 6.10.

1.2.72 ~~1.2.71~~ "**Low Income Household**" shall mean a household whose combined annual gross income for all members does not exceed sixty percent (60%) of the median income for the City and County of San Francisco, as calculated by MOH using data from the United States Department of Housing and Urban Development (or, if unavailable, alternative data used by MOH for such purposes) and adjusted for household size.

1.2.73 ~~1.2.72~~ "**Major MUNI Project Permits**" shall have the meaning set for in Section 3.6.9.

1.2.74 ~~1.2.73~~ "**Market Rate Units**" shall mean housing units constructed on the Project Site that are not Replacement Units or BMR Units.

1.2.75 ~~1.2.74~~ "**Master HOA**" shall have the meaning set forth in Section 3.5.3.

1.2.76 ~~1.2.75~~ "**Material Change to the Basic Approvals**" shall mean any substantive and material change to the Project, as defined by the Basic Approvals, as

reasonably determined by the Planning Director and/or an affected City Agency. Without limiting the foregoing, the following shall each be deemed a Material Change to the Basic Approvals: (i) any reduction in the number of Replacement Units for each To-Be-Replaced Building; (ii) any change in the permitted uses or building heights contained in the Planning Code text amendment and the Zoning Map amendment; (iii) any increase in the parking ratio above that of one (1) parking space per residential dwelling unit, one (1) parking space per 500 square feet of occupied grocery store use, one (1) parking space per 1,000 square feet of occupied school, fitness or community center use and one (1) parking space per 750 square feet of occupied space for all other non-residential uses as set forth in Section 3.3.2 below; (iv) any reduction of more than ten percent (10%) in the size of any park or open space designated as a Community Improvement, unless such change is approved as an Alternate Community Improvement in accordance with the terms of this Agreement; and (v) any material change to the Parkmerced Plan Documents, as reasonably determined by the affected City Agency and the Planning Director.

1.2.77 ~~1.2.76~~ “**Median Income Household**” shall mean a household whose combined annual gross income for all members does not exceed one hundred percent (100%) of the median income for the City and County of San Francisco, as calculated by MOH using data from the United States Department of Housing and Urban Development (or, if unavailable, alternative data used by MOH for such purposes) and adjusted for household size.

1.2.78 ~~1.2.77~~ “**Mitigation Measures**” shall mean the mitigation measures (as defined by CEQA) applicable to the Project by the FEIR or other environmental review document. Mitigation Measures shall include any mitigation measures that are identified and required as part of an Implementing Approval.

1.2.79 ~~1.2.78~~ “**Mitigation Monitoring Program**” shall mean that certain mitigation monitoring program applicable to the project by the FEIR or other environmental review document.

1.2.80 ~~1.2.79~~ “**Modified Tier 5 MUNI Realignment**” shall have the meaning set forth in Section 3.6.9(b).

1.2.81 ~~1.2.80~~ “**MOH**” shall mean the San Francisco Mayor’s Office of Housing.

1.2.82 ~~1.2.81~~ “**MUNI Project**” shall have the meaning set forth in Section 3.6.9(b).

1.2.83 ~~1.2.82~~ “**MUNI Realignment**” shall have the meaning set forth in Section 3.6.9.

1.2.84 ~~1.2.83~~ “**Municipal Code**” shall mean the San Francisco Municipal Code.

1.2.85 ~~1.2.84~~ “**New Tenant**” shall have the meaning set forth in Section 4.4.6.

1.2.86 ~~1.2.85~~ "**Non-City Regulatory Approval**" shall have the meaning set forth in Section 3.6.1.

1.2.87 ~~1.2.86~~ "**Non-City Responsible Agency**" or "**Non-City Responsible Agencies**" shall have the meaning set forth in Section 3.6.1.

1.2.88 ~~1.2.87~~ "**Notice of Default**" shall have the meaning set forth in Section 12.3.

1.2.89 ~~1.2.88~~ "**Objective Requirements**" shall have the meaning set forth in Section 3.3.1.

1.2.90 ~~1.2.89~~ "**Occupied Floor Area**" shall have the meaning set forth in Planning Code section 102.10 as of the Effective Date, as follows: the floor area devoted to, or capable of being devoted to, a principal or conditional use and its accessory uses. For purposes of computation, "occupied floor area" shall consist of the gross floor area, as defined in the Planning Code, minus the following: (a) nonaccessory parking and loading spaces and driveways, and maneuvering areas incidental thereto; (b) exterior walls of the building; (c) mechanical equipment, appurtenances and areas, necessary to the operation or maintenance of the building itself, wherever located in the building; (d) restrooms, and space for storage and services necessary to the operation and maintenance of the building itself, wherever located in the building; (e) space in a retail store for store management, show windows and dressing rooms, and for incidental repairs, processing, packaging and stockroom storage of merchandise for sale on the premises; and (f) incidental storage space for the convenience of tenants.

1.2.91 ~~1.2.90~~ "**OEWD**" shall mean the San Francisco Office of Economic and Workforce Development.

1.2.92 ~~1.2.91~~ "**Official Records**" shall mean the official real estate records of the City and County of San Francisco, as maintained by the City's Recorder's Office.

1.2.93 ~~1.2.92~~ "**Parkmerced**" shall mean the Project Site.

1.2.94 ~~1.2.93~~ "**Parkmerced Design Standards and Guidelines**" shall mean the Parkmerced Design Standards and Guidelines dated as of ___, as amended from time to time.

1.2.95 ~~1.2.94~~ "**Parkmerced Plan Documents**" shall mean the Parkmerced Vision Plan, the Phasing Plan, the Parkmerced Design Standards and Guidelines, the Transportation Plan, the Sustainability Plan, and the Infrastructure Plan, all dated as of ________ and approved by the Board of Supervisors, as each may be revised or updated in accordance with this Agreement. A copy of each of the approved Parkmerced Plan Documents, including any approved amendments, will be maintained and held by the Planning Department.

1.2.96 ~~1.2.95~~ "**Parkmerced Special Use District**" shall have the meaning set forth in Section 3.3.1.

1.2.97 ~~1.2.96~~ "**Party**" means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). "**Parties**" shall have a correlative meaning.

1.2.98 ~~1.2.97~~ "**Permitted Change**" shall have the meaning set forth in Section 11.5.

1.2.99 ~~1.2.98~~ "**Phasing Plan**" shall mean the Phasing Plan attached hereto as Exhibit F.

1.2.100 ~~1.2.99~~ "**Planning Code**" shall mean the San Francisco Planning Code.

1.2.101 ~~1.2.100~~ "**Planning Commission**" or "**Commission**" shall mean the Planning Commission of the City and County of San Francisco.

1.2.102 ~~1.2.101~~ "**Planning Department**" shall mean the Planning Department of the City and County of San Francisco.

1.2.103 ~~1.2.102~~ "**Principal Project**" shall have the meaning set forth in Section 4.2.2.

1.2.104 ~~1.2.103~~ "**Prior Approvals**" shall mean, at any specific time during the Term, the applicable provisions of each of the following: this Agreement, the Basic Approvals, the then-existing Implementing Approvals (including any Development Phase Approval), the Existing Standards and permitted Future Changes to Existing Standards.

1.2.105 ~~1.2.104~~ "**Privately-Owned Community Improvements**" shall mean those facilities and services that are privately-owned and privately-maintained for the public benefit, with varying levels of public accessibility, that are not dedicated to the City. The Privately-Owned Community Improvements are listed on Exhibit C. Privately-Owned Community Improvements will include certain streets, paseos, pedestrian paths and bicycle lanes, storm drainage facilities, parks and open spaces, and community or recreation facilities to be built on land owned and retained by Developer. Exhibit D sets forth the provisions pertaining to the use, maintenance, and security of the Privately-Owned Community Improvements.

1.2.106 ~~1.2.105~~ "**Processing Fees**" shall mean the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee and Exaction, in accordance with the then-current City practice on a City-wide basis.

1.2.107 ~~1.2.106~~ "**Project**" shall mean the development project at the Project Site as described in this Agreement and the Parkmerced Plan Documents, including the Public Improvements and the Community Improvements, which development project is consistent with the Basic Approvals and the Implementing Approvals.

1.2.108 ~~1.2.107~~ "**Project Site**" shall have the meaning set forth in Recital C.

1.2.109 ~~1.2.108~~ "**Proportionality, Priority and Proximity Requirement**" shall have the meaning set forth in Section 3.4.2.

1.2.110 ~~1.2.109~~ "**Public Health and Safety Exception**" shall have the meaning set forth in Section 2.5.1.

1.2.111 ~~1.2.110~~ "**Public Improvements**" shall mean the facilities, both on- and off-site, to be improved, constructed and dedicated to (and, upon Completion in accordance with this Agreement, accepted by) the City by Developer. Public Improvements include streets within the Project Site, sidewalks, bioswales and other Stormwater Management Improvements in the public right-of-way, all public utilities within the streets (such as gas, electricity, water and sewer lines but excluding any non-municipal utilities), bicycle lanes and paths in the public right of way, off-site intersection improvements (including but not limited to curbs, medians, signaling, traffic controls devices, signage, and striping), and SFMTA Infrastructure. The Public Improvements do not include Privately-Owned Community Improvements, including paseos, pedestrian paths within the Project Site, parks and open spaces, and community or recreation facilities to be built on land owned and retained by Developer.

1.2.112 ~~1.2.111~~ "**Recognized Residents' Association**" shall mean an organization with more than ten (10) members (defined as tenants of the Project Site, each occupying a separate unit), that has been in existence for not less than twenty four (24) months and that has notified or notifies Developer and the Planning Department of its existence in writing.

1.2.113 ~~1.2.112~~ "**Recorded Restrictions**" shall have the meaning set forth in Section 3.10.2.

1.2.114 ~~1.2.113~~ "**Relocation Notice**" shall have the meaning set forth in Section 4.4.4(c).

1.2.115 ~~1.2.114~~ "**Rent Board**" shall mean the San Francisco Rent Stabilization and Arbitration Board.

1.2.116 ~~1.2.115~~ "**Rent Ordinance**" shall mean the City's Residential Rent Stabilization and Arbitration Ordinance (Chapters 37 and 37A of the Administrative Code) or any successor ordinance designated by the City.

1.2.117 ~~1.2.116~~ "**Replacement Building**" shall have the meaning set forth in Section 4.3.1.

1.2.118 ~~1.2.117~~ "**Replacement Unit**" shall have the meaning set forth in Recital A.1.

1.2.119 ~~1.2.118~~ "**Replacement Unit Acceptance Notice**" shall have the meaning set forth in Section 4.4.4(c).

1.2.120 ~~1.2.119~~ “**Replacement Unit Availability Notice**” shall have the meaning set forth in Section 4.4.3(b).

1.2.121 ~~1.2.120~~ “**Replacement Unit Preference Notice**” shall have the meaning set forth in Section 4.4.3(c).

1.2.122 ~~1.2.121~~ “**Replacement Unit Rejection Notice**” shall have the meaning set forth in Section 4.4.4(b).

1.2.123 ~~1.2.122~~ “**Replacement Unit Notice**” shall have the meaning set forth in Section 4.4.4(a).

1.2.124 ~~1.2.123~~ “**Second Replacement Unit Notice**” shall have the meaning set forth in Section 4.4.4(b).

1.2.125 ~~1.2.124~~ “**Selection Period**” shall have the meaning set forth in Section 4.4.3(c).

1.2.126 ~~1.2.125~~ “**SFFD**” shall mean the San Francisco Fire Department.

1.2.127 ~~1.2.126~~ “**SFMTA**” shall mean the San Francisco Municipal Transportation Agency.

1.2.128 ~~1.2.127~~ “**SFMTA Infrastructure**” shall mean the Public Improvements to be designed and constructed by Developer that the Parties intend the SFMTA to accept, operate, and maintain in accordance with this Agreement.

1.2.129 ~~1.2.128~~ “**SFPUC**” shall mean the San Francisco Public Utilities Commission.

1.2.130 ~~1.2.129~~ “**Stormwater Management Improvements**” shall mean the facilities, both those to remain privately-owned and those to be dedicated to the City, that comprise the infrastructure and landscape system that is intended to manage the stormwater runoff associated with the Project, as described in the Infrastructure Plan. Stormwater Management Improvements include but are not limited to: (i) swales and bioswales (including plants and soils), (ii) bio-gutters and grates (including plants and soils), (iii) tree wells, (iv) ponds, wetlands, and constructed streams, (v) stormwater cisterns, (vi) permeable paving systems, (vii) stormwater culverts, (viii) trench drains and grates, (ix) stormwater piping, (x) stormwater collection system, and (xi) other facilities performing a stormwater control function.

1.2.131 ~~1.2.130~~ “**Stormwater Management Ordinance**” shall mean Article 4.2 (Sewer System Management) of the San Francisco Public Works Code.

1.2.132 ~~1.2.131~~ “**Subdivision Code**” shall mean the San Francisco Subdivision Code, with such additions and revisions as set forth in Section 2.6.

1.2.133 ~~1.2.132~~ "**Substitute Community Improvement**" shall have the meaning set forth in Section 3.6.4.

1.2.134 ~~1.2.133~~ "**Sustainability Plan**" shall mean the Parkmerced Sustainability Plan, dated as of _______, as amended from time to time.

1.2.135 ~~1.2.134~~ "**TDM**" shall have the meaning set forth in Recital A.7 and as further defined in the Transportation Plan.

1.2.136 ~~1.2.135~~ "**Tenant Relocation Plan**" shall have the meaning set forth in Section 4.4.2.

1.2.137 ~~1.2.136~~ "**Term**" shall have the meaning set forth in Section 1.4.

1.2.138 ~~1.2.137~~ "**Third-Party Challenge**" shall have the meaning set forth in Section 8.3.1.

1.2.139 ~~1.2.138~~ "**Tier 5 Improvements**" shall have the meaning set forth in Section 3.6.9(a).

1.2.140 ~~1.2.139~~ "**Tier 5 Modification Process**" shall have the meaning set forth in Section 3.6.9.

1.2.141 ~~1.2.140~~ "**To-Be-Replaced Building(s)**" shall have the meaning set forth in Section 4.3.2.

1.2.142 ~~1.2.141~~ "**Traffic Improvements**" shall have the meaning set forth in Section 3.7.1.

1.2.143 ~~1.2.142~~ "**Transfer**" shall mean the transfer all or any portion of Developer's rights, interests, or obligations under this Agreement, together with the conveyance of the affected real property.

1.2.144 ~~1.2.143~~ "**Transferee**" shall mean the developer to whom Developer transfers all or a portion of its obligations under this Agreement under an Assignment and Assumption Agreement. A Transferee shall be deemed "Developer" under this Agreement with respect to all of the rights, interests and obligations assigned to and assumed by Transferee under the applicable Assignment and Assumption Agreement.

1.2.145 ~~1.2.144~~ "**Transferred Property**" shall have the meaning set forth in Section 11.1.2.

1.2.146 ~~1.2.145~~ "**Transportation Plan**" shall mean the Parkmerced Transportation Plan, dated as of _______, as amended from time to time.

1.2.147 ~~1.2.146~~ "**Uniform Codes**" shall have the meaning set forth in Section 2.4.

1.2.148 ~~1.2.147~~ "**Vertical Obligation**" shall have the meaning set forth in Section 12.3.

1.2.149 ~~1.2.148~~ "**Zoning Map Amendment**" shall mean have the meaning set forth in Recital J.

1.3 Effective Date. Pursuant to Section 56.14(f) of the Administrative Code, this Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties, (ii) the execution and delivery of a consent and subordination agreement between the City and the Existing Lender, and (iii) the effective date of the Enacting Ordinance ("**Effective Date**"). The Effective Date is _____________.

1.4 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for thirty (30) years thereafter so as to accommodate the phased development of the Project, unless extended or earlier terminated as provided herein ("**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. APPLICABLE LAW

2.1 Existing Standards. Except as expressly provided in this Article 2, the City shall process, consider, and review all Developer requests for Implementing Approvals in accordance with (i) the Basic Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the City's Subdivision Code) and all other applicable City policies, rules and regulations as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), (iii) any permitted Future Changes to Existing Standards, (iv) any applicable laws, including CEQA and (v) this Agreement.

2.2 Future Changes to Existing Standards.

2.2.1 Future changes to Existing Standards and any other ordinances, laws, rules, regulations, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**Future Changes to Existing Standards**") shall apply to the Project and the Project Site except to the extent they conflict with this Agreement or the terms and conditions of the Basic Approvals. In the event of such a conflict, the terms of this Agreement and the Basic Approvals shall prevail, subject to the terms of Section 2.4 below.

2.2.2 Future Changes to Existing Standards shall be deemed to "conflict with this Agreement" and the Basic Approvals if they:

(a) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed buildings (including number of residential dwelling units) or other improvements from that permitted under this Agreement, the Existing Standards and the Basic Approvals;

(b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual proposed buildings or other improvements from that permitted under this Agreement, the Existing Standards and the Basic Approvals;

(c) change or limit any land uses of the Project Site that are permitted under this Agreement, the Existing Standards and the Basic Approvals;

(d) materially change the Project site plan as shown in the Parkmerced Plan Documents;

(e) except as provided in this Agreement, limit or control in more than an insignificant manner the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of the Project, including the demolition of existing buildings at the Project Site, so long as all requirements of this Agreement are satisfied and all necessary infrastructure to serve such development is constructed by Developer as required by the Basic Approvals;

(f) require the issuance of permits or approvals by the City other than those required under the Existing Standards. Any permits or approvals that replace (but do not expand the purpose or scope of) a permit or approval shall apply to the Project, and shall not be considered new categories of permits or approvals;

(g) limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities for the Project as contemplated by the Parkmerced Plan Documents and FEIR (*provided* nothing in the foregoing shall limit Developer's obligation to Complete the Community Improvements and/or Public Improvements as contemplated and required under this Agreement);

(h) impose any ordinance or regulation that controls commercial or residential rents or purchase prices charged within the Project or on the Project Site, except as such imposition is expressly required by this Agreement;

(i) materially limit or delay the processing or procuring of applications and approvals of Implementing Approvals that are consistent with Basic Approvals; or,

(j) impose any new Impact Fees and Exactions on the Project (not including permitted increases or replacements as set forth in Section 2.3 of this Agreement).

2.2.3 Developer may, with the concurrence of any affected City Agencies, elect to have a Future Change to Existing Standards that conflicts with this Agreement applied to the Project or the Project Site by giving the City written notice of its election to have a Future Change to Existing Standards applied, in which case such Future Change to Existing Standards shall be deemed to be an Existing Standard.

2.2.4 The Parkmerced Plan Documents may be amended with Developer's consent from time to time without the amendment of this Agreement as follows: (a) nonmaterial amendments may be agreed to by the Planning Director and the Director of any affected City Agency (as appropriate), each in their reasonable discretion, and (b) material amendments may be agreed to by the Planning Commission, the City Administrator and the affected City Agency (either by its Director or, if existing, its applicable Commission), each in their sole discretion, provided that any material amendment to a Parkmerced Plan Document that requires an amendment to this Agreement shall also be subject to the approval of the Board of Supervisors in accordance with Section 10.1. Without limiting the foregoing, the Parties agree that any change to the Transportation Plan must be approved by DPW and the SFMTA, any change to the Infrastructure Plan must be approved by DPW, the SFMTA and the SFPUC, and any change to Sustainability Plan must be approved by DPW and the SFPUC.

2.3 Impact Fees and Exactions.

2.3.1 The Project shall only be subject to the Impact Fees and Exactions, as set forth in Exhibit E, and the City shall not impose any new impact fees or exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required contributions of land, public amenities or services) except as set forth in this Agreement; *provided*, *however*, that Developer shall pay the Impact Fees and Exactions in the dollar amount that applies, on a City-wide basis, at the time that Developer applies for a permit or approval in connection with the Project. Accordingly, Developer shall be subject to all increases in the Impact Fees and Exactions as established by the City from time to time during the Term and that are generally-applicable to all development of the same type in the City. However, Developer shall not be subject to new categories of impact fees or exactions, or the imposition of new development conditions, that are adopted by the City from and after the Effective Date in connection with the development of the Project. Any substitute impact fees or exactions that replace (but do not expand the purpose or scope of) an Impact Fees and Exaction shown on Exhibit E shall apply to the Project, and shall not be considered new categories of impact fees as set forth above.

2.3.2 The City shall assess Impact Fees and Exactions only against the net new Gross Floor Area for each use at the Project Site. Notwithstanding the foregoing, the City shall not assess Impact Fees and Exactions against the Replacement Units regardless of whether the Replacement Units have a larger Gross Floor Area than the Existing Units that they are replacing. In addition, the City shall not assess Impact Fees and Exactions against a percentage of the Gross Floor Area of the common area of the Replacement Building, which percentage shall be the percentage of Gross Floor Area of all Replacement Units compared to the Gross Floor Area of all of the residential units in the Replacement Building. The foregoing shall be calculated in the following manner: (i) the total Gross Floor Area of the Replacement Building comprised of residential units (both Replacement Units and non-Replacement Units) shall be subtracted from the total Gross Floor Area of the Replacement Building, the result of which shall represent the common area; and (ii) the Gross Floor Area of the Replacement Units shall be compared

to the Gross Floor Area of the non-Replacement Units to determine the percentage of common area that shall not be subject to Impact Fees and Exactions. For example, for a Replacement Building that contains 20,000 Gross Floor Area of Replacement Units and 40,000 Gross Floor Area of non-Replacement Units, one-third (1/3) of the common area (20,000/60,000) shall not be subject to Impact Fees and Exactions. As water connection fees are excluded from the definition Impact Fees and Exactions, payment of the water connection fees shall be paid for installing new water service connections on the Project Site.

2.4 Applicability of Uniform Codes to All Permit Activity within the Project, including all Buildings and Community Improvements. The Parties acknowledge that, in addition to submitting Design Review Applications and Development Phase Applications, Developer must submit a variety of applications for Implementing Approvals before commencement of construction of the Project, including building permit applications for the construction of the residential and commercial buildings on the Project Site, and street improvement permits, encroachment permits, and building permit applications for the construction of Community Improvements. Developer shall be responsible for obtaining all Implementing Approvals required under applicable law before commencement of construction. When considering any such application for Implementing Approvals, the City shall apply the provisions, requirements, rules, or regulations applicable City-wide that are contained in the California Building Standards Code, as amended by the City in accordance with the California Health and Safety Code, including requirements of the San Francisco Building Code, Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Plumbing Code, Fire Code or other uniform construction codes (collectively, the "**Uniform Codes**"). In addition, upon submittal of the Design Review Application, the City Agencies shall apply their then-existing technical design standards and specifications with respect to Public Improvements to be dedicated to that City Agency, including any applicable standards or requirements of Non-City Responsible Agencies with jurisdiction (the "**Agency Design Standards**"), so that Public Improvements integrate and function with existing City systems and applicable law; *provided*, *however*, that (i) the City cannot impose standards or requirements on Developer that it would not apply to itself if the Public Improvement was to be constructed by the City on its own in a different location in the City and (ii) such Design Review Application shall not materially alter the location and dimensions of the streets and easement and walks as set forth in the Parkmerced Design Standards and Guidelines. The Parties understand and agree that any Public Improvement identified in this Agreement or the Parkmerced Plan Documents, including the Stormwater Management Improvements and the SFMTA Infrastructure, may become part of a larger City system and that the proposed Public Improvements must be constructed so as to integrate and work with the existing City systems in every material respect.

2.5 Changes in State and Federal Rules and Regulations.

2.5.1 Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its sole discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the

physical health and safety of the public (the "**Public Health and Safety Exception**") or to comply with changes in Federal or State law, including applicable federal and state regulations (the "**Federal or State Law Exception**"), including the authority to condition or deny an Implementing Approval or to adopt a new City regulation applicable to the Project so long as such condition or denial or new regulation is limited solely to addressing a specific and identifiable issue related to the protection of the public health and safety or compliance with a Federal or State law and not for independent discretionary policy reasons that are inconsistent with this Agreement. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception. If the Parties are not able to reach agreement on such dispute following a reasonable meet and confer period, then Developer or City may seek judicial relief with respect to the matter.

2.5.2 Pursuant to Section 65869.5 of the Development Agreement Statute, in the event that state or federal laws or regulations enacted after this Agreement have gone into effect and preclude or prevent compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such law or regulation. In the event that Developer believes in its reasonable judgment that such modifications render the Project economically infeasible for Developer or the City believes in its reasonable judgment that such modifications materially reduce the economic value of the Community Improvements or other public benefits to the City, then the Parties may negotiate additional amendments to this Agreement as may be necessary to satisfy both Developer and City, each in their reasonable discretion. If the Parties cannot reach agreement on additional amendments despite good faith negotiations, the Parties shall seek to resolve such dispute in accordance with the provisions of Section 12.7 herein.

2.5.3 This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the Effective Date. No amendment or addition to those provisions which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights to Developer hereunder, or increase the obligations or diminish the benefits to the City, shall be applicable to this Agreement unless such amendment or addition is specifically required by law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected. The Parties shall cooperate and shall undertake such actions as may be necessary to implement and reflect the intent of the Parties to allow and encourage development of the Project consistent with all of the terms of this Agreement.

2.6 Subdivision Code Requirements for Public Improvements. For purposes of the design, review, permitting, approval and acceptance of the Public Improvements, the Parties agree to follow the Subdivision Code subject to revisions in Exhibit M and Section 2.2 of this Agreement.

2.7 Compliance with Applicable Federal and State Laws. Developer shall comply, at no cost to the City, with all applicable federal or state laws relating to the Project or the use, occupancy or development of the Project Site under this Agreement, including but not limited to any applicable tenant relocation laws and the Development Agreement Statute. Developer shall Indemnify the City against any and all Losses resulting from Developer's failure to comply with any applicable state or federal law.

2.8 General. The Parties acknowledge that the provisions contained in this Article 2 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development, without abridging the right of the City to act in accordance with its powers, duties and obligations.

3. DEVELOPMENT OF PROJECT SITE

3.1 Development Rights. Developer shall have the vested right to develop the Project Site in accordance with and subject to the provisions of this Agreement, the Basic Approvals, and any Implementing Approvals, and the City shall process all Implementing Approvals related to development of the Project Site in accordance with and subject to the provisions of this Agreement. Developer agrees that all improvements it constructs on the Project Site shall be done in accordance with this Agreement, the Basic Approvals (including but not limited to the Parkmerced Plan Documents), and any Implementing Approvals, and in accordance with all applicable laws.

3.2 Compliance with CEQA. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (i) the FEIR and CEQA Findings contain a thorough analysis of the Project and possible alternatives to the Project, (ii) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (iii) the Board of Supervisors adopted a statement of overriding considerations in connection with the Project Approvals, pursuant to CEQA Guidelines section 15093, for those significant impacts that could not be mitigated to a less than significant level. For these reasons, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested by this Agreement, as more particularly described by the Basic Approvals, except as may be required by applicable law in taking future discretionary actions relating to the Project.

3.3 Vested Rights; Demolition; Permitted Uses and Density; Building Envelope. By approving the Basic Approvals, the City has made a policy decision that the Project, as currently described and defined in the Basic Approvals, is in the best interest of the City and promotes the public health, safety and general welfare. Accordingly, the City in granting the Basic Approvals and vesting them through this Agreement is limiting its future discretion with respect to Project approvals that are consistent with the Basic Approvals. Consequently, the City shall not use its discretionary authority in considering any application for an Implementing Approval to change the policy decisions reflected by the Basic Approvals or otherwise to prevent or to delay development of the Project as set forth in the Basic Approvals. Instead, Implementing Approvals that substantially conform to or implement the Basic Approvals, subsequent Development Phase Approvals, and subsequent Design Review Approvals shall be issued by the City so long as they

substantially comply with and conform to this Agreement (including the requirements and limitations set forth in Article 2 and Section 6.2), the Basic Approvals, Existing Standards and permitted Future Changes to Existing Standards, if applicable. Nothing in the foregoing shall impact or limit the City's discretion with respect to (i) Design Review Approvals (as provided in Section 3.3.1 of this Agreement), (ii) Implementing Approvals that seek a Material Change to the Basic Approvals, (iii) Board of Supervisor approvals of subdivision maps, as required by law, or (iv) requests for approval that may materially impair, alter or decrease the scope and economic benefit of the Community Improvements described in the Parkmerced Plan Documents, the Phasing Plan and this Agreement.

3.3.1 Design Review Approvals. The Basic Approvals include a Planning Code text amendment that creates a special use district for the Project Site (the "**Parkmerced Special Use District**"). The Parkmerced Special Use District and the Parkmerced Design Standards and Guidelines were created and adopted to ensure that the urban, architectural and landscape design of the buildings, public realm and Community Improvements at Parkmerced will be of high quality and appropriate scale, include sufficient open space, and promote the public health, safety and general welfare. To ensure that all new buildings, the public realm associated with each new building and any Community Improvements related to implementation of the Project meet the Parkmerced Design Standards and Guidelines, Developer must submit a design review application (a "**Design Review Application**") and obtain design review approval (a "**Design Review Approval**") before obtaining separate permits consistent with Section 2.4 of this Agreement to commence construction of any proposed building or Community Improvement within or adjacent to the Project Site (as more particularly described in the Parkmerced Special Use District). The City shall review and approve, disapprove, or approve with recommended modifications each Design Review Application in accordance with the requirements of this Agreement, the Parkmerced Plan Documents and the procedures specified in the Parkmerced Special Use District section of the Planning Code, as the same may be amended from time to time. Notwithstanding anything to the contrary in this Agreement, the City may exercise its reasonable discretion in approving the aspects of a Design Review Application that relate to the qualitative or subjective requirements of the Parkmerced Design Standards and Guidelines, including the choice of building materials and fenestration. Also notwithstanding anything to the contrary in this Agreement, in considering a Design Review Application for those aspects of a proposed building or Community Improvement that meet the quantitative or objective requirements of the Parkmerced Design Standards and Guidelines and the other Parkmerced Plan Documents (the "**Objective Requirements**"), including without limitation, the building's proposed height, bulk, setbacks, streetwalls, location of uses and size of such uses, and amount of open space and parking, the City acknowledges and agrees that (i) it has exercised its discretion in approving the Parkmerced Special Use District, the Parkmerced Design Standards and Guidelines, and the other Parkmerced Plan Documents, and (ii) any proposed Design Review Application that meets the Objective Requirements shall not be rejected by the City based on elements that conform to or are consistent with the Objective Requirements, so long as the proposed building or Community Improvement meets the Uniform Codes and Agency Design Standards as required by Section 2.4 above.

3.3.2 Subject to the terms of this Agreement, Developer shall have a vested right to develop the Project at the Project Site, including 5,679 net new residential units, 1,538 rent-controlled Replacement Units, 310,000 square feet of commercial use, 64,000 square feet of recreational/fitness center/community center use, 100,000 square feet of building and property maintenance use, 25,000 square feet of educational use, and net new off-street parking for up to 6,252 vehicles, all as more particularly described in the Basic Approvals. The Project shall be built in phases ("**Development Phases**") in the manner described in Section 3.4. At all times during the phased construction, the parking ratio shall not be less than 0.25 off-street parking spaces per residential unit or greater than one (1) parking space per residential dwelling unit, one (1) parking space per 500 square feet of occupied grocery store use, one (1) parking space per 1,000 square feet of occupied school, fitness or community center use and one (1) parking space per 750 square feet of occupied space for all other non-residential uses. Any off-street parking constructed that would result in the cumulative off-street parking in the Project exceeding the above ratios may not be used for any parking purpose and must be physically separated to preclude use of such spaces for any duration of time to the satisfaction of the Planning Department until such time that sufficient additional residential or non-residential development is completed to bring the overall parking ratio into conformance with the parking ratios listed above. At the Completion of the Project, the number of off-street parking spaces accessory to the residential units shall not exceed the lesser of (i) the ratios described above applied to the Completed Project and (ii) 8,900 residential parking spaces and 550 non-residential parking spaces.

3.3.3 Provided that Developer constructs and develops the Project as described in the Basic Approvals, Developer shall have a vested right to construct buildings on the Project Site up to the maximum heights permissible under the Zoning Map Amendment and in a manner consistent with building envelope requirements, including but not limited to bulk, as set forth in the Parkmerced Special Use District.

3.3.4 Each Basic Approval or Implementing Approval shall remain in effect during the Term of this Agreement. Notwithstanding anything to the contrary above, each street improvement, building, grading, demolition or similar permit shall expire at the time specified in the permit or the applicable public improvement agreement approved under the City's Subdivision Code, with extensions as normally allowed under the Uniform Codes or as set forth in such public improvement agreement.

3.4 Commencement of Construction; Development Phases; Development Timing.

3.4.1 Development Phases. The Parties currently anticipate that the Project will be constructed in Development Phases over approximately twenty (20) to thirty (30) years. The Parties acknowledge that Developer cannot guarantee the exact timing in which Development Phases will be constructed, whether certain development will be constructed at all, or the characteristics of each Development Phase (including without limitation the number of units constructed during each Development Phase and the parcels included within each Development Phase). Such decisions depend on numerous factors that are not within the control of Developer or the City, such as market absorption and demand, interest rates, availability of project financing, competition, and other

similar factors. To the extent permitted by this Agreement, Developer shall have the right to develop the Project in Development Phases in such order and time, and with such characteristics (subject to the Proportionality, Priority and Proximity Requirements of this Agreement), as Developer requests, as determined by Developer in the exercise of its subjective business judgment, but subject to the City's approval of each Development Phase, which approval shall not be unreasonably withheld, conditioned, or delayed

3.4.2 Proportionality, Priority and Proximity Requirement. Because (i) the Project will be built over a long time period, and future portions of the Project may not, in fact, be developed after Developer completes a Development Phase, and (ii) Developer has requested and the City has agreed to allow Developer flexibility in the order and timing of the proposed development included in the Project, including allowing discretion in the amount of net new development included in a Development Phase, the City must approve each Development Phase Application to ensure that (A) the Community Improvements for each Development Phase (or Sub-Phase, if applicable) are proportional to the cumulative amount of private development to occur in that Development Phase (or Sub-Phase, if applicable), (B) the Community Improvements are implemented in order of public policy priority as set forth in the Phasing Plan, (C) to the extent that the priority requirement in the immediately preceding subsection is satisfied and a choice exists with regard to Community Improvements to be included in that Development Phase or Sub-Phase, that such Community Improvements are selected with reference to geographic proximity to the proposed Development Phase or Sub-Phase, and (D) the timing and phasing of the Community Improvements are consistent with the operational needs and plans of the affected City Agencies, and are phased in such a way as to not interfere with the utility and transportation systems operated and maintained by the City, except for scheduled work agreed to by an affected City Agency in the course of the construction of the Project (the "**Proportionality, Priority and Proximity Requirement**"). With regard to those Public Improvements subject to a street improvement permit (including but not limited to any major or minor encroachment permit) that must be completed to obtain First Certificates of Occupancy for a building, the Proportionality, Priority and Proximity Requirement shall be deemed to be satisfied by virtue of the requirement that, pursuant to existing Municipal Code, all such improvements must be substantially complete before issuance of a First Certificate of Occupancy for each and every building within the Project. With regard to any proposed Community Improvements not associated with any individual building permit application, the City must review the proposed Development Phase Application to ensure that the Proportionality, Priority and Proximity Requirement is satisfied. Without limiting the foregoing, the Parties agree that any Community Improvement to be located within one thousand (1,000) feet of any new proposed building of over forty thousand (40,000) square feet in size shall be deemed to bear a reasonable geographic proximity to the parcels proposed for development in that Development Phase. The foregoing notwithstanding, nothing in this Section or other provisions of this Agreement shall affect the Mitigation Measures, which must be completed as and when required based upon the trigger dates established with respect to each applicable Mitigation Measure.

3.4.3 Phasing Plan. The Community Improvements and certain Public Improvements to be constructed by Developer are listed in the Phasing Plan, attached

hereto as Exhibit F. The Phasing Plan reflects the Parties' mutual acknowledgement that (i) the content and boundaries of each Development Phase (including sub-phases within such Development Phase), the exact number of net new residential units and the exact amount of commercial floor area in each Development Phase (and sub-phases therein) is currently unknown, and (ii) the need for certain Community Improvements and certain Public Improvements is related to the amount and location of net new residential units and commercial floor area proposed by each Development Phase (and the sub phases therein) combined with the cumulative amount of net new residential units and commercial floor area Completed to date. The Phasing Plan defines certain minimum requirements to aid in determining satisfaction of the Proportionality, Priority and Proximity Requirement described in Section 3.4.2. For example, the Phasing Plan requires that all sidewalks and bioswales be completed before the issuance of the First Certificate of Occupancy for the immediately adjacent building. In addition, for all Community Improvements and Public Improvements related to transportation, the Phasing Plan sets forth the precise number of net new cumulative residential units and commercial square footage that can be constructed in relation to each Community Improvement. The Parties agree that the requirements of the Phasing Plan are generally representative of the Proportionality, Priority and Proximity Requirement but are not determinative such that the City must reasonably review and approve each Development Phase Application as consistent with the Proportionality, Priority and Proximity Requirement pursuant to Section 3.4.4. The Parties acknowledge and agree that (i) the minimum requirements of the Phasing Plan must be satisfied at each stage of development, including during and within each Development Phase (*i.e.*, the net amount of commercial floor area and/or residential units in each Development Phase must be equal to or less than the corresponding Community Improvements and/or Public Improvements shown on the Phasing Plan, as measured by the development metrics identified on the Phasing Plan), and (ii) the City cannot disproportionably burden a Development Phase in violation of the Proportionality, Priority and Proximity Requirement. The Parties acknowledge that certain transit, infrastructure or utility improvements may be required at an early stage of development in accordance with operational or system needs and the City may reasonably request Developer to advance certain Community Improvements at such earlier stage in order to achieve system functionality. The Parties shall cooperate in good faith to amend the Developer's originally proposed Development Phase Application to advance such improvements and to delay other improvements while maintaining the Proportionality, Priority and Proximity Requirement.

3.4.4 Development Phase Application and Approval. Prior to the commencement of the each Development Phase, Developer shall submit to the Planning Department an application (a "**Development Phase Application**") in substantial conformance with the sample attached hereto as Exhibit G. Each Development Phase Application shall include, at a minimum: (i) an overall summary of the proposed Development Phase; (ii) a site plan that clearly indicates the parcels subject to the proposed Development Phase (including sub-phases within such Development Phase); (iii) the amount of new residential and commercial square footage and the number of net new units in the proposed Development Phase (including sub-phases within such Development Phase); (iv) the existing buildings that would be demolished in the

proposed Development Phase (including sub-phases within such Development Phase); (v) the number of BMR Units and Replacement Units to be Completed during the proposed Development Phase (including sub-phases within such Development Phase); (vi) a description and approximate square footage of any land to be dedicated to the City or vacated by the City in the proposed Development Phase (including sub-phases within such Development Phase); (vii) a brief description of each proposed Community Improvement and Mitigation Measure to be Completed during the proposed Development Phase (including sub-phases within such Development Phase) with specific references to the pages in the Parkmerced Plan Documents containing detailed descriptions and schematic drawings of each improvement, and calculations showing that the Proportionality, Priority and Proximity Requirements of the Phasing Plan will be satisfied; (viii) a description of the proposed Stormwater Management Improvements that comply with the submittal requirements and performance standards set forth in Appendix E of the Infrastructure Plan; (ix) a general description of the proposed order of construction of the private development and Community Improvements within the proposed Development Phase (including sub-phases within such Development Phase); and (x) a statement describing any requested modification or deviation from the Parkmerced Plan Documents, if any. If Developer submits a Development Phase Application before the Completion of a previous Development Phase, then the Development Phase Application shall include a proposed order of development for all development in both Development Phases in its response to item (ix) above. In order to ensure that each Development Phase pertains to a portion of the overall development proposed by the Project, each Development Phase Application shall not propose the construction of not less than five-hundred (500) new residential units (both Replacement Units and non-Replacement Units) or more than twenty-five hundred (2,500) new residential units (both Replacement Units and non-Replacement Units) within such Development Phase. Sub-phases may include fewer than five-hundred (500) new residential units. Upon receipt, the Planning Director shall forward a copy of the Development Phase Application to each affected City Agency. The Planning Director and affected City Agencies shall have the right to request additional information from Developer as may be needed to understand the proposed Development Phase Application and to ensure compliance with this Agreement, including but not limited to the Parkmerced Plan Documents and the Proportionality, Priority and Proximity Requirement. If the Planning Director or any affected City Agency objects to the proposed Development Phase Application, it shall do so in writing, stating with specificity the reasons for the objection and any items that it or they believe may or should be included in the Development Phase Application in order bring the application into compliance with the Proportionality, Priority and Proximity Requirement and this Agreement. The Planning Director and affected City Agencies agree to act reasonably in making determinations with respect to each Development Phase Application, including the determination as to whether the Proportionality, Priority and Proximity Requirement has been satisfied. The Parties agree to meet and confer in good faith to discuss and resolve any differences in the scope or requirements of a Development Phase Application. If there are no objections, or upon resolution of any differences, the Planning Director shall issue to Developer in writing an approval of the Development

Phase Application with such revisions, conditions or requirements as may be permitted in accordance with the terms of this Agreement (each, a "**Development Phase Approval**").

3.4.5 Commencement of Development Phase. Upon receipt of a Development Phase Approval, Developer shall submit a tentative subdivision map application (if not already submitted) covering all of the real property within the Development Phase or Sub-Phase. Following submittal of the tentative subdivision map application, Developer shall have the right to submit any individual Design Review Applications and associated permits required to commence the scope of development described in each Development Phase Approval; *provided*, *however*, that the City is not required to approve such Design Review Applications until approval of the tentative subdivision map. Each Development Phase (or Sub-Phase, if applicable) shall be deemed to have commenced if (i) site or building permits have been issued by the City for all or a portion of the buildings located in that Development Phase (or Sub-Phase, if applicable) and (ii) some identifiable construction, such as grading, of all or a portion of that Development Phase (or Sub-Phase) has been initiated. Upon commencement of work in a Development Phase (or Sub-Phase, if applicable), Developer shall continue the work at a commercially reasonable pace in light of market conditions to Completion of that Development Phase (or Sub-Phase), including all Community Improvements and Public Improvements within the Development Phase (or Sub-Phase) in accordance with applicable permits and requirements under this Agreement to ensure that there are no material gaps between the start and Completion of all work within that Development Phase (or Sub-Phase), subject to any Excusable Delay or amendment of the Development Phase Approval as permitted by Section 3.4.6.

3.4.6 Amendment of a Development Phase Approval. At any time after receipt of a Development Phase Approval, Developer may request an amendment to the Development Phase Approval. Such amendment may include but is not limited to changes to the number and location of units proposed during that Development Phase, the substitution of a Community Improvement for another Community Improvement, or the elimination of a Community Improvement from the Development Phase due to a proposed reduction of net new private development proposed for that Development Phase. Any such requested amendment shall be subject to the review and approval process and the standards (including the Proportionality, Priority and Proximity Requirements) set forth above in Section 3.4.4 for a Development Phase Application. Notwithstanding anything to the contrary above, Developer shall not have the right to eliminate any Community Improvement for which construction or service has already commenced in that Development Phase.

3.4.7 Without limiting the foregoing, it is the desire of the Parties to avoid the result in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), in which the California Supreme Court held that because the parties had failed to consider and expressly provide for the timing of development, a later-adopted initiative restricting the timing of development prevailed over the parties' agreement. Accordingly, the Parties hereto expressly acknowledge that except for the construction phasing required by this Section 3.4, a Development Phase Approval, the Parkmerced Plan Documents, the Phasing Plan, the Mitigation Measures, Section 3.6.9, and any express construction dates

set forth in an Implementing Approval, Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

3.5 Community Improvements and/or Public Improvements.

3.5.1 Developer Responsibilities. Developer shall undertake the design, development and installation of the Community Improvements. Public Improvements shall be designed and constructed, and shall contain those improvements and facilities, as reasonably required by the applicable City Agency that is to accept, and in some cases operate and maintain, the Public Improvement in keeping with the then-current Citywide standards and requirements of the City Agency as if it were to design and construct the Public Improvement on its own at that time, including the requirements of any Non-Responsible City Agency with jurisdiction. With regard to the Community Improvements that are ongoing programs or services, such as shuttles and transit services, Developer shall consult with the relevant City Agencies before commencing such programs or services. Without limiting the foregoing, any Community Improvement, whether a Publicly-Owned Community Improvement or a Privately-Owned Community Improvement, shall obtain a Design Review Approval from the Planning Department as set forth in Section 3.3.1 of this Agreement before obtaining all necessary permits and approvals (including review of all design and construction plans) from any responsible agencies having jurisdiction over the proposed Community Improvement pursuant to Section 2.4 of this Agreement. Without limiting the foregoing, (i) the SFMTA must approve all of the plans and specifications for the SFMTA Infrastructure, (ii) the SFPUC must approve all of the plans and specifications for the Stormwater Management Improvements and all water and sewer facilities, and (iii) DPW must approve all of the plans and specifications for all Public Improvements unless the DPW Director waives this requirement. With the exception of any and all construction relating to the realignment of the SFMTA light rail "M" Oceanview, construction of Community Improvements must be Completed by Developer on or before issuance of the First Certificate of Occupancy for any building containing new residential units or commercial gross floor area permitted by the Phasing Plan in exchange for construction of such Community Improvement (or as otherwise described in a Development Phase Approval), subject to Excusable Delay. If Developer fails to complete the Community Improvement within such time frame, the City may cease issuing any further Project approvals, not accept any additional applications for the Project, and include in any estoppel certificate language reflecting Developer's failure to complete such Community Improvements. In addition, failure to continue to diligently prosecute such Community Improvement to Completion shall, following notice and cure as set forth in Article 12, be an Event of Default.

3.5.2 Dedication of Public Improvements. Upon Completion of each Public Improvement in accordance with this Agreement, Developer shall dedicate and the City shall accept the Public Improvement.

3.5.3 Maintenance and Operation of Community Improvements by Developer and Successors. The Parties agree that Developer shall, in perpetuity, own, operate and

maintain in good and workmanlike condition, and otherwise in accordance with all applicable laws and any applicable permits, all Community Improvements and Public Improvements that are not accepted by the City for maintenance. A map of the Project Site identifying all Community Improvements and Public Improvements subject to this on-going service, maintenance and operations obligation, and the respective land area of each sub-category of space (including, for example, the shuttle service, the park and open space system, bio-swales, sidewalk and streetscape areas, etc.) is attached hereto as Exhibit H and incorporated herein. The provisions of this Section 3.5.3 shall survive the expiration of this Agreement. In order to ensure that the Community Improvements owned by Developer are maintained in a clean, good and workmanlike condition, Developer shall record a declaration of covenants, conditions, and restrictions against the entirety of the Project Site, but excluding any property owned by the City as and when acquired by the City ("**CC&Rs**"), that include a requirement that a master homeowner's association ("**Master HOA**") provide all necessary and ongoing maintenance and repairs to the Community Improvements and Public Improvements not accepted by the City for maintenance, and all ongoing services, at no cost to the City, with appropriate homeowners' dues to provide for such maintenance and services. Notwithstanding anything to the contrary above or contained in any Master HOA governing document, Developer shall make commercially reasonable efforts to enforce the maintenance and repair obligations of the Master HOA during the Term. The CC&Rs identified herein shall be subject to reasonable review and approval by the City Attorney, OEWD, and the Planning Department and shall expressly provide the City with a third-party right to enforce the maintenance and repair provisions of the CC&Rs. On or before the recordation of the CC&Rs, OEWD and the Planning Department shall reasonably approve the proposed budget for the on-going maintenance and operations of the Community Improvements, based on a third-party consultant study verifying the commercial reasonableness of an initial and 20-30 year "build-out" budget.

(a) Maintenance of Stormwater Management Improvements. Pursuant to the requirements of Appendix E of the Infrastructure Plan and the Public Works Code, the SFPUC must approve a Stormwater Control Plan that describes the activities required by Developer to appropriately design, install, and maintain the Stormwater Management Improvements within each Development Phase. In order to ensure that the Stormwater Management Improvements installed by Developer are maintained in the manner described in the Stormwater Control Plan, Developer shall record CC&Rs that include a requirement that the Master HOA provide ongoing maintenance and repairs to the Stormwater Management Improvements not accepted by the City in the manner described in the Stormwater Control Plan, at no cost to the City, with appropriate homeowners' dues to provide for such maintenance. As set forth above, Developer shall make commercially reasonable efforts to enforce the maintenance and repair obligations of the Master HOA during the Term.

3.5.4 Permits to Enter City Property. Subject to the rights of any third-party and the City's reasonable agreement with respect to the scope of the proposed work and insurance or security requirements, and *provided* Developer is not then in default under this Agreement, each City Agency with jurisdiction shall grant permits to enter City-

owned property on the City's standard form permit and otherwise on commercially reasonable terms in order to permit Developer to enter City-owned property as needed to perform investigatory work, construct Public Improvements, and complete the Mitigation Measures as contemplated by each Development Phase Approval. Such permits may include release, indemnification and security provisions in keeping with the City's standard practices.

3.6 Non-City Regulatory Approvals for Community Improvements and/or Public Improvements.

3.6.1 Cooperation to Obtain Permits. The Parties acknowledge that certain Community Improvements and/or Public Improvements, most particularly the proposed intersection improvements to 19th Avenue, the outfall of stormwater from the Project Site to Lake Merced, the realignment of the SFMTA light rail "M" Oceanview and construction within the Coastal Zone, require the approval of federal, state, and local governmental agencies that are independent of the City and not a Party to this Agreement ("**Non-City Responsible Agencies**"), including but not limited to the California State Department of Transportation ("**Caltrans**") the California Public Utilities Commission ("**CPUC**"), and the California Coastal Commission. The Non-City Responsible Agencies may, at their sole discretion, disapprove installation of such Public Improvements, making such installation impossible. The City will cooperate with reasonable requests by Developer to obtain permits, agreements, or entitlements from Non-City Responsible Agencies for each Public Improvement, and as may be necessary or desirable to effectuate and implement development of the Project in accordance with the Basic Approvals (each, a "**Non-City Regulatory Approval**"). The City's commitment to Developer under this Section 3.6 is subject to the following conditions:

(a) Throughout the permit process for any Non-City Regulatory Approval, Developer shall consult and coordinate with each affected City Agency in Developer's efforts to obtain the Non-City Regulatory Approval, and each such City Agency shall cooperate reasonably with Developer in Developer's efforts to obtain the Non-City Regulatory Approval; and

(b) Developer shall not agree to conditions or restrictions in any Non-City Regulatory Approval that could create: (1) any obligations on the part of any City Agency, unless the City Agency agrees to assume such obligations at the time of acceptance of the Public Improvements; or (2) any restrictions on City-owned property (or property to be owned by City under this Agreement), unless in each instance the City, including each affected City Agency, has previously approved the conditions or restrictions in writing, which approval may be given or withheld in its sole discretion.

3.6.2 Costs. Developer shall bear all costs associated with applying for and obtaining any necessary Non-City Regulatory Approval. Developer, at no cost to the City (excepting any City Cost approved by the City), shall be solely responsible for complying with any Non-City Regulatory Approval and any and all conditions or restrictions imposed as part of a Non-City Regulatory Approval, whether the conditions

apply to the Project Site or outside of the Project Site. Developer shall have the right to appeal or contest any condition in any manner permitted by law imposed under any Non-City Regulatory Approval, but only with the prior consent of the affected City Agency if the City is a co-applicant or co-permittee or the appeal impacts the rights, obligations or potential liabilities of the City. If Developer demonstrates to the City's satisfaction that an appeal would not affect the City's rights, obligations or potential liabilities, the City shall not unreasonably withhold or delay its consent. In all other cases, the affected City Agencies shall have the right to give or withhold their consent in their sole discretion. Developer must pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Non-City Regulatory Approval, and Developer shall Indemnify the City for any and all Losses relating to Developer's failure to comply with any Non-City Regulatory Approval.

3.6.3 Continuing City Obligations. Certain Non-City Regulatory Approvals may include conditions that entail special maintenance or other obligations that continue after the City accepts the dedication of Completed Public Improvements (each, a "**Continuing Obligation**"). Standard maintenance of Public Improvements, in keeping with City's existing practices, shall not be deemed a Continuing Obligation. Developer must notify all affected City Agencies in writing and include a clear description of any Continuing Obligation, and each affected City Agency must approve the Continuing Obligation in writing in its sole discretion before Developer agrees to the Non-City Regulatory Approval and the Continuing Obligation. Upon the City's acceptance of any Public Improvements that has a Continuing Obligation that was approved by the City as set forth above, the City will assume the Continuing Obligation and notify the Non-City Responsible Agency that gave the applicable Non-City Regulatory Approval of this fact.

3.6.4 Notice to City. In the event that Developer has not obtained, despite its good faith diligent efforts, a necessary Non-City Regulatory Approval for a particular Community Improvement within three (3) years of Developer's or the City's application for the same, Developer shall provide written notice to the City of its intention to (i) continue to seek the required Non-City Regulatory Approval from the Non-City Responsible Agency, (ii) substitute the requirement that Developer construct such Community Improvement with a requirement that Developer construct another Community Improvement listed on the Phasing Plan (a "**Substitute Community Improvement**") or (iii) substitute the requirement that Developer construct the Community Improvement with a requirement that Developer construct a new Community Improvement not listed on the Phasing Plan (an "**Alternate Community Improvement**"); *provided*, *however*, the provisions of this Section shall not apply to the SFMTA light rail "M" Oceanview, which are addressed separately in Section 3.6.9.

3.6.5 Extensions and Negotiations for Substitute or Alternate Community Improvements. If Developer provides notice to the City of its intention to continue to seek Non-City Regulatory Approval of the Community Improvement, as permitted by Section 3.6.4, the Parties shall continue to make good faith and commercially reasonable efforts to obtain the required Non-City Regulatory Approval for a reasonable period agreed to by the Parties (the "**Extension Period**"). The Parties shall meet and confer in good faith to determine what work within the Development Phase can continue during

the Extension Period in light of the failure to obtain the Non-City Regulatory Approval, subject to the Mitigation Measures and the Proportionality, Priority and Proximity Requirement. If, after the expiration of the Extension Period, Developer has not yet obtained the required Non-City Regulatory Approval for the Community Improvement, Developer shall provide written notice to the City of its intention to (i) pursue a Substitute Community Improvement, or (ii) pursue an Alternate Public Improvement. The Parties, by mutual consent, may also agree in writing to an extension of the Extension Period to obtain required approvals for any Community Improvement, Substitute Community Improvement or Alternate Community Improvement, which shall not require an amendment to this Agreement.

3.6.6 Substitute Community Improvement. If Developer provides notice of its intention to pursue a Substitute Community Improvement pursuant to Section 3.6.4 or Section 3.6.5, the City shall review the proposed Substitute Community Improvement as set forth in an amendment to the Development Phase Approval (which amendment process is set forth in Section 3.4.6 of this Agreement). Upon approval of such amended Development Phase Application, Developer shall continue to file Design Review Applications and obtain Design Review Approvals and any associated permits necessary to construct and complete the amended Development Phase in which the original Community Improvement would have been required in accordance with the amended Development Phase Approval. The time permitted for Developer to complete construction of the Substitute Community Improvement shall be established in writing (without the need for an amendment to this Agreement), and the City shall allow a commercially reasonable time for Developer to Complete the Substitute Community Improvement without delaying or preventing, or denying approvals for, any other development set forth in the amended Development Phase Approval.

3.6.7 Alternate Community Improvement. If Developer provides notice of its intention to pursue an Alternate Community Improvement pursuant to Section 3.6.4 or Section 3.6.5, the Parties shall make reasonable and good faith efforts to identify such Alternate Community Improvement in a timely manner. The Parties shall negotiate in good faith to reach agreement on the Alternate Community Improvement. The Parties acknowledge and agree that any Alternate Community Improvement should be designed so as to replicate the anticipated public benefits from the Community Improvement to be eliminated to the greatest possible extent but without increasing the cost to Developer of the original Community Improvement, thus maintaining the benefit of the bargain for both Parties. The estimated cost to Developer shall be determined by the methodology set forth in Section 3.6.8. In addition, any proposed Alternate Community Improvement should minimize disruptions or alterations to the Phasing Plan and Project design. The City shall review the proposed Alternate Community Improvement pursuant to the Development Phase Approval amendment process set forth in Section 3.4.6 of this Agreement. Upon City approval of such amended Development Phase Application, Developer may file Design Review Applications and obtain Design Review Approvals and any associated permits necessary to construct and complete the amended Development Phase in which the original Community Improvement would have been required. The time permitted for Developer to complete construction of the Alternate Community Improvement shall be established in writing (without need for an amendment

to this Agreement), and the City shall allow a commercially reasonable time for Developer to Complete the Alternate Community Improvement without delaying, preventing or denying approvals for any other development set forth in the amended Development Phase Approval. The Parties understand and agree that any Alternate Community Improvement may require additional environmental review under CEQA, and Developer shall be responsible for any and all costs associated with such CEQA review. So long as the Parties continue to diligently work together to negotiate proposed adjustments relating to an Alternate Community Improvement, any delay caused thereby shall be deemed to be an Excusable Delay. In the event that the Parties are not able to agree upon an Alternate Community Improvement within a reasonable amount of time, the Developer shall pay to City the estimated cost to complete the original Community Improvement as determined by the methodology set forth in Section 3.6.8 below. The City shall use such payments to fund the design and construction of improvements or the provision of services that are proximate to the Project Site and that, as reasonably determined by the City, replicate the public benefits of the original Community Improvement to the extent possible.

3.6.8 Methodology for Determining the Estimated Cost to Complete the Original Community Improvement. In the event a Community Improvement is replaced with an Alternate Community Improvement or payment of an in lieu payment is required as set forth in Section 3.6.7, an economic value must be assigned to the original Community Improvement so that the benefit of the bargain of this Agreement may be preserved for both the City and Developer. Accordingly, Developer shall select one construction manager, contractor or professional construction cost estimator (the "**Cost Estimator**"), who shall develop an estimate of the total costs remaining to complete the original Community Improvement as of the date of the cost estimate. The Cost Estimator shall be qualified to prepare cost estimates for the applicable Community Improvement (*e.g.*, transportation engineer, landscape architect, etc.). The Cost Estimator shall be provided with plans, designs, and construction specifications for the original Community Improvement to the extent completed as of such date. The cost estimate shall include both hard construction costs and soft costs, with as much cost detail for individual cost line items as possible. After the Cost Estimator completes the cost estimate, the City shall have forty-five (45) days to review and consider the cost estimate. If the City rejects the cost estimate in its reasonable discretion, the City shall select a Cost Estimator with the qualifications required by this Section. After completion of the City's cost estimate, the Parties agree to meet and confer in good faith to reach agreement on the cost. If the Parties are not able to reach such agreement within twenty (20) days, then the two Cost Estimators shall select a third Cost Estimator who shall decide which of the two original cost estimates shall be used as the cost. The determination of the third Cost Estimator shall be binding and final. When an in lieu payment is required, the cost that results from the process detailed in this Section shall represent the value of the in lieu payment.

3.6.9 SFMTA Light Rail "M" Oceanview Light Rail Line Realignment and Tier 5 Improvements.

(a) Generally. The Parties acknowledge that the future extension and realignment of the SFMTA light rail "M" Oceanview as shown in the Parkmerced Plan Documents (the "**MUNI Realignment**") through the Project Site represents a fundamental component of the Project's land use program and environmental sustainability goals, and represents a major public benefit of the Project. The Parties further acknowledge that the MUNI Realignment requires approval of Non-City Responsible Agencies, including but not limited to Caltrans and the CPUC, and that Non-City Responsible Agencies may, at their sole discretion, disapprove the MUNI Realignment, making such installation impossible. The Parties further acknowledge that the design of the MUNI Realignment may be affected by further conceptual transportation improvements identified in the 19th Avenue Corridor Study "Tier 5" analysis (the "**Tier 5 Improvements**"). The City has not refined or selected any of the conceptual Tier 5 Improvements at this time and therefore the timing of implementation of any such improvements is speculative. The Parties acknowledge that, over time, a continued lack of certainty about whether Non-City Responsible Agencies will approve the MUNI Realignment or whether the Tier 5 Improvements may affect the MUNI Realignment may create significant Project Site planning challenges for the Project and capital planning challenges for SFMTA and the City. The Parties further acknowledge that the disapproval of the MUNI Realignment by Non-City Responsible Agencies may materially affect the Project and the City's community benefit program by compromising the Project's land use plan and environmental sustainability goals.

(b) Good Faith Efforts; Notice by City; Tier 5 Modification of the MUNI Realignment, Termination of MUNI Realignment Requirement and Selection of Alternate Community Improvement. In recognition of the foregoing, promptly following the Effective Date, the Parties shall make good faith and commercially reasonable efforts to study, refine and design the conceptual Tier 5 Improvements to a level of detail required to determine whether the City wishes to pursue approval of any of the potential Tier 5 Improvements (the "**Tier 5 Modification Process**"). Developer shall participate in such discussions and shall cooperate with the City to coordinate design proposals. On or before the date two (2) years from the Effective Date, the City acting through the SFMTA shall provide notice to Developer indicating whether the City intends to (i) seek approval from Non-City Responsible Agencies of the original MUNI Realignment, (ii) seek approval of a modified MUNI Realignment to allow for any proposed Tier 5 Improvements (the "**Modified Tier 5 MUNI Realignment**") or (iii) seek approval of both simultaneously from Non-City Responsible Agencies (collectively, the "**MUNI Project**"). If the City fails to give such notice, Developer shall request such notice from the City, and City shall respond to such request within thirty (30) days. Upon notice by the City, the Parties agree to make good faith and commercially reasonable efforts to seek approval of the MUNI Project from City and Non-City Responsible Agencies, which shall

include the diligent preparation and submittal by both Parties of all permit applications and information required to obtain the necessary permits or approvals. In light of the challenges created for both the SFMTA and Developer by continued uncertainty about the approval and construction of the MUNI Project, the Parties agree that, if the MUNI Project has not been approved by all necessary Non-City Responsible Agencies within five (5) years from the date of City's notice to Developer regarding the MUNI Project, any requirement in this Agreement or any of the Basic Approvals to install or pay funds for the MUNI Project shall no longer be of any force or effect provided the City and Developer have selected an Alternate Community Improvement of equivalent economic value to replace the former MUNI Project (which could include, for example, the enlargement of the existing MUNI platform at the intersection of 19th Avenue and Holloway Avenue), following the procedures set forth in Section 3.6.7 for selection of Alternate Community Improvements. Notwithstanding anything to the contrary in Section 3.6.7, the Parties shall take into consideration the net present value of any adverse economic impacts to the Project caused by the failure to extend the SFMTA light rail "M" Oceanview into the Project Site (and add the then-net present value of any positive economic impacts to the Project caused by the Alternate Community Improvement) in determining economic equivalency as set forth above. To determine economic equivalency, the Parties shall determine the reasonably estimated cost to Developer of completing the MUNI Project and the Alternate Community Improvement, each as determined by the methodology set forth in Section 3.6.8. Any adjustments for the reasonably estimated economic loss attributable to the elimination of the MUNI Project and the reasonably estimated economic benefit attributable to the inclusion of the Alternate Community Improvement shall be determined by the methodology set forth in Section 3.6.8 except instead of using a Cost Estimator, the Parties shall select an appraiser or real estate professional who (A) is practicing and has worked for at least ten (10) years in either a national firm or a regional firm based in California, (B) is not an affiliate of the Developer and has no equity investment in Developer, (C) has particular experience in California real property transactions involving similar developments, and (D) has no conflict of interest as evidenced by contractual relationships with Developer at that time or in the immediately preceding twelve (12) months. Once an Alternate Community Improvement for the MUNI Project has been selected and agreed upon by both Parties, the Parties shall prepare an addendum to this Agreement to define the terms and conditions of the Alternate Community Improvement and the termination of any MUNI Project requirements. Any such addendum shall not be deemed an amendment to this Agreement, but shall be subject to the approval of the Executive Director of the SFMTA and the Planning Director.

(c) Permitted Tier 5 Improvements. Developer's contribution to any Modified Tier 5 MUNI Realignment shall equal the reasonably estimated cost of the MUNI Realignment contemplated by this Agreement and set forth in the Infrastructure Plan. The reasonably estimated cost shall be determined by the methodology set forth in Section 3.6.8.

(d) Commencement of Construction of the MUNI Project. Developer shall commence construction of the MUNI Project before or upon Completion of twenty-five hundred (2,500) net new residential units at the Project Site. Construction shall be deemed to have commenced if (i) site or building permits have been issued by the City for all or a portion of the MUNI Project, and (ii) some identifiable construction, such as grading, of all or a portion of the MUNI Project has occurred. Notwithstanding the foregoing, Developer may commence construction and Complete more than 2,500 net new residential units before commencement of construction of the MUNI Project: if (A) SFMTA requests a delay to the commencement of construction of the MUNI Project, provided that SFMTA shall not request such a delay to a date that is later than seven (7) years from the Effective Date, or if (B) Developer has submitted all applications to both City Agencies and Non-City Agencies for all approvals and permits required to commence and Complete construction of the physical rail facilities of the MUNI Project (including the alignment and grading of the track but excluding ancillary facilities the permitting of which will not affect the alignment, grading, or subsurface infrastructure work of the MUNI Project, such as signage, station architecture, and finishing of pavements) (the "**Major MUNI Project Permits**") but has not yet received final and binding approval of all the Major MUNI Project Permits; *provided, however*, that Developer shall commence construction of the MUNI Project promptly following final and binding approval of the Major MUNI Project Permits. For the purposes of this Section, "final and binding approval" shall mean that all Major MUNI Project Permits have been issued, and no appeal has been filed within 90 days thereafter (or, if such an appeal has been filed, then the final adjudication of such appeal). Upon commencement of construction, Developer shall continue the work at a commercially reasonable pace to Completion of the MUNI Project in accordance with applicable permits to ensure that there are no material gaps between the start and Completion of all work, subject to any Excusable Delay. Notwithstanding anything to the contrary above, in no event shall Developer commence construction of more than 4,000 net new residential units until the MUNI Project is Complete (or, if Developer is constructing an Alternate Community Improvement to the MUNI Project in accordance with Section 3.6.9(b), then Developer shall have the right to continue constructing new residential units so long as Developer continues to meet the schedule of performance for such Alternative Community Improvement as set forth in Section 3.6.7).

(e) Phased Construction to preserve the option of a Modified Tier 5 MUNI Realignment. After one or both of the options described in subsection (b) above for the MUNI Project have been approved (i.e., the original MUNI Realignment and/or the Modified Tier 5 MUNI Realignment), the City shall allow Developer to begin construction of the MUNI Realignment if the City has not yet obtained the separate approvals and funding necessary to implement the Modified Tier 5 MUNI Realignment. However, the Parties acknowledge that the Modified Tier 5 MUNI Realignment represents a significant opportunity to the City and Developer to substantially improve the performance of the SFMTA light rail "M" Oceanview above and beyond the public benefits provided by the MUNI

Realignment. Specifically, the Modified Tier 5 MUNI Realignment has the potential to decrease travel times and operating costs of the SFMTA light rail "M" Oceanview, improve pedestrian safety and accessibility throughout the 19th Avenue corridor, and provide a future link to the Daly City BART station. The Parties further acknowledge that the City may simultaneously pursue approval of both variants, the MUNI Realignment and the Modified Tier 5 MUNI Realignment, with Caltrans and the CPUC, while also meeting with San Francisco State University and the owners of the Stonestown Shopping Center (collectively, the "**Adjoining Landowners**") to secure the rights to develop the Modified Tier 5 MUNI Realignment. In the event that Caltrans and the CPUC approve both variants but the City has not obtained funding or approvals from the Adjoining Landowners to commence the Modified Tier 5 MUNI Realignment, the City may require that Developer delay commencement of construction of two key portions of the proposed MUNI Realignment to preserve the City's option to develop the Modified Tier 5 MUNI Realignment, while allowing the remainder of the MUNI Realignment to proceed. These two key portions are separately identified in the diagram attached hereto as Exhibit I and are: (i) the "Felix Avenue Rail Extension" and (ii) the "Transit Plaza", each as shown on Exhibit I. The City may require such delayed commencement for a period of no longer than two (2) years from Developer's commencement of construction of the MUNI Project.

3.6.10 Stormwater Management System Discharge Alternatives

(a) Generally. The Project includes a series of bioswales, ponds, and other natural filtration systems to capture and filter stormwater runoff from buildings and streets in accordance with the Infrastructure Plan and the Sustainability Plan. As shown in the Basic Approvals, the Project further proposes to disconnect the stormwater infrastructure from the City's combined sewer system, so that the stormwater either (i) percolates into the aquifer beneath the Project Site or (ii) is discharged into Lake Merced though existing pipes or a newly-constructed outfall (the "**Outfall to Lake Merced**") (collectively, the "**Stormwater Discharge Alternatives**"). The Parties acknowledge that construction of the Outfall to Lake Merced may require Non-City Regulatory Approvals, including but not limited to the Regional Water Quality Control Board and the U.S. Army Corps of Engineers, and that Non-City Responsible Agencies may, at their sole discretion, disapprove some aspect of the Outfall to Lake Merced, making such disconnection impossible. The Parties further acknowledge that the design and advisability of the Stormwater Discharge Alternatives may be affected by other related processes and projects, including the SFPUC's efforts to maximize the utility of the Westside groundwater aquifer and to manage the water level and quality in Lake Merced. The City has not selected one of the Stormwater Discharge Alternatives studied in the Infrastructure Plan and the FEIR at this time and therefore the timing of implementation of any such improvement is speculative.

(b) Good Faith Efforts. In recognition of the foregoing, immediately upon the Effective Date, Parties shall make good faith and commercially

reasonable efforts to study, refine and design the Stormwater Discharge Alternatives, to a level of detail required to determine whether the City wishes to pursue approval of any of the Stormwater Discharge Alternatives.

(c) Notice by City. On or before the date that is nine (9) months after the Effective Date, the SFPUC shall provide notice to Developer indicating (i) support for one of the Stormwater Discharge Alternatives (the "**Preferred Stormwater Discharge Alternative**") or (ii) direction to Developer to convey stormwater flows back into the City's combined sewer system. If the SFPUC fails to give such notice, Developer shall request such notice from the SFPUC, which must respond to such request within thirty (30) days.

(d) Implementation of the Preferred Stormwater Alternative. Upon notice by the SFPUC as described in subsection (c) above indicating the Preferred Stormwater Discharge Alternative, the Parties agree to make good faith and commercially reasonable efforts to seek any necessary approvals of the Preferred Stormwater Discharge Alternative from Non-City Responsible Agencies. If applicable, the Outfall to Lake Merced shall be constructed and connected to the areas where appropriately separated stormwater infrastructure has been completed at the earliest possible date, in part to avoid duplicative costs of upgrading combined sewers for increased flows in the interim before the Outfall to Lake Merced is fully implemented.

(e) Termination of Outfall to Lake Merced Requirement. In light of the challenges created to both the SFPUC and Developer by continued uncertainty about the approval and construction of the Outfall to Lake Merced, the Parties agree that, if the Outfall to Lake Merced is the Preferred Stormwater Discharge Alternative and if the Outfall to Lake Merced has not received all necessary final, binding and non-appealable approvals required for construction within five (5) years from the date of City's notice to Developer as described in Section 3.6.10(c), any requirement in this Agreement or any of the Basic Approvals to install or pay funds for the Outfall to Lake Merced shall no longer be of any force or effect. SFPUC and Developer shall then select one of the remaining alternatives described in Appendix C of the Infrastructure Plan. Once a new Stormwater Discharge Alternative has been selected and agreed upon by both Parties, the Parties shall execute an addendum to this Agreement to reflect such agreement. Any such addendum shall not be deemed an amendment to this Agreement, but shall require the prior approval of the SFPUC Commission and the DPW Director.

(f) Compliance with Stormwater Management Ordinance. Notwithstanding the foregoing, Developer agrees to comply with all requirements of the City's Stormwater Management Ordinance at all times during Project construction, including during the review of the Outfall to Lake Merced.

3.7 Design and Construction of SFMTA Infrastructure.

3.7.1 Design of Intersections and Traffic Improvements.

(a) Developer shall be responsible for the design of upgrades and reconfiguration of intersections and other infrastructure affecting traffic in the public right of way as set forth in the Parkmerced Plan Documents (the "**Traffic Improvements**"). The SFMTA and DPW shall review the designs of intersections and Traffic Improvements to confirm that the designs meet SFMTA and other applicable performance requirements and specifications in accordance with the terms of this Agreement. Developer shall not construct any Traffic Improvement without the SFMTA's prior written approval of the design. The design shall include the layout of the intersection, traffic calming infrastructure, medians, bulb outs, striping, signal lights, signal controllers and ancillary equipment, street lights, and all necessary support infrastructure, such as poles, equipment cabinets, cabling, conduits, and duct banks, and other elements listed in Exhibit P.

(b) Developer's intersection and Traffic Improvement designs must conform to the then-current design requirements and performance and equipment specifications of the SFMTA, the CPUC and Caltrans in effect at the time the design is commenced.

(c) If requested by Developer and acceptable to SFMTA, SFMTA may design one or more of the intersections or Traffic Improvements, or elements thereof. The City shall have no liability whatsoever to Developer or its contractors and subcontractors for the accuracy or completeness of such designs. Said limitation of liability shall include, but is not limited to, delay to construction of the Public Improvements or delay to the Project.

3.7.2 Design of SFMTA Light Rail "M" Oceanview Relocation and Other Transit Improvements.

(a) Developer shall be responsible for the design of the extension of the SFMTA light rail "M" Oceanview and cutover from and to the existing alignment, as generally described in the Transportation Plan. Developer shall be responsible for the design of all elements of the light rail line extension, including but not limited to the station, trackway, signaling and control, and traction power elements listed in Exhibit P.

(b) Before starting any design work on the SFMTA light rail "M" Oceanview, Developer shall notify the SFMTA. At SFMTA's option, SFMTA may provide design services for the trackway and overhead traction power elements of the SFMTA light rail "M" Oceanview extension *provided* SFMTA can meet Developer's reasonable construction schedule and perform the design work at a commercially reasonable rate.

(c) At Developer's request, SFMTA may provide shelters, through its bus shelter contractor, for private shuttle bus stops. If Developer does not make

such request, Developer shall be responsible for the design and construction of private shuttle bus stops within the development, in conformance with City, and Americans with Disabilities Act requirements. The SFMTA, through its bus shelter contractor, shall provide the shelters for SFMTA bus stops.

(d) Developer shall have no claim to revenue from advertising placed through SFMTA contractors on SFMTA bus shelters and SFMTA light rail "M" Oceanview platforms and stations. If the SFMTA provides shelters for private shuttle buses, Developer shall have no claim to advertising placed through SFMTA contractors on those shelters. Developer shall have the right, but not the obligation, to provide wayfinding and other non-commercial signage with SFMTA's agreement at bus shelters and SFMTA light rail "M" Oceanview stations.

3.7.3 Design Review.

(a) Within each Development Phase, SFMTA shall review and provide comments to Developer's designs of SFMTA Infrastructure upon completion of 35 percent, 90 percent and 100 percent of the design. SFMTA shall use its best efforts to complete said reviews expeditiously and within twenty (20) business days of receipt of designs from Developer, but may require more time depending on the scope and complexity of the design. Developer shall incorporate SFMTA's comments and requested corrections into its designs to the extent that it does not disagree with them. If Developer disagrees or otherwise objects to SFMTA's comments or corrections, Developer shall provide SFMTA with a written explanation and shall confer with SFMTA to resolve said disagreements or objections.

(b) The SFMTA shall expend reasonable care and effort in expeditiously reviewing Developer's designs, providing comments and approval, and inspecting constructed SFMTA Infrastructure. The foregoing notwithstanding, SFMTA shall have no liability for delay to the construction of a Public Improvement or the Project.

(c) Developer shall at all times be responsible for the accuracy, completeness, and compliance of its designs with all applicable laws and regulations and requirements imposed by City and Non-City Responsible Agencies with jurisdiction over at-grade light rail design, construction, and operation, including but not limited to Caltrans and the CPUC. Developer shall at all times be responsible for the costs of any delay or damages arising from its designs. The City shall have no liability for said designs unless and until the Public Improvement has been fully constructed and tested and the City has accepted and assumed ownership of said Public Improvement pursuant to applicable requirements for government design immunity. Nothing in this Agreement shall affect the City's sovereign or other governmental immunities under applicable law.

3.7.4 Construction Responsibilities.

(a) Construction. Developer shall be responsible for the construction, installation, testing and commissioning of every element of the SFMTA Infrastructure.

(b) Contracting. Developer shall establish prerequisites as to experience, expertise, and resources for contractors that may bid on the construction of the SFMTA Infrastructure. Developer shall provide SFMTA an opportunity to review and comment on these prerequisites. Intersection/signal contractors must have previously performed similar work in San Francisco. Contractors for the SFMTA light rail "M" Oceanview work must have previous experience with light rail construction subject to CPUC and Caltrans jurisdiction.

(c) Compensation. The City shall have no liability for the payment of compensation to contractors under contract with Developer to construct the SFMTA Infrastructure (but the City shall be responsible for the payment of contractors for any contract entered into by the City). The Developer agrees and stipulates for all purposes that the design and construction of the SFMTA Infrastructure are not public works and are not subject to stop notices or mechanics liens against the City. Developer agrees and stipulates for all purposes that the funds intended to reimburse the City for its costs of review and inspection of the design and construction of SFMTA Infrastructure are not contract funds subject to stop notices or other liens for Developer's refusal or failure (or that of any Developer contractor) to pay a subcontractor or material supplier.

(d) Access. Developer shall provide SFMTA access at all reasonable times to construction and job sites for review and inspection of SFMTA Infrastructure.

3.7.5 Financial Responsibility. Developer has prepared and SFMTA has reviewed design and construction cost estimates for the SFMTA Infrastructure. Developer is, and shall at all times be, wholly responsible for all of the costs of the SFMTA Infrastructure. The City has reviewed such cost estimates only as good faith effort to the support the Project and the City shall have no liability whatsoever for the accuracy of those estimates.

3.7.6 SFMTA Acceptance of SFMTA Infrastructure. SFMTA will accept each SFMTA Infrastructure only when Complete.

3.7.7 Warranty. All SFMTA Infrastructure shall have a two (2) year warranty provided by the construction contractor. The warranty period shall commence upon the City's acceptance of the SFMTA Infrastructure as Complete. All manufacturer warranties for equipment and materials used in SFMTA Infrastructure shall be transferred to the City upon the City's acceptance of the associated SFMTA Infrastructure.

3.7.8 Permits. Developer shall be responsible for obtaining all permits necessary for the construction of the SFMTA Infrastructure, including permits from

Caltrans and the CPUC. SFMTA will assist Developer in obtaining such permits as necessary.

3.8 Financing of Any Public Improvements. At Developer's request, Developer and the City agree to use good faith efforts to pursue the creation of a Community Facilities District ("**CFD**") under the Mello-Roos Community Facilities Act of 1982 (California Government Code § 53311 *et seq.*) within the Project Site only to finance the capital costs for Public Improvements and maintenance and other costs for specified Community Improvements, including maintenance of the parks and open spaces in the Project Site and any ongoing commitments made by Developer such as the BART shuttle. Any and all costs incurred by the City in negotiating and forming a CFD shall be City Costs. The terms and conditions of any CFD must be agreed to by both Parties, each in their sole discretion. Upon agreement on the terms and conditions for a CFD, and subject to market conditions and fiscal prudence, Developer agrees to vote in favor of the formation of the CFD and the City shall use reasonable efforts to issue or cause issuance (potentially through the Association of Bay Area Governments) of bonds for the formed CFD in keeping with standard City practices. Failure to form a CFD or to issue CFD bonds or other debt shall not relieve Developer of its obligations under this Agreement, including but not limited to the obligation to Complete Public Improvements or Public Improvements as and when required.

3.9 Cooperation.

3.9.1 Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Basic Approvals, Development Phase Approvals, Design Review Approvals, Implementing Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Basic Approvals are fulfilled during the Term. Nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs that Developer must reimburse under this Agreement or costs that Developer must reimburse through the payment of Processing Fees. Subject to the requirements of Section 3.4.5, nothing in this Agreement obligates the Developer to proceed with the Project, including without limitation filing Development Phase Applications, unless it chooses to do so in its sole discretion. The Parties may agree to establish a task force, similar to the Mission Bay Task Force, to create efficiencies and coordinate the roles of various City departments in implementing this Agreement.

3.9.2 Role of Planning Department. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for Development Phase Approvals, Design Review Approvals, and Implementing Approvals. As such, Planning Department staff will: (i) work with Developer to ensure that all such applications are technically sufficient and constitute complete applications and (ii) interface with City Agency staff responsible for reviewing any application under this Agreement to ensure that City Agency review of such applications are concurrent and that the approval process is efficient and orderly and avoids redundancies.

3.9.3 City Agency Review of Individual Permit Applications. Following issuance of Design Review Approval as set forth in this Agreement, the Parties agree to prepare and consider applications for Implementing Approvals in the following manner:

(a) City Agencies. Developer will submit each application for Implementing Approvals, including applications for the design and construction of Community Improvements and Mitigation Measures, to the applicable City Agencies. Each City Agency will review submittals made to it for consistency with the Prior Approvals, and will use good faith efforts to provide comments and make recommendations to the Developer within thirty (30) days of the City Agency's receipt of such application. The City Agencies will not impose requirements or conditions that are inconsistent with the Prior Approvals, and will not disapprove the application based on items that are consistent with the Prior Approvals, including but not limited to denying approval of Community Improvements based upon items that are consistent with the Prior Approvals. Any City Agency denial of an application for an Implementing Approval shall include a statement of the reasons for such denial. Developer will work collaboratively with the City Agencies to ensure that such application for an Implementing Approval is discussed as early in the review process as possible and that Developer and the City Agencies act in concert with respect to these matters.

(b) SFMTA. Upon submittal of an application that includes any SFMTA Infrastructure or any transportation-related Mitigation Measure within the SFMTA's jurisdiction, the SFMTA will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of the SFMTA's receipt of such application.

(c) SFPUC. Upon submittal of an application that includes any Stormwater Management Improvements or Public Improvements that fall under the jurisdiction of SFPUC or any public utility-related Mitigation Measure within the SFPUC's jurisdiction, the SFPUC will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of the SFPUC's receipt of such application.

(d) SFFD. Upon submittal of an application that includes any Community Improvements that fall under the jurisdiction of SFFD or any fire suppression-related Mitigation Measure within the SFFD's jurisdiction, the SFFD will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of the SFFD's receipt of such application.

(e) DPW. Upon submittal of an application that includes any Community Improvements that fall under the jurisdiction of DPW or any Mitigation Measure within the DPW's jurisdiction, DPW will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of DPW's receipt of such application.

(f) MOH. Upon submittal of an application that includes any BMR Units, MOH will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of MOH's receipt of such application.

3.9.4 Specific Actions by the City. City actions and proceedings subject to this Agreement shall be processed through the Planning Department, as well as affected City Agencies (and when required by applicable law, the Board of Supervisors), and shall include:

(a) Street Vacation, Dedication, Acceptance, and Other Street Related Actions. Instituting and completing proceedings for opening, closing, vacating, widening, modifying, or changing the grades of streets, alleys, sidewalks, and other public rights-of-way and for other necessary modifications of the streets, the street layout, and other public rights-of-way in the Project Site, including any requirement to abandon, remove, and relocate public utilities (and, when applicable, city utilities) within the public rights-of-way as specifically identified and approved in a Development Phase Approval, and as may be necessary to carry out the Basic Approvals and the Implementing Approvals.

(b) Acquisition. Acquiring land and Public Improvements from Developer, by accepting Developer's dedication of land and Public Improvements that have been Completed in accordance with this Agreement, the Basic Approvals, Implementing Approvals and approved plans and specifications.

(c) Release of Security. Releasing security as and when required under the Subdivision Code in accordance with any public improvement agreement.

(d) Environmental Review. Complying with and implementing Mitigation Measures for which the City is responsible, reviewing feasibility studies for Mitigation Measures, or completing any subsequent environmental review at Developer's sole cost.

3.10 Subdivision Maps.

3.10.1 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications) with respect to some or all of the Project Site, to subdivide or reconfigure the parcels comprising the Project Site as may be necessary or desirable in order to develop a particular Development Phase or Sub-Phase of the Project or to lease, mortgage or sell all or some portion of the Project Site, consistent with the density, block and parcel sizes set forth in the Parkmerced Design Standards and Guidelines. The City acknowledges that Developer intends to create and sell condominiums on the Project Site (excluding the Replacement Units), and that such intent is reflected in the Basic Approvals and Parkmerced Plan Documents.

3.10.2 Notwithstanding anything to the contrary set forth above, in any subdivision or condominium map placed on the Project Site, the Replacement Units shall not be subdivided into separate condominium units so as to ensure that the Replacement Units remain rental units, under common ownership, for the life of each building in which a Replacement Unit is located. Developer shall record restrictions running with the land, in form and substance satisfactory to the Planning Director and the City Attorney (the "**Recorded Restrictions**"), binding upon Developer and successor owners of all or part of the Replacement Units, that shall, without limitation: (i) require that the Replacement Units remain rental for the life of the buildings in which they are located; (ii) waive any and all rights to evict tenants under the Ellis Act and any other laws or regulations that permit owner move-in evictions; (iii) apply the terms of Rent Ordinance to the Replacement Units, and acknowledge the non-applicability of the Costa-Hawkins Act; and (iv) waive any other laws or regulations that would limit the ability of the City to enforce the rental-only requirements and the other benefits and amenities relative to the Replacement Units under this Agreement. Developer, on behalf of itself and successor owners, agrees that it shall not seek to challenge the applicability or enforceability of the Recorded Restrictions. Without limiting the City's rights and remedies as set forth in this Agreement, the Parties acknowledge and agree that the City shall have the right of specific performance to enforce the Recorded Restrictions against Developer and all successor owners. The City would not be willing to enter into this Agreement, permit the demolition of Existing Units, or approve a subdivision or condominium map, without the agreement and understanding as set forth above.

3.10.3 Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the California Subdivision Map Act (California Government Code § 66410 *et seq.*), or with the Subdivision Code, or that removes the Replacement Units from the rental market for the life of the buildings in which they are located, or that removes or renders ineffective or unenforceable the Rent Ordinance, or a similar successor ordinance, as applied against the Replacement Units, whether or not the initial Existing Tenant moves into the Replacement Unit. Developer's commitment to maintain the Replacement Units as rent controlled under the Rent Ordinance shall survive the termination or expiration of this Agreement for so long as the Rent Ordinance, or a similar successor ordinance remains in effect, and does not depend upon the initial occupancy of the Replacement Unit by an Existing Tenant or any other person, and such commitments shall be evidenced by the Recorded Restrictions. Developer shall, as part of the Recorded Restrictions or as part of a subdivision map, waive any and all rights to evict tenants under the Ellis Act and any other laws or regulations that permit owner move-in evictions for any of the Replacement Units.

3.10.4 Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Basic Approvals or any Implementing Approvals as set forth in Section 2.2.

3.10.5 Pursuant to Section 65867.5(c) of the Development Agreement Statute, any tentative map prepared for the Project shall comply with the provisions of

California Government Code section 66473.7 concerning the availability of a sufficient water supply.

3.11 Interim Uses. Notwithstanding the zoning designations set forth in the Parkmerced Special Use District, Developer may install interim or temporary uses on sites for up to four (4) years that might be inconsistent with the underlying zoning yet consistent with the principally permitted uses elsewhere on the Project Site or other permissible temporary or interim uses allowed under the Planning Code. Developer also may use sites for temporary or interim Community Improvements even though such use may not be permitted under the Parkmerced Special Use District.

3.12 Renewable Energy Agreement. Developer shall comply with the terms and provision of the Parkmerced Power Generation Requirements and Implementation Plan attached hereto as Exhibit Q.

3.13 Replacement of Preschool Space . Approximately 4,000 square feet of space on the Project Site, as shown in Exhibit __ (the "**Existing Preschool Space**"), is currently used for childcare services. Developer agrees that the Project shall include not less than 4,000 square feet of new space on the Project Site devoted exclusively for childcare services (the "Replacement Preschool Space"), and the Replacement Preschool Space shall be completed and open for business as a childcare facility before the operation of the Existing Childcare Space is terminated and the Existing Preschool Space is demolished

4. PUBLIC BENEFITS EXCEEDING THOSE REQUIRED BY EXISTING ORDINANCES, REGULATIONS, AND POLICIES RELATED TO HOUSING

4.1 Costa-Hawkins Rental Housing Act.

4.1.1 Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Act provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (section 1954.52(b)). Based upon the language of the Costa-Hawkins Act and the terms of this Agreement, the Parties understand and agree that Section 1954.52(a) of the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the Replacement Units or the BMR Units. This Agreement falls within the express exception to the Costa-Hawkins Act because this Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). The City contributions and other forms of assistance include but are not limited to the following:

- Eliminating maximum density controls (which, before this Agreement, were set at one (1) unit per 800 square feet of lot area for the majority of the Project Site) such that density is limited only by other Code limitations, such as height, bulk, setbacks, open space, exposure, and unit mix as well as the Parkmerced Design Standards and Guidelines;

- Reducing the front setback from the lesser of fifteen (15) feet or fifteen percent (15%) of lot depth to approximately zero (0) to eight (8) feet;

- Increasing the permissible height and bulk envelope for new buildings in at least fifty percent (50%) of the existing Project Site. New height districts allow increases ranging from five (5) up to one hundred (100) feet in height;

- Reducing the size of required rear yards from approximately forty-five (45) percent of lot depth to approximately twenty-five percent (25%) of total lot area;

- Eliminating conditional use requirements for any new building exceeding forty (40) feet in height and for residential demolitions;

- Eliminating discretionary review for any vertical project consistent with the Development Agreement, Parkmerced Special Use District, and the Parkmerced Design Standards and Guidelines;

- Substantially increasing the amount of permitted commercial mixed-use development on the Project Site over that which would be permitted under existing RM-1 and RM-4 zoning (for a total of approximately 310,000 square feet);

- Vesting the BMR Requirement, so that any future increase in the required percentage of BMR Units will not apply to the Project;

- Excluding the Replacement Units from the BMR Requirement;

- Not assessing the Impact Fees and Exactions against the Replacement Units;

- Vesting and freezing development rights to the Project for thirty (30) years, with no required milestones or schedules of performance;

- Committing to issue approvals and permits and take other implementation measures including the transfer of City-owned real property, consistent with the Project; and

- Limiting Impact Fees and Exactions as set forth in Section 2.3.

The City and Developer would not be willing to enter into this Agreement without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code section 1954.52(a) do not apply to the Replacement Units or the BMR Units as a result of the exemption set forth in California Civil Code section 1954.52(b). In the

alternative, Developer, on behalf of itself and all of its successors and assigns of all or any part of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of this Agreement related to the establishment of the initial and all subsequent rental rates for the BMR Units and the Replacement Units under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time. Developer shall include this agreement and waiver in any and all Assignment and Assumption Agreements and in any real property conveyance agreements for property that includes or will include BMR Units or Replacement Units. While each Replacement Unit shall be subject to the Rent Ordinance, including its supporting fee provisions, Developer does not waive its right to adjust the rent for a Replacement Unit when a tenant has voluntarily vacated or abandoned the premises or been evicted in accordance with California Code of Civil Procedure section 1161 *et seq.* or any successor statute; *provided*, *however*, following any such rate adjustment, all provisions of the Rent Ordinance, including but not limited to the rent control provisions, shall apply to the new tenant (and each subsequent tenant) during the length of his or her tenancy for the life of the Replacement Building.

4.1.2 Exception for Replacement Housing. In addition to the exception described in Section 4.1.1, the Parties further understand and agree that (i) Costa Hawkins does not affect the authority of a public entity to regulate or monitor the basis for evictions, and (ii) Government Code Section 7060.2(d) provides an exception to Costa Hawkins, as recognized in Apartment Association of Los Angeles County, Inc. v. City of Los Angeles, 173 Cal.App.4th 13 (2nd Dist. 2009), to allow public entities to impose rent control on newly constructed units by ordinance or regulation when an existing rent controlled unit is demolished and a new unit is constructed on the same property within 5 years. San Francisco has adopted such as ordinance, as set forth in Administrative Code Section 37.9A(b). Although Developer is not withdrawing rental units under the Ellis Act specifically, Developer is, under the terms of this Agreement, withdrawing existing rent controlled units from rent or lease in order to demolish them and construct new replacement units on the same site. The Parties agree that (1) the removal and demolition of existing housing units under this Agreement is the functional equivalent to the removal and demolition of existing units under the Ellis Act, (2) the required notices to be delivered to existing tenants under this Agreement are the functional equivalent of, and are intended to replace, the notices required under Administrative Code Section 37.9A for Ellis Act evictions, (3) without this Agreement, Developer would be required to proceed under the Ellis Act to evict existing tenants but that would not serve the best interests of Developer, the City or the existing tenants, and furthermore the City would not be willing to allow the demolition of the existing housing units following one or more Ellis Act evictions unless Developer provided new rent-controlled units as provided below in this Article 4, (4) the “property”, for purposes of Government Code Section 7060.2(d), shall mean the Project Site, and (5) there is no substantive basis to differentiate between replacement units constructed following an Ellis Act eviction and replacement units constructed under a development agreement designed to prevent Ellis Act evictions. The California legislature and California judiciary have both recognized an exception to Costa Hawkins for replacement housing constructed on real property where the existing housing was subject to rent control and the replacement housing is built within 5 years. The Parties rely on this exception, and

reiterate that the City and Developer would not be willing to permit demolition of the Existing Units if they could not impose the Rent Ordinance on the Replacement Units and satisfy the needs of existing and future tenants through the relocation and rent control provisions set forth in this Article 4.

4.2 BMR Units. BMR Requirement. Except as expressly modified by this Agreement, the Project shall satisfy the requirements of Planning Code section 415 as of the Effective Date (including but not limited to the percentage of required BMR Units by building type and location of buildings on or off site) for all of the residential units constructed on the Project Site from and after the Effective Date excluding the Replacement Units (the "**BMR Requirement**"). The Parties shall calculate numerical amounts needed to implement the BMR Requirement (including but not limited to household income eligibility requirements, permitted rental and sales prices, and in lieu fee amounts) using the formulas or methodologies provided by Planning Code section 415 as of the Effective Date but with then-current data (such as then-current household income data). Notwithstanding the foregoing, the Parties shall implement the BMR Requirement in accordance with the provisions of the San Francisco Affordable Housing Monitoring Procedures Manual, as published by the Mayor's Office of Housing and as updated from time to time, except for any updates or changes that conflict with the requirements of Planning Code section 415 as of the Effective Date. Not less than one-third (1/3) of the BMR Requirement shall be satisfied with BMR Units constructed on the Project Site. BMR Units constructed on the Project Site or within 1,000 feet of the boundary of the Project Site shall be considered units constructed on the Project Site. The exact number and location of BMR Units (per building) in each Development Phase, and the number of in lieu payments (if any), shall be identified in each Development Phase Approval. If Developer constructs or pays an in lieu fee equivalent to a greater number of BMR Units than is required within a Development Phase to meet the BMR Requirement, then such additional BMR Units shall be counted against the total number of BMR Units required in the next Development Phase Approval.

4.2.2 Permitted Updates; No Conflicts. Notwithstanding the foregoing, the Parties shall implement the BMR Requirement in accordance with the provisions of Planning Code section 415 and the San Francisco Affordable Housing Monitoring Procedures Manual, as published by the Mayor's Office of Housing and as updated from time to time, except for any updates or changes that conflict with the requirements of this Agreement as set forth in Section 2.2.2. In addition, the following changes shall be deemed to conflict with this Agreement and therefore shall not apply to the Project Site: (i) any increase in the required number or percentage of BMR Units; (ii) any change in the minimum or maximum area median income (AMI) percentage levels for the BMR Units pricing or income eligibility; (iii) any change in the permitted on-site/off-site ratio as set forth in this Agreement; and (iv) any change that conflicts with the express provisions of this Section 4.2.

4.2.3 4.2.2 Satisfaction of BMR Requirement. The Parties acknowledge that the satisfaction of the BMR Requirement for the Project must occur in proportion to the construction of new Market Rate Units. However, the Parties further acknowledge and agree that it is desirable for the Project to maintain some flexibility as to the location of

the BMR Units at the Project Site to permit the siting of BMR Units in buildings where the costs of homeowners association dues and other miscellaneous fees may be lower. To ensure the foregoing policy goals are met, Developer shall submit a proposal to MOH before the submittal of a building permit application for a residential building indicating the manner in which the BMR Requirement will be satisfied with respect to such residential building (the "**Principal Project**"), which may include (i) construction of BMR Units within the Principal Project, (ii) construction of BMR Units within a different building within that Development Phase (or, if applicable, within that Sub-Phase) (the "**Affiliated Project**"), such that the total number of BMR Units otherwise required for the Principal Project shall be added to the total number of BMR Units required in the Affiliated Project, and (iii) payment of an in lieu fee. If a Development Phase is divided into Sub-Phases, then the Parties agree that the BMR Requirement must be satisfied in each Sub-Phase. The location and the minimum and maximum number of BMR Units in each Principal Project and Affiliated Project (or the satisfaction of the BMR Requirement through payment of an in lieu fee as permitted by this Agreement) shall be subject to the review and approval of the Director of MOH, which approval shall not be unreasonably withheld but shall be consistent with the practices and policies of MOH in other areas of the City; *provided*, *however*, that no more than fifty percent (50%) of the units within a single building located within the boundaries of the Project Site may be BMR Units. If the approved manner of satisfying the BMR Requirement for a Principal Project includes the construction of units in an Affiliated Project or the payment of an in lieu fee, then the construction of such units in the Affiliated Project must be Completed or payment of such in lieu fee must be made concurrently with or before the issuance of the First Certificate of Occupancy for the Principal Project.

4.3 Replacement Units; Affordability.

4.3.1 ~~Provision of Replacement Units. Developer shall replace each of the 1,538 Existing Units with a Replacement Unit located in a new residential building (each, a "**Replacement Building**") on a one-for-one basis.~~

(a) ~~Each Replacement Unit shall contain one (1) washing machine, one (1) dryer and one (1) dishwasher and shall be wired for telephone, cable, and internet access (provided that such internet access may be provided by telephone or cable outlets).~~

(b) ~~4.3.1 Provision of Replacement Units. Developer shall replace each of the 1,538 Existing Units with a Replacement Unit located in a new residential building (each, a "**Replacement Building**") on a one-for-one basis. Each Replacement Unit shall contain one (1) washing machine, one (1) dryer and one (1) dishwasher and shall be wired for telephone, cable, and internet access (provided that such internet access may be provided by telephone or cable outlets).~~ If the lease for the Existing Unit includes the right to park at a reserved off-street parking space or spaces, then the Replacement Unit shall include the same parking rights. The foregoing notwithstanding, the Parties acknowledge that a major component of the Project's parking strategy is to separate parking garages from the residential buildings at the Project Site, in order to concentrate parking

spaces at the portion of the Project Site that is farthest from the MUNI light rail stations, and that such parking strategy furthers the City's Transit First policy. The Parties therefore agree that the parking space(s) associated with the Replacement Unit may not be located within the building or parcel in which the Replacement Unit is located and may be located in an underground garage and. The fact that such location is underground shall not, by itself, be considered a reduction in service under the Rent Ordinance. ~~The foregoing notwithstanding~~However, if the parking space(s) associated with a specific Replacement Unit are located at a farther distance from such Replacement Unit than the parking space(s) associated with an Existing Tenant's Existing Unit, such Existing Tenant shall have the right to petition the Rent Board for a determination that such additional ~~walking~~ distance to the parking space(s) for the Existing Unit represents a reduction in service ~~pursuant to the Rent Ordinance. Not all of the residential units constructed by the Project will have patios and balconies. Accordingly, not all Replacement Units will have patios or balconies. The City agrees that, because of the improvement in the size and quality of the open space proposed by the Project compared to the existing open space at the Project Site, and due to the Project's provision of amenities in the Replacement Units that are not present in the existing units (such as a washing machine, dryer, and dishwasher), the lack of such patio or balcony shall not violate the Rent Ordinance. The Parties agree that leasing and occupancy of each such Replacement Unit shall be governed by the requirements of this Article 4 whether or not an Existing Tenant chooses to relocate to the Replacement Unit.~~ under the Rent Ordinance.

(c) While some of the Existing Units have patios or balconies, the Replacement Units may or may not have patios or balconies. The City agrees that, because of the improvement in the size and quality of the open space proposed by the Project compared to the existing open space at the Project Site, and due to the Project's provision of amenities in the Replacement Units that are not present in the existing units (such as a washing machine, dryer, and dishwasher), the lack of a patio or balcony in a Replacement Unit shall not violate the Rent Ordinance.

4.3.2 Definition of Existing Tenant. For purposes of this Agreement, "**Existing Tenant**" shall mean each person or persons recognized as a tenant under the Rent Ordinance with respect to an Existing Unit in an existing building which will be demolished as part of the Project (each a, "**To-Be-Replaced Building**") on the date that Developer delivers the Existing Tenant Notice, as defined in Section 4.4.3(a). For the purposes of this Agreement, any person or persons who meet the criteria above shall remain an Existing Tenant until they either (i) become a Relocating Tenant in accordance with Section 4.3.3, (ii) voluntarily vacate their Existing Unit before delivery of the Replacement Unit Availability Notice, or (iii) are evicted from their Existing Unit for a "just cause" reason under the Rent Ordinance other than Sections 37.9(a)(10) or 37.9(a)(15). Existing Tenants who decline an offer to relocate to a Replacement Unit in accordance with Section 4.4 shall retain all other rights afforded to tenants under the Rent Ordinance and, to the extent permitted by this Agreement, the right to relocation

payments in the amounts equal to those required by Rent Ordinance Section 37.9C. In the event of any dispute regarding whether a person or group of persons is an Existing Tenant or a Relocating Tenant, such person or persons may request a determination of the Rent Board, which determination shall be final and binding on the Parties, subject to any further adjudication as allowed by law. Such request must be submitted to the Rent Board within forty-five (45) days after delivery of the Existing Tenant Notice, provided the Rent Board may accept a late submission for cause but not later than ninety (90) days after delivery of the Existing Tenant Notice.

4.3.3 Right of Existing Tenants to Relocate to Replacement Units. Each Existing Tenant shall have the right to relocate from an Existing Unit to a Replacement Unit in accordance with terms of this Article 4; *provided*, *however*, that if more than one person occupies an Existing Unit, the persons occupying the Existing Unit shall collectively be entitled to relocate to only one (1) Replacement Unit as further described in Section 4.4.3. Developer shall lease to each Existing Tenant who elects to and does relocate to a Replacement Unit in accordance with the terms of this Section 4.3 (each, a "**Relocating Tenant**") a Replacement Unit under the same terms and provisions as the Relocating Tenant's existing lease; *provided*, *however*, that (i) ~~such~~the date of initial occupancy shall continue to be the date of the existing lease for all purposes except for calculating future rent increases, as set forth in Section 4.3.6 below, (ii) such existing lease shall be amended to reflect the changed location of the leased premises (and the changed location of any parking space, if applicable), and (~~ii~~iii) no other amendments to the lease shall be made (including but not limited to any provision regarding the permissibility of pets).

4.3.4 Size and Type of Replacement Units. The type and size of each Replacement Unit (including the size of dedicated storage space for that Replacement Unit) shall be determined by the type and size of the Existing Tenant's Existing Unit, as more particularly set forth on the Table 4.3.4. As shown on Table 4.3.4, Existing Tenants shall be offered a Replacement Unit of the same unit type (e.g., Medium 1-bedroom/1-bathroom) as their Existing Unit (e.g., Medium 1-bedroom/1-bathroom). The ~~average~~minimum size of that unit type of Replacement Unit in each Replacement Building shall be equal to or larger than the average size of that unit type of Existing Unit, as shown on Table 4.3.4. ~~No Replacement Unit of a specific type shall be smaller than the minimum size of that type of Existing Unit. The average~~The minimum size of in-unit storage space for each type of Replacement Unit shall be equal to or larger than the average size of in-unit storage space of that type of Existing Unit, as shown on Table 4.3.4. ~~Developer shall not provide fewer square feet of storage space for each type of Replacement Unit than the minimum amount of storage space of that type of Existing Unit.~~ If an Existing Unit has associated off-site storage space, Developer shall provide an off-site storage space on the Project Site of equal or greater size for the Replacement Unit. ~~At the completion of each Replacement Building, the average size of the Replacement Units and associated storage space constructed within that Replacement Building must meet the average size requirements shown on Table 4.3.4.~~

Table 4.3.4: Type and Size of Existing and Replacement Units

Number of Units	Unit Type	Average Size (Square Feet) of Existing and Minimum Size of Replacement Units	~~Minimum Size (Square Feet) of Existing and Replacement Units~~	Average In-Unit Storage Space (Square Feet) of Existing and Minimum Size of Replacement Units	~~Minimum In-Unit Storage Space (Square Feet) of Existing and Replacement Units~~
252	Small 1-bedroom/ 1-bathroom	688	~~682~~	45	~~39~~
172	Medium 1-bedroom/ 1-bathroom	713	~~691~~	48	~~44~~
120	Large 1-bedroom/ 1-bathroom	749	~~748~~	42	~~39~~
157	Small 2-bedroom/ 1-bathroom	873	~~873~~	41	~~41~~
407	Medium 2-bedroom/ 1-bathroom	888	~~888~~	42	~~42~~
114	Large 2-bedroom/ 1-bathroom	916	~~910~~	50	~~47~~
106	Extra Large 2-bedroom/ 1-bathroom	1,022	~~1,005~~	75	~~60~~
18	Jumbo 2-bedroom/ 1-bathroom	1,046	~~1,042~~	81	~~81~~
122	Regular 3-bedroom/ 2-bathroom	1,192	~~1,192~~	80	~~80~~
68	Small 3-bedroom/ 2.5-bathroom	1,330	~~1,328~~	78	~~77~~
2	Large 3-bedroom/ 2.5-bathroom	1,506	~~1,506~~	115	~~115~~

(a) Initial Rent. The initial rent payable by a Relocating Tenant for his or her Replacement Unit shall be the then-existing Base Rent (as defined by Section 37.2(a) of the Rent Ordinance) for the Existing Unit at the time of relocation to the Replacement Unit, subject only to future increases permitted under the terms of the Rent Ordinance and the applicable lease. Developer shall not require a Relocating Tenant to pay a new or increased security deposit for the Replacement Unit, but shall transfer the Relocating Tenant's existing security deposit to his or her Replacement Unit. Each Replacement Unit shall be subject to the terms of the Rent Ordinance (or a successor rent-control ordinance) for the life of the Replacement Unit and for so long as the Rent Ordinance (or a successor rent-control ordinance) remains in effect, whether or not the initial Relocating Tenant remains the tenant of the Replacement Unit. Developer shall not, and waives any and all rights to, petition the Rent Board for a rent increase as a result of the construction of, and the relocation of the Relocating Tenants into, the Replacement Units or the construction of the Community Improvements.

(b) Passthroughs. Developer shall not transfer any passthroughs assessed against an Existing Unit (including but not limited to utility passthroughs, bond measure passthroughs, water revenue bond passthroughs, capital improvement passthroughs) to the Replacement Unit. Developer shall have the right to assess new passthroughs to the Replacement Units as permitted by the Rent Ordinance; *provided, however,* that Developer shall assume all costs directly related to (i) the construction of the Project and (ii) the relocation of the Relocating Tenants, such that no passthroughs for these costs are permitted. Upon relocation, each Relocated Tenant shall be assigned a date of initial occupancy, which is the day, month and year that the relocation occurred and was completed. Such date of initial occupancy shall be considered the date of occupancy under Section 37.2(a) of the Rent Ordinance for purposes of any future increase or adjustment to Base Rent.

(c) New Tenants. Any Replacement Unit that is not leased to a Relocating Tenant may be leased to a new tenant; *provided*, *however*, that such Replacement Unit shall be subject to the Rent Ordinance (or a successor rent-control ordinance) for the life of the Replacement Unit and for so long as the Rent Ordinance (or a successor rent-control ordinance) remains in effect. Developer shall have the right to establish the initial rental rate for such Replacement Unit as if the Replacement Unit had been voluntarily vacated by the Relocating Tenant, and there shall be no limit on the initial rental rate that may be charged to a new tenant that occupies such Replacement Unit.

4.4 Relocation to Replacement Units.

4.4.1 Presentation of Development Phase. Following each Development Phase Approval by the City pursuant to Section 3.4.4, Developer shall hold at least one (1) duly noticed informational presentation to Existing Tenants regarding the details of the approved Development Phase, such that the Existing Tenants are informed of whether their Existing Units are proposed for replacement during such approved Development

Phase and the anticipated schedule of construction within such approved Development Phase.

4.4.2 Tenant Relocation Plan.

(a) ~~4.4.2 Tenant Relocation Plan.~~ Before submitting the first building permit application for a Replacement Building, Developer shall submit to the Planning Director and the Executive Director of the Rent Board (i) a Tenant Relocation Plan in substantial conformance with the tenant relocated plan attached to this Agreement as Exhibit Q (the "**Tenant Relocation Plan**"), (ii) a site plan showing the location of the Replacement Building and the To-Be-Replaced Buildings occupied by Existing Tenants who will be offered the opportunity to relocate to a Replacement Unit in the Replacement Building, (iii) preliminary floor plans showing the location of the Replacement Units within the Replacement Building to be occupied by Existing Tenants, (iv) the address and names of Existing Tenants, (v) the date of initial occupancy of the Existing Unit for each Existing Tenant, (vi) the Unit Type as set forth in Table 4.3.4 for each Existing Tenant, and (vii) an approximate schedule for the proposed relocations.

(b) If Developer requests any changes to the form of Tenant Relocation Plan attached as Exhibit R, then Developer shall provide a clear statement of the proposed changes with the submittal. If Developer requests any such changes or if the Tenant Relocation Plan is otherwise not in substantial conformance with Exhibit R, then the Tenant Relocation Plan shall not become effective until it has been approved by the Planning Director and Executive Director of the Rent Board, which approval shall not be unreasonably withheld or delayed, and which shall not be based on anything that is in conformance with Exhibit R.

(c) In the event the Planning Director or Executive Director of the Rent Board disapproves the Tenant Relocation Plan, he or she shall provide to Developer a written statement of the reasons for the disapproval within thirty (30) days following Developer's submittal. Before submittal of each Tenant Relocation Plan, Developer shall hold at least one (1) duly noticed informational presentation with Existing Tenants of the To-Be-Replaced Buildings regarding the Tenant Relocation Plan and the information required in (ii) and (iii) above. The notice for such meeting shall include the information required in (ii) and (iii) above. Developer shall also make available copies of the materials required by this Section at the Parkmerced resident services office.

4.4.3 Notice.

(a) Existing Tenant Notice. Within sixty (60) days after commencement of construction of the Replacement Building, Developer shall deliver written notice (the "**Existing Tenant Notice**") to every occupied unit in the To-Be-Replaced Building(s) (regardless of whether Developer knows of an Existing Tenant to reside at such unit), to the Rent Board, and to each Recognized

Residents' Association of the To-Be-Replaced Building of the following: (i) the name of each Existing Tenant known by Developer at such address; (ii) the Existing Tenant's numerical rank in seniority for the unit type for which the Existing Tenant qualifies (pursuant to Section 4.3.4 and Table 4.3.4 of this Agreement); (iii) if more than one person occupies an Existing Unit, the numerical rank in seniority of each person occupying such Existing Unit as compared to the other persons occupying such unit; (iv) a detailed explanation of the rights of Existing Tenants to relocate to a Replacement Unit in accordance with the terms of this Agreement; (v) notice that further information regarding such rights can be obtained from the Rent Board, including but not limited to, notice that any party can file a request for determination of tenancy status with the Rent Board if there is a dispute about whether an occupant is an Existing Tenant; (vi) the anticipated completion date for the Replacement Building; and (vii) the anticipated relocation dates for Existing Tenants who choose to become Relocating Tenants. At such time as the Existing Tenant Notice is delivered to the occupied units, Developer shall also deliver to the Rent Board and post in the commons areas (such as laundry rooms or exterior passageways) of the To-Be-Replaced Building(s) a notice indicating that the Existing Tenant Notices have been delivered to the occupied units.

The Existing Tenant Notice shall also request that the Existing Tenant complete and return an attached response form that notifies Developer of the Existing Tenant's preliminary intention to accept or reject a Replacement Unit. The purpose of such response form is solely to provide information to Developer in order to plan for and facilitate the relocation process. Existing Tenant's response indicating interest in accepting or rejecting a Replacement Unit shall be non-binding and delivery or lack of delivery of such response form shall have no legal effect on an Existing Tenant's ability to later accept or reject a Replacement Unit in accordance with this Agreement.

In the event of any dispute regarding whether (i) a person or group of persons is an Existing Tenant, (ii) if a group of persons is an Existing Tenant, each person's seniority within such group of persons, and/or (iii) the Existing Tenant's seniority in the To-Be Replaced Building in relation to other Existing Tenants as stated in the Existing Tenant Notice, such person or persons shall have the right to request a determination of the Rent Board, which determination shall be final and binding on the Parties, subject to any other further adjudication as allowed by law. Such request must be submitted to the Rent Board within forty-five (45) days after delivery of the Existing Tenant Notice, provided the Rent Board may accept a late submission for cause but not later than ninety (90) days after delivery of the Existing Tenant Notice.

For the purposes of this section, commencement of construction shall have occurred when (i) site or building permits have been issued by the City for the Replacement Building in which the Replacement Units will be located, and (ii) some identifiable construction under the First Construction Document has commenced. Construction of residential buildings within a particular

Development Phase or Development Sub-Phase shall be completed in commercially reasonable pace as set forth in Section 3.4.5.

(b) Replacement Unit Availability Notice. Not sooner than one (1) year and no later than six (6) months before the anticipated completion date of a Replacement Building, Developer shall deliver written notice to Existing Tenants and any Recognized Residents' Association of the To-Be Replaced Building (the "**Replacement Unit Availability Notice**") of the following: (i) a detailed explanation of the rights of Existing Tenants to relocate to a Replacement Unit in accordance with the terms of this Agreement, including the requirements for qualifying as an Existing Tenant; (ii) notice that further information regarding such rights can be obtained from the Rent Board; (iii) the anticipated completion date of the Replacement Building; (iv) the anticipated relocation dates for Relocating Tenants; (v) the final determination of the Existing Tenant's numerical rank in seniority for the unit type for which the Existing Tenant qualifies pursuant to Section 4.4.3 and Table 4.3.4; (vi) if more than one person occupies an Existing Unit, the numerical rank in seniority of each person occupying such Existing Unit as compared to the other persons occupying such unit; (vii) at least (3) three dates and times when Developer will arrange for an opportunity for the Existing Tenant to visit a model Replacement Unit (one of which shall be a time on Saturday between 9:00 am and 6:00 pm, Sunday between 10:00 am and 5:00 pm or on weekday evenings between 6:00 pm and 9:00 pm) *provided* that the first site visit offered by Developer shall be no sooner than ten (10) days after the delivery of the Replacement Unit Availability Notice (unless an earlier date is agreed to by Developer and the Existing Tenant) and the last site visit shall be no more than thirty (30) days after delivery of the Replacement Unit Availability Notice; (viii) notice that the Existing Tenant must deliver a Replacement Unit Preference Notice (in accordance with the terms of Section 4.4.3(c)), and the date by which such Replacement Unit Preference Notice must be delivered to Developer, in order to exercise his or her right to relocate to a Replacement Unit; and (ix) a floor plan of the Replacement Building indicating the Unit Type within such building that the Existing Tenant qualifies.

The site visit shall provide an opportunity for the Existing Tenant to visit a model Replacement Unit with completed finishes. The model Replacement Unit may be different than the Unit Type for which the Existing Tenant qualifies pursuant to Section 4.3.4 and Table 4.3.4. The site visit shall include a tour of the exterior of the Replacement Building so that the Existing Tenant may understand the location of the Replacement Units in the building. The site visit shall also provide an opportunity for the Existing Tenant to tour the interior of the Replacement Building under construction, if such a tour can be accommodated in a safe manner as reasonably determined by Developer and appropriate waivers of liability are executed by such Existing Tenants. At such time as the Replacement Unit Availability Notice is delivered to Existing Tenants, Developer shall also deliver to the Rent Board and post in the common areas (such as laundry rooms or exterior passageways) of the To-Be-Replaced Building(s) a notice containing the information specified in (i) through (iv) above.

(c) Replacement Unit Preference Notice. Each Existing Tenant desiring to exercise his or her right to relocate to a Replacement Unit must, within twenty (20) days following the last of the three dates provided in the Replacement Unit Availability Notice for the Existing Tenant's visit of the model Replacement Unit (the "**Selection Period**"), deliver written notice to Developer of (i) his or her decision to relocate or not to relocate to a Replacement Building, and (ii) for Existing Tenants choosing to relocate, their selection of all available Replacement Units (of the unit type for which they qualify), ranked in the order of preference in accordance with the Tenant Relocation Plan (the "**Replacement Unit Preference Notice**"). Delivery of the Replacement Unit Preference Notice to Developer shall determine which Existing Tenants become Relocating Tenants and which remain Existing Tenants qualifying for relocation benefits under this Agreement. If an Existing Tenant (i) fails to return the Replacement Unit Preference Notice before the expiration of the Selection Period, or (ii) returns a Replacement Unit Preference Notice indicating a decision to not accept a Replacement Unit, such Existing Tenant shall no longer qualify for a Replacement Unit but shall instead have the right to remain in the Existing Unit until the Building Vacancy Date and shall qualify for relocation benefits under Section 4.4.4(b).

I) If more than one person occupies an Existing Unit (and thereby collectively constitute the Existing Tenant of that Existing Unit), then such persons shall be collectively entitled to relocate to one (1) Replacement Unit. Such persons shall qualify for a Replacement Unit only if the person with the most seniority of such persons occupying the Existing Unit submits a Replacement Unit Preference Notice indicating interest in relocating to a Replacement Building. If the person with the most seniority of those persons residing in an Existing Unit submits a Replacement Unit Preference Notice indicating a choice to accept a Replacement Unit, then (A) all such persons within such Existing Unit shall collectively qualify for a single Replacement Unit and none shall qualify for relocation benefits under Section 4.4.4(b), and (B) any such persons who choose not to move to the Replacement Unit shall have the right to remain in the Existing Unit under the existing lease until the Building Vacancy Date. Any such persons electing to remain in the Existing Unit pursuant to (B) above shall not qualify for relocation benefits under Section 4.4.4(b). If the person with the most seniority of those persons residing in an Existing Unit submits a Replacement Unit Preference Notice indicating a choice to reject a Replacement Unit, then all such persons within such Existing Unit shall collectively qualify for relocation benefits under Section 4.4.4(b) and none of such persons shall qualify for a Replacement Unit.

~~(d) Notices and Responses. All notifications under this Section 4.4.2 shall be by Certified U.S. Mail to the applicable residential unit on the Project Site and any other notice address set forth in the lease, with copies submitted to the Rent Board. Developer shall provide stamped Certified U.S. Mail envelopes with all notifications requiring responses by tenants. All responses by tenants under this Section 4.4.3 shall be by Certified U.S. Mail to Developer.~~

4.4.4 Replacement Unit Assignment Process.

(a) Assignment of Replacement Units. Replacement Units shall be allocated in order of tenant seniority, as determined by the commencement date of the Relocating Tenant's lease. Developer shall first allocate a Replacement Unit to each Relocating Tenant who delivers a Replacement Unit Preference Notice before the end of the Selection Period based on the unit preference set forth in each Replacement Unit Preference Notice. Any conflict in such preferences shall be resolved by the Relocating Tenant's seniority status. Developer shall notify each Relocating Tenant who delivered a Replacement Unit Preference Notice of the location of his or her respective Replacement Unit (the "**Replacement Unit Notice**"), which notice shall also explain that the Relocating Tenant must deliver a Replacement Unit Acceptance Notice in accordance with the terms of Section 4.4.3(b) in order to exercise his or her right to relocate to the Replacement Unit. The Parties acknowledge that, as one Relocating Tenant's unit assignment affects all other Relocating Tenants' unit assignments, that fairness requires that disputes regarding the assignment of units be determined as expeditiously and fairly as possible. Furthermore, the Parties recognize that any disputes regarding a person's status as an Existing Tenant or an Existing Tenant's seniority shall have been previously filed and must be resolved in accordance with the procedures of Section 4.4.2(a). Accordingly, the Rent Board Administrative Law Judge shall be the sole arbiter of technical disputes concerning whether Developer has made a ministerial error in assigning a Replacement Unit. The decision of the Rent Board Administrative Law Judge shall be binding, final, and non-appealable to the Rent Board Commission. Any such request for review by the Rent Board Administrative Law Judge must be submitted to the Rent Board within thirty (30) days after delivery of the Replacement Unit Notice. The Rent Board Administrative Law Judge shall use good faith efforts to render a decision of such dispute within forty-five (45) days of the request for such hearing.

(b) Acceptance of Replacement Unit. Within thirty (30) days of delivery of the Replacement Unit Notice (the "**Acceptance Period**"), if the Relocating Tenant does not file a request for arbitration with the Rent Board's Administrative Law Judge under Section 4.4.3(a), the Existing Tenant shall send written notification of acceptance or rejection of the specified Replacement Unit to Developer (the "**Replacement Unit Acceptance Notice**" or "**Replacement Unit Rejection Notice**" as applicable). In the event that the Existing Tenant does not respond within the Acceptance Period, Developer shall send a second written notice (the "**Second Replacement Unit Notice**") informing the Existing Tenant of his or her right to occupy the specified Replacement Unit and shall send a copy

the Second Replacement Unit Notice to the Rent Board. The City acknowledges and agrees that any and all rights of an Existing Tenant to a Replacement Unit provided by this Agreement shall be waived if such Existing Tenant (i) fails to notify Developer of his or her intention to relocate to a Replacement Unit within ten (10) days of receipt of the Second Replacement Unit Notice (the "**Second Acceptance Period**") or (ii) delivers to Developer a Replacement Unit Rejection Notice. In such event, the Existing Tenant shall not be deemed a Relocating Tenant and shall no longer qualify for a Replacement Unit but instead shall have the right to remain in their Existing Unit until the Building Vacancy Date and shall qualify for relocation benefits under Section 4.4.4(b). If a Relocating Tenant files for arbitration with the Rent Board's Administrative Law Judge under Section 4.4.3(a), then such Relocation Tenant's rights to select a Replacement Unit shall be as determined by the Administrative Law Judge in accordance with Section 4.4.3(a).

(c) Relocation Notice. Upon issuance of the Certificate of Occupancy for the Replacement Units, Developer shall deliver written notice of the completion of the Replacement Building (the "**Relocation Notice**") within thirty (30) days to each Existing Tenant who delivered a Replacement Unit Acceptance Notice. Such Relocation Notice shall indicate that Developer intends to relocate the Relocating Tenant to his or her Replacement Unit on a date reasonably agreed upon by Developer and the Relocating Tenant, which date shall be not sooner than thirty (30) days and not later than sixty (60) days after delivery of the Relocation Notice unless an earlier or later date is mutually acceptable to Developer and the Relocating Tenant.

(d) Relocation Obligations. Developer shall be responsible, at Developer's sole cost, for moving the possessions of each Relocating Tenant from the Relocating Tenant's Existing Unit to the applicable Replacement Unit; *provided*, *however*, that Developer shall not be responsible for packing or unpacking the Relocating Tenant's possessions into or out of moving boxes or other containers. Developer shall pay for any utility hook-up fees or charges incurred by a Relocating Tenant, including cable tv and internet service initiation fees, in relocating to a Replacement Unit, but only to the extent that the Relocating Tenant had such utility, cable television, or internet service activated in his or her Existing Unit. Upon the relocation of a Relocating Tenant and payment of the utility hook-up fees as set forth in this Agreement, Developer shall not be subject to the payment of relocation expenses under the Rent Ordinance for such Relocating Tenant.

~~(e) Notices and Responses. All notifications under this Section 4.4.3 shall be by Certified U.S. Mail to the applicable residential unit on the Project Site and any other notice address set forth in the lease, with copies submitted to the Rent Board. Developer shall provide stamped Certified U.S. Mail envelopes with all notifications requiring responses by tenants. All responses by tenants under this Section 4.4.4 shall be by Certified U.S. Mail to Developer.~~

4.4.5 Rental of Units in To-Be-Replaced Buildings.

(a) Existing Tenants. If an Existing Tenant rejects or is deemed to have rejected a Replacement Unit pursuant to this Section 4.4, Developer shall continue to rent to the Existing Tenant his or her Existing Unit under the terms of his or her existing lease until such time as (i) the Existing Tenant voluntarily terminates his or her lease or (ii) each of the following has occurred: (A) Developer stops leasing unoccupied units in the To-Be-Replaced Building to new tenants, and (B) Developer delivers a written notice of lease termination to the Existing Tenant, which notice shall be delivered not less than sixty (60) days before the lease termination date specified therein (a "**Lease Termination Notice**"). Once Developer delivers a Lease Termination Notice in a To-Be-Replaced Building (the "**Building Vacancy Date**"), (i) Developer shall no longer have the right to enter into any new leases for unoccupied units in the To-Be-Replaced Building, and (ii) Developer shall deliver a Lease Termination Notice to all remaining occupants in the To-Be Replaced Building. The City acknowledges and agrees that, in accordance with Section 37.9(a)(15) of the Rent Ordinance, Developer has the right to terminate the lease as provided herein and may lawfully evict such Existing Tenant on or after the lease termination date specified in the Lease Termination Notice. The City shall have no liability or responsibility in connection with any and all evictions of Existing Tenants at the Project Site, and Developer shall Indemnify the City for any and all claims made in connection with any eviction.

I) Relocation Expenses. Although payment of relocation expenses is not required pursuant to Section 37.9(a)(15) of the Rent Ordinance, Developer agrees to pay relocation expenses to Existing Tenants who reject or are deemed to have rejected a Replacement Unit in accordance with the provisions of this Agreement in the amounts and manner set forth in Section 37.9C of the Rent Ordinance. An Existing Tenant who vacates a To-Be-Replaced Unit after receipt of the Replacement Unit Availability Notice is eligible for relocation expenses unless he or she was evicted for a "just cause" reason, excluding Section 37.9(a)(10) or Section 37.9(a)(15) of the Rent Ordinance.

~~(b) Notices and Responses. Developer shall notify the applicable Recognized Residents' Association at such time as Developer applies to the City for a demolition permit for each To-Be-Replaced Building. All notifications under this Section 4.4.5 shall be by Certified U.S. Mail to the residential unit on the Project Site and any other notice address set forth in the lease with copies sent to each Recognized Residents' Association and the Rent Board. Developer shall provide stamped Certified U.S. Mail envelopes with all notifications requiring responses by tenants. All responses by tenants under this Section 4.4.5 shall be by Certified U.S. Mail to Developer.~~

4.4.6 New Tenants. Developer may continue to rent unoccupied units in a To-Be-Replaced Building (whether vacated due to relocation or otherwise) to new tenants (each, a "**New Tenant**") after (i) the date on which Developer has delivered an Existing Tenant Notice to residents of that particular building or (ii) the relocation of the Existing Tenants from such building and before the Building Vacancy Date; *provided* Developer includes in a written lease agreement with each New Tenant a clear statement of (i) Developer's intent to demolish the To-Be-Replaced Building (including an anticipated date for demolition) and (ii) Developer's right to terminate the lease upon sixty (60) days prior written notice to the New Tenant. Developer shall also inform each New Tenant, before entering into a lease with a New Tenant, of Developer's then-current estimate of the demolition date of the To-Be-Replaced Building. Developer may terminate any lease to a New Tenant by delivering to such New Tenant a Lease Termination Notice, which notice shall be delivered not less than sixty (60) days before the lease termination date specified therein. The City acknowledges and agrees that, in accordance with Section 37.9(a)(15) of the Rent Ordinance, Developer has the right to terminate the lease as provided herein and may lawfully evict such New Tenant on or after the lease termination date specified in the Lease Termination Notice. In accordance with Section 37.9(a)(15) of the Rent Ordinance, New Tenants shall not qualify for reimbursement of relocation expenses under the Rent Ordinance. The City shall have no liability or responsibility in connection with any and all evictions of New Tenants at the Project Site, and Developer shall Indemnify the City for any and all claims made in connection with any such eviction. No New Tenant who rents a unit in a To-Be-Replaced Building pursuant to this Section shall be considered an Existing Tenant under this Agreement.

4.4.7 Disputes. The rights of any occupant of the Project Site to challenge his or her status as an Existing Tenant, to challenge his or her numerical rank by seniority for the unit type for which the Existing Tenant qualifies pursuant to Section 4.3.4 and Table 4.3.4 (and, if applicable, a person's seniority within an Existing Tenant if the Existing Tenant is more than one person), or to challenge the assignment of Replacement Units under this Agreement shall be limited to the express procedural requirements set forth in this Article 4. Nothing in this Agreement shall affect the right of any occupant of the Project Site to seek judicial remedies at any time.

4.4.8 Housing Vouchers. Developer currently accepts "Section 8" vouchers from Existing Tenants (under the Housing Choice Voucher Program sponsored by the U.S. Department of Housing and Urban Development, Code of Federal Regulations, 24 CFR Section 982.4). Nothing in this Article 4 shall change Developer's acceptance of Section 8 vouchers from Existing Tenants, and Developer shall continue to accept Section 8 vouchers from Existing Tenants for the applicable Replacement Unit. Nothing in this Agreement shall require Developer to accept Section 8 vouchers from any new tenant or tenant applicant that is not an Existing Tenant participating in the Section 8 program at the time of relocation.

4.4.9 Newsletter; Meeting. In addition to the notices and other public meetings (including the public meetings regarding the approved Development Phase and Tenant Relocation Plan) required under this Article 4, upon submittal of the Development

Phase Application for the first Development Phase (as defined in Section 3.4.5), Developer shall prepare and deliver to each residential unit on the Project Site a newsletter that includes a description of the Project, work completed to date and work anticipated to be completed in the following year, and addresses any commonly asked questions about the Project. Such newsletter shall also include the date, time and location of any known public hearings relating to the Project, contact information provided by the City for the Planning Department and the Rent Board, and information on how a group of tenants can become a Recognized Resident's Association. The newsletter shall also include the time, date and location of a public meeting during which Developer's representatives will answer questions relating to the Project.

4.4.10 Notices and Responses. All tenant notifications under this Article 4 shall be by regular and certified U.S. Mail to the applicable residential unit on the Project Site and any other notice address set forth in the lease, with copies submitted to the Rent Board. Developer shall provide stamped certified U.S. Mail envelopes with all notifications requiring responses by tenants. All responses by tenants under this Article 4 shall be by certified U.S. Mail to Developer, using the envelope provided by Developer. Notifications of meetings shall be posted in the common area of affected buildings and on the Project Website.

5. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the laws of the State of Delaware. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

5.2 Priority of Development Agreement. Developer warrants and represents that there is no prior lien or encumbrance (other than mechanics or materialmen's liens, or liens for taxes or assessments, that are not yet due) against the Project Site that, upon foreclosure, would be free and clear of the obligations set forth in this Agreement and that, as of the date of execution of this Agreement, the only beneficiary under an existing deed of trust encumbering the Project Site is Existing Lender. On or before the Effective Date of this Agreement, the Developer shall provide title insurance in form and substance satisfactory to the Planning Director and the City Attorney confirming the absence of any such liens or encumbrances. If there are any such liens or encumbrance, then Developer shall obtain written instruments from the beneficiaries of any such liens or encumbrances, in a form ~~approved by the Planning Director and the City Attorney~~attached hereto in the form of Exhibit U, subordinating their interest in the Project Site to this Agreement. Developer shall ensure that all future liens and encumbrances affecting or encumbering the Project Site (other than liens for taxes or assessments that are not yet due) would, upon foreclosure, be subordinate to and free and clear of the obligations set forth in this Agreement.

5.3 No Conflict With Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

5.4 No Inability to Perform; Valid Execution. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

5.5 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

5.6 Notification of Limitations on Contributions. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

5.7 Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the

statements contained therein not misleading under the circumstances under which any such statement shall have been made.

5.8 No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

5.9 No Bankruptcy. Developer represents and warrants to City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

5.10 Taxes. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, Developer shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the Project Site.

5.11 Notification. Developer shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect Developer or Developer's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

6. OBLIGATIONS OF DEVELOPER

6.1 Completion of Project. Upon commencement, Developer shall diligently prosecute to Completion all construction on the Project Site in accordance with the Basic Approvals and any Implementing Approvals. The foregoing notwithstanding, expiration of any building permit or other Project Approval shall not limit Developer's vested rights as set forth in this Agreement, and Developer shall have the right to seek and obtain subsequent building permits or approvals consistent with this Agreement at any time during the Term. Developer shall pay for all costs relating to the Project, including the Community Improvements, at no cost to the City.

6.1.1 Real Estate Transfers. In connection with the Project, the Parties agree that the City shall transfer certain real property to Developer and Developer shall transfer certain real property to the City in order to reconfigure the public rights-of-way as generally shown on Exhibit J. The actual real property transfers to be completed in each Development Phase shall be set forth in each applicable Development Phase Approval. Developer shall, following the Development Phase Approval, prepare all maps and legal descriptions as required to effectuate the proposed real estate transfers subject to the City's approval, which will not be unreasonably withheld. As and when needed in connection with the development of an approved Development Phase (and subject to the requirements set forth in this Agreement), the City shall convey any real property to Developer, following the vacation and abandonment of any public rights and the relocation of any utilities in such real property, by quitclaim deed in the form attached as Exhibit K. Developer shall convey any real property to the City by grant deed in the

form attached as Exhibit L . Each Party shall have the right to perform physical, title and other customary due diligence before accepting title to exchanged land, and shall have the right to object to the condition of the property, in its reasonable discretion. It shall be a condition precedent to the City's acceptance of any real property that the City obtain title insurance, at Developer's sole cost, in form and from an issuer reasonably acceptable to City in the amount of the fair market value of the land. Developer shall have the right, but not the obligation, to obtain title insurance for the real property that it accepts at Developer's sole cost. If the accepting Party objects to the condition of the real property, including any title exceptions, then the Parties shall meet and confer for a period of thirty (30) days, or such longer period as may be agreed to by the Parties, to try to reach a reasonable resolution. It is the Parties' intent that Developer shall pay all reasonable costs of remedying any objectionable property condition. If the Parties are not able to reach resolution, then neither Party shall be required to complete the real property transfer.

6.1.2 Potential Payments for Real Property; Indemnification. All real property exchanged under this Agreement shall be valued on a square foot basis, and shall be deemed equal in value per square foot. If any real property exchange under this Agreement results in a net loss of acreage for the City, then Developer shall pay to the City the fair market value of the real property loss at the time of transfer based on the then-current use of the property so transferred. The City shall not be required to pay for any net gain in real property; *provided*, *however*, such gain can be applied against future real property transfers for purposes of determining whether there has been a net loss as described above. Notwithstanding any such credit against future transfers, the City will not be required to reimburse any payments made for real property in connection with a previous transfer. Developer shall indemnify the City against any and all Losses relating to real property conveyed by Developer to City under this Agreement, including but not limited to any Loss relating to the presence of hazardous materials in or on the real property at the time of transfer to the City.

6.2 Compliance with Conditions and CEQA Mitigation Measures. Developer shall comply with all applicable conditions of the Basic Approvals and any Implementing Approvals, and shall comply with all Mitigation Measures.

6.2.1 The Parties expressly acknowledge that the FEIR and the associated Mitigation Monitoring Program are intended to be used in connection with each of the Basic Approvals and the Implementing Approvals to the extent appropriate and permitted under applicable law. Consistent with the CEQA policies and requirements applicable to the FEIR, the City agrees to rely upon the FEIR in connection with the processing of any Implementing Approval to the extent the Implementing Approval does not change the Basic Approvals and to the extent allowed by law.

6.2.2 Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from material changes to the Project from that described by the Basic Approvals as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the granting of such permit or otherwise to address

significant environmental impacts as defined by CEQA created by the approval of such permit; *provided*, *however*, any such conditions must be in accordance with applicable law.

6.3 Progress Reports. Developer shall make reports of the progress of construction of the Project in such detail and at such time as the Planning Director reasonably requests.

6.4 Cooperation By Developer.

6.4.1 Developer shall, in a timely manner, provide the City and each City Agency with all documents, applications, plans and other information reasonably necessary for the City to comply with its obligations under this Agreement.

6.4.2 Developer shall timely comply with all reasonable requests by the Planning Director and each City Agency for production of documents or other information evidencing compliance with this Agreement.

6.5 Nondiscrimination.

6.5.1 Developer Shall Not Discriminate. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City and County employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

6.6 First Source Hiring Program.

6.6.1 Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the Administrative Code ("**Chapter 83**") are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Developer shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under Chapter 83, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83. On or before each Development Phase Approval, Developer shall have entered into a First Source Hiring Agreement with respect to such Development Phase substantially in a form that is mutually acceptable. Without limiting the foregoing, each First Source Hiring Agreement shall:

(a) Set appropriate hiring and retention goals for entry level positions. The Employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as

set forth in the agreement. The agreement shall take into consideration the Employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the Employer to the provisions of Section 83.10 of the Administrative Code;

(b) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; *provided*, *however*, if the Employer utilizes nondiscriminatory screening criteria, the Employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed ten (10) days. During that period, the Employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement;

(c) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating Employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the Employer's proprietary information;

(d) Set appropriate record keeping and monitoring requirements. The FSHA shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the Employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals;

(e) Establish guidelines for Employer good faith efforts to comply with the first source hiring requirements of Chapter 83. The FSHA will work with City departments to develop Employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each

department. Employers shall appoint a liaison for dealing with the development and implementation of the Employer's agreement. In the event that the FSHA finds that the Employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of Chapter 83, that Employer shall be subject to the sanctions set forth in Section 83.10 of Chapter 83;

(f) Set the term of the agreement;

(g) Set appropriate enforcement and sanctioning standards consistent with Chapter 83;

(h) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the Employer in complying with this Chapter; and

(i) Require the Employer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

6.6.2 Miscellaneous. Developer or its contractor, as applicable, shall make the final determination of whether an economically disadvantaged individual referred by the System is "qualified" for the position. Upon application by an Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with Chapter 83 would cause economic hardship. In the event Developer breaches the requirements of this Section 6.6, Developer shall be liable to the City for liquidated damages as set forth in Chapter 83. As set forth in the First Source Hiring Agreement, any contract or subcontract entered into by Developer shall require the contractor or subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section 6.6.

6.7 Payment of Fees and Costs.

6.7.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 2.3 of this Agreement.

6.7.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Basic Approvals or the Implementing Approvals under the Municipal Code. In connection with any environmental review relative to an Implementing Approval, Developer shall reimburse City or pay directly all reasonable and actual costs relating to the hiring of consultants and the performing of studies as may be necessary to perform such environmental review. Prior to engaging the services of any consultant or authorizing the expenditure of any funds for such consultant, the City shall consult with Developer in an effort to mutually agree to terms regarding (i) the scope of work to be performed, (ii) the projected costs associated with the work, and (iii) the particular consultant that would be engaged to perform the work.

6.7.3 Developer shall pay to the City all City Costs during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to OEWD monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and OEWD shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then OEWD or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within twelve (12) months from the date the City Cost was incurred shall not be recoverable.

6.7.4 The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 12.5.

6.8 Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project or the Basic Approvals, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement or the Existing Standards, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax. In the event Developer challenges any Future Change to an Existing Standard, or any increased or new fee permitted under Section 2.3, then the City shall have the right to withhold additional development approvals or permits until the matter is resolved; *provided*, *however*, Developer shall have the right to make payment or performance under protest, and thereby receive the additional approval or permit while the matter is in dispute.

6.9 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, *provided* (i) the City shall not institute on its own initiative proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (California Government Code § 53311 *et seq.*)) that includes the Project Site unless the new district is City-wide or Developer gives its prior written consent to such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any space therein, that is enacted in accordance with law and applies to similarly-situated property on a City-wide basis.

6.10 Indemnification of City. Developer shall Indemnify the City and its officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from this Agreement and Developer's performance (or nonperformance) of this Agreement, regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or

willful misconduct of City. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the City's cost of investigating any claims against the City. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

6.11 Equal Opportunity and Employment and Training Program. In accordance with Administrative Code section 56.7, this Agreement must include a detailed equal opportunity program and employment and training program (the "**Equal Opportunity and Employment Program**") containing goals and timetables and a program for implementation. Before the first Development Phase Application, the Parties agree to negotiate for a detailed agreement for the Equal Opportunity and Employment Program, which will be subject to the review and approval of Developer, the OEWD Director and the Planning Director, each in their reasonable discretion. Developer's rights under this Agreement are subject to and conditioned upon entering into such agreement before the first Development Phase Approval. If the Parties are unable to reach such agreement within one (1) year after the Effective Date, then either Party may initiate arbitration under Section 12.7 to seek to resolve their differences. If the Parties remain unable to reach agreement on or before the date that is two (2) year following the Effective Date, then this Agreement shall terminate without cost, liability or penalty to either Party.

6.12 Prevailing Wages. During the Term, Developer agrees that any person performing labor in the construction of Public Improvements or Community Improvements on the Project Site shall be paid not less than the highest prevailing rate of wages under Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Developer shall include in any contract for construction a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Developer shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of Public Improvements or Community Improvements.

6.13 Contracting for Public Improvements. In connection with all of the Public Improvements, Developer shall engage a contractor that is duly licensed in California and qualified to complete the work (the "**Contractor**"). The Contractor shall contract directly with Developer pursuant to an agreement to be entered into by Developer and Contractor (the "**Construction Contract**"), which shall: (i) be a guaranteed maximum price contract; (ii) require the Contractor or Developer to obtain and maintain bonds for one-hundred percent (100%) of the cost of construction for performance and fifty percent (50%) of payment for labor and materials (and include the City and Developer as dual obliges under the bonds), or provide a letter of credit or other security satisfactory to the City, in accordance with the requirements of the Subdivision Code; (iii) require the Contractor to obtain and maintain customary insurance, including workers compensation in statutory amounts, Employer's liability, general liability, and builders all-risk; (iv) release the City from any and all claims relating to the construction, including but not limited to mechanics liens and stop notices; (v) subject to the rights of any Mortgagee that forecloses on the property, include the City as a third party beneficiary, with all rights to rely on the work, receive the benefit of all warranties, and prospectively assume Developer's obligations and enforce the terms and conditions of the Construction Contract as if

the City were an original party thereto; and (vi) require that the City be included as a third party beneficiary, with all rights to rely on the work product, receive the benefit of all warranties and covenants, and prospectively assume Contractor's rights in the event of any termination of the Construction Contract, relative to all work performed by the Project's architect and engineer.

7. OBLIGATIONS OF CITY

7.1 No Action to Impede Basic Approvals. Subject to City's express rights under this Agreement (including under Section 2.5 and Section 6.2), City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Basic Approvals. An action taken or condition imposed shall be deemed to be "in conflict with" this Agreement or the Basic Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 2.2.2 of this Agreement.

7.2 Processing During Third Party Litigation. The filing of any third-party lawsuit(s) against the City or Developer relating to this Agreement, the Basic Approvals, the Implementing Approvals, or other development issues affecting the Project or the Project Site, shall not delay or stop the development, processing or construction of the Project or the issuance of Implementing Approvals unless the third-party obtains a court order preventing the activity.

7.3 Criteria for Approving Implementing Approvals. The City may approve an application for an Implementing Approval subject to any conditions necessary to bring the Implementing Approval into compliance with this Agreement, the Basic Approvals, any Implementing Approvals that have been previously granted, the Existing Standards, or Future Changes to Existing Standards (except to the extent such Future Changes to Existing Standards are in conflict with this Agreement or the terms and conditions of the Basic Approvals). If the City denies any application for an Implementing Approval that implements the Project as contemplated by the Basic Approvals (as opposed to requests for Implementing Approvals that effect a Material Change to the Basic Approvals), the City must specify in writing the reasons for such denial and may suggest modifications. Any such specified modifications shall be consistent with this Agreement (including the consistency with the Uniform Codes or the Agency Design Guidelines, as provided in Section 2.4), the Basic Approvals, the Implementing Approvals that have been previously granted, and the Existing Standards or Future Changes to Existing Standards and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, the Basic Approvals, any Implementing Approvals that have been granted, the Existing Standards, Future Changes to Existing Standards (if any) and applicable law.

7.4 Coordination of Offsite Improvements. The City shall use reasonable efforts to assist Developer in coordinating construction of offsite improvements specified in a Development Phase Approval in a timely manner; *provided*, *however*, the City shall not be required to incur any costs in connection therewith, other than incidental administrative costs, such as staff time.

8. MUTUAL OBLIGATIONS

8.1 Notice of Completion or Revocation. Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

8.2 Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9.2 below. The Planning Director shall execute and return such certificate within thirty (30) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

8.3 Cooperation in the Event of Third-Party Challenge.

8.3.1 In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Project, the Basic Approvals or Implementing Approvals, the adoption or certification of the FEIR, other actions taken pursuant to CEQA, or other approvals under state or City codes, statutes, codes, regulations, or requirements, and any combination thereof relating to the Project or any portion thereof (each, a "**Third-Party Challenge**"), the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

8.3.2 Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any consultants; *provided*, *however*, (i) Developer shall have the right to receive monthly invoices for all such costs, and (ii) Developer may elect to terminate this Agreement, and upon any such termination, Developer's and City's obligations to defend the Third-Party Challenge shall cease and Developer shall have no responsibility to reimburse any City defense costs incurred after such termination date. Developer shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the willful misconduct of the City or its officers or

employees. This section shall survive any judgment invalidating all or any part of this Agreement.

8.4 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Basic Approvals and any Implementing Approvals. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

8.5 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, the Basic Approvals, Development Phase Approvals, Design Review Approvals, and the Implementing Approvals, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

9.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code as of the Effective Date, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year; *provided, however,* that such review shall be deferred to the following January if not commenced before June.

9.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section.

9.2.1 Required Information from Developer. Not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director containing evidence to show compliance with this Agreement, including, but not limited to, compliance with the requirements regarding the following: the Public Improvements constructed or under construction by Developer as required by the Phasing Plan, the timing of construction and quality of the Replacement Units constructed for Existing Tenants, and the manner in which the BMR Requirements have been met. The burden of proof, by substantial evidence, of compliance is upon Developer.

9.2.2 City Report. Within forty (40) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement. All such available evidence including final staff reports shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement.

If the Planning Director finds Developer in compliance, then the Planning Director shall proceed in the manner provided in Section 56.17(~~f~~b) ~~and 56.18~~ of the Administrative Code ~~as those Sections are~~ in effect as of the Effective Date, attached hereto as Exhibit N. If the Planning Director finds Developer is not in compliance with this Agreement, the Planning Director shall issue a Certificate of Non-Compliance as procedures set forth in Section 56.17(c) of the Administrative Code. The City's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

9.2.3 Planning Director shall issue a Certificate of Non-Compliance. If the Planning Director finds Developer is not in compliance with this Agreement, the Planning Director shall issue a Certificate of Non-Compliance after complying with the procedures set forth in Section 9.3.4.

9.2.4 Effect on Transferees. If Developer has effected a transfer so that its interest in the Project Site has been divided between Developer and/or Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee that is not Affiliated with Developer, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its actions separately with respect to Developer and each such Non-Affiliate Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this Agreement in connection with a determination that Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party (and its Affiliates) to whom the determination is made and the portions of the Project Site in which such Party (and its Affiliates) has an interest.

9.2.5 Default. The rights and powers of the City under this Section 9 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of an Event of Default.

10. AMENDMENT; TERMINATION; EXTENSION OF TERM

10.1 Amendment or Termination. Except as provided in Section 2.5 (Changes in State and Federal Rules and Regulations) and Section 12.5 (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. The amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56 as of the Effective Date.

10.1.1 Amendment Exemptions. No amendment of a Basic Approval or Implementing Approval, or the approval of an Implementing Approval, shall require an amendment to this Agreement. Upon approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Implementing Approval). Notwithstanding the foregoing, if there is any conflict between the terms of this Agreement and an

Implementing Approval, or between this Agreement and any amendment to a Basic Approval or Implementing Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Implementing Approval or the proposed amendment to a Basic Approval or Implementing Approval. If the Parties fail to amend this Agreement as set forth above, then the terms of this Agreement shall prevail over any Implementing Approval or any amendment to a Basic Approval or Implementing Approval that conflicts with this Agreement.

10.2 Extension Due to Legal Action, Referendum, or Excusable Delay.

10.2.1 If any litigation is filed challenging this Agreement (including but not limited to any CEQA determinations) or the validity of this Agreement or any of its provisions, or if this Agreement is suspended pending the outcome of an electoral vote on a referendum, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension. The Parties shall document the start and end of this delay in writing within thirty (30) days from the applicable dates.

10.2.2 In the event of changes in state or federal laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the Project or any portion thereof or with the ability of Developer to perform its obligations under this Agreement ("**Excusable Delay**"), the Parties agree to extend the time periods for performance of Developer's obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with carrying out the Project or the ability of Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer will be extended for the period of the Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; *provided*, *however*, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

10.2.3 The foregoing Section 10.2.2 notwithstanding, Developer may not seek to delay the Completion of any Community Improvement or other public benefit required under a Development Phase Approval (including any required implementation

trigger contained in the Phasing Plan or in an Implementing Approval) as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing. Furthermore, Developer may not rely on Excusable Delay to delay the Completion of a Community Improvement or other public benefit while commensurate work (to that which is sought to be delayed) is being performed on market rate development in the Project Site.

11. TRANSFER OR ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE

11.1 Permitted Transfer of this Agreement.

11.1.1 No City Consent. Developer shall have the right to Transfer its rights, interests and obligations under this Agreement, without the City's consent, as follows:

(1) Developer may convey the entirety of its right, title, and interest in and to the Project Site together with a Transfer of all rights, interests and obligations of this Agreement without the City's consent;

(2) From and after the recordation of a final subdivision map for all real property within an Development Phase or Sub-Phase Approval and Developer's Completion of the Community Improvements and Transportation Mitigation Measures in that approved Development Phase or Sub-Phase, Developer shall have the right to Transfer all of its interest, rights or obligations under this Agreement with respect to that Development Phase or Sub-Phase to a Transferee acquiring a fee or long-term ground lease interest in all or a portion of the real property within that Development Phase or Sub-Phase without the City's consent;

(3) Following the Completion of infrastructure as needed to create developable lots, Developer shall have the right to convey developable lots or parcels within the Project Site for vertical development not requiring the construction of Community Improvements and Transportation Mitigation Measures but requiring the construction of on-site Public Improvements required by the Planning Code or other City code or regulation (including adjoining streetscape improvements required by a street improvement permit), and Transfer all rights, interests and obligations under this Agreement with respect to the conveyed lots or parcels, without the City's consent (subject to the requirements of Section 4.2.2 with respect to the Completion of BMR Units or payment of an in lieu fee); and

(4) Developer shall have the right to convey a portion of the Project Site, together with a Transfer of its rights, interests and obligations under to this Agreement with respect to the conveyed real property, to Affiliates without the City's consent (but subject to the cross-default provisions between Developer and Affiliates as set forth in Section 12.3 below); and

(5) Developer shall have the right to convey all or a portion of the Project Site, together with a Transfer of all its rights, interests and obligations under this Agreement with respect to the conveyed real property, to a Mortgagee as set forth in Section 11.9 below without the City's consent.

For all Transfers under this Section 11.1.1, Developer shall provide to the City written notice of such conveyances and Transfers no later than thirty (30) days after the conveyance or Transfer. Any Transfer of rights, interests and obligations under this Agreement shall be by an Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit O, and notwithstanding the fact that the City cannot object to Transfers described in this Section 11.1.1 above, the City shall have the right to object to an Assignment and Assumption Agreement if and to the extent such agreement does not meet the requirements of Section 11.3.3. No Transfer under this Section shall terminate or modify the rights or obligations of the Parties under this Agreement including but not limited to the Replacement Unit and BMR Requirements.

11.1.2 City Consent Requirement. Developer shall have the right, at any time, to convey a portion of its right, title and interest in and to the Project Site, as well as Transfer the rights, interests and obligations under this Agreement with respect to such real property (including the obligation to construct Community Improvements and Transportation Mitigation Measures required to be constructed in the applicable Development Phase Approval) subject to the prior written consent of the Planning Director, which consent will not be unreasonably withheld, conditioned or delayed. In determining the reasonableness of any consent or failure to consent, the Planning Director shall consider whether the proposed Transferee has sufficient development experience and creditworthiness to perform the obligations to be transferred. With regard to any proposed Transfer under this Section 11.1.2, Developer shall provide to the City information to demonstrate the Transferee's development experience, together with any additional information reasonably requested by the City.

11.2 Transferee Obligations. The Parties understand and agree that rights and obligations under this Agreement run with the land, and each Transferee must satisfy the obligations of this Agreement with respect to the land owned by it (including but not limited to completion of any BMR or Replacement Units); *provided, however*, notwithstanding the foregoing, if an owner of a portion of the Project Site (other than a ~~Mortgagee~~mortgagee, including any mortgagee who obtains title to the Project Site or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action) does not enter into an Assignment and Assumption Agreement approved by the Planning Director, then it shall have no rights, interests or obligations under this Agreement and the City shall have such remedies as may be available for violation of this Article 11.

11.3 Notice and Approval of Transfers.

11.3.1 With regard to any proposed Transfer under this Article 11, Developer shall provide not less than forty five (45) days written notice to City before any proposed Transfer of its interests, rights and obligations under this Agreement. Developer shall provide, with such notice, a copy of an assignment and assumption agreement, in

substantially the form attached hereto as Exhibit O, that Developer proposes to enter into, with a detailed description of what obligations are to be assigned to the Transferee and what obligations will be retained by Developer, and a description of the real property proposed for conveyance to the Transferee (an "**Assignment and Assumption Agreement**").

11.3.2 Each Assignment and Assumption Agreement shall be in recordable form, substantially the form attached hereto as Exhibit O, and include: (i) an agreement and covenant by the Transferee not to challenge the enforceability of any of the provisions or requirements of this Agreement, including but not limited to the Ellis Act and Costa-Hawkins Act provisions and waivers; (ii) a description of the obligations under this Agreement (including but not limited to obligations to construct Community Improvements and Mitigation Measures) that will be assumed by the assignee and from which assignor will be released; (iii) confirmation of all of the Indemnifications and releases set forth in this Agreement; (iv) a covenant not to sue the City, and an Indemnification to the City, for any and all disputes between the assignee and assignor; (v) a covenant not to sue the City, and an Indemnification to the City, for any failure to complete all or any part of the Project by any party, and for any harm resulting from the City's refusal to issue further permits or approvals to a defaulting party under the terms of this Agreement; and (vi) such other matters as are deemed appropriate by the assignee and assignor and are approved by the City.

11.3.3 With regard to any proposed Transfer under this Article 11 not requiring the City's consent, each Assignment and Assumption Agreement shall be subject to the review and approval of the Planning Director and the Planning Director shall only disapprove the Assignment and Assumption Agreement it such Assignment and Assumption Agreement does not include the items (i) to (vi) of Section 11.3.2 above, or the description of the obligations that will be assigned and assumed are unclear or inconsistent with this Agreement, the Phasing Plan or any applicable Development Phase Approval. With regard to any proposed Transfer under this Article 11 requiring the City's consent, each Assignment and Assumption Agreement shall be subject to the review and approval of the Planning Director, which shall not be unreasonably withheld or delayed. The Planning Director may withhold such approval (a) if the proposed Assignment and Assumption Agreement does not include the items (i) to (vi) of Section 11.3.2 above, or the description of the obligations that will be assigned and assumed are unclear or inconsistent with this Agreement, the Phasing Plan or any applicable Development Phase Approval, (b) the Planning Director reasonably objects to the qualifications of the proposed Transferee, as set forth in Section 11.1.2 above, or (c) the proposed Assignment and Assumption Agreement disproportionally burdens particular parcels or Transferees with obligations and Developer or Transferee does not provide reasonable evidence that such obligations can or will be completed.

11.4 City Review of Proposed Transfers. The City shall use good faith efforts to promptly review and respond to all approval requests under this Article 11. The City shall explain its reasons for any denial, and the parties agree to meet and confer in good faith to resolve any differences or correct any problems in the proposed documentation or transaction. If the City grants its consent, the consent shall include a fully executed, properly acknowledged

release of assignor for the prospective obligations that have been assigned, in recordable form, and shall be recorded together with the approved Assignment and Assumption Agreement. Notwithstanding anything to the contrary set forth in this Agreement, the City shall not be required to consider any request for consent to any Transfer while Developer is in uncured breach of any of its obligations under this Agreement. Any Transfer in violation of this Article 11 shall be an Event of Default. If Developer fails to cure such Event of Default by voiding or reversing the unpermitted Transfer within ninety (90) days following the City's delivery of the Notice of Default, the City shall have the rights afforded to it under Article 12.

11.5 Permitted Change; Permitted Contracts. Notwithstanding anything to the contrary set forth above, the following shall not be deemed a Transfer requiring City consent under this Agreement: (i) any sale, pledge, assignment or other transfer of the entire Project Site to an Affiliate of Developer and (ii) any change in corporate form of Developer or its Affiliates, such as a transfer from a limited liability company to a corporation or partnership, that does not affect or change beneficial ownership of the Project Site (each, a "**Permitted Change**"); *provided*, *however*, Developer shall provide to City written notice of any such Permitted Change, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such Permitted Change or City's request for backup information, as applicable. In addition, Developer has the right to enter into contracts with third parties, including but not limited to construction and service contracts, to perform work required by Developer under this Agreement. No such contract shall be deemed a Transfer under this Agreement and Developer shall remain responsible to City for the Completion of the work in accordance with this Agreement, subject to Excusable Delay.

11.6 Release of Liability. Upon City's consent to a Transfer (other than to an Affiliate of Developer), Developer shall be released (subject to Section 12.3) from any prospective liability or obligation under this Agreement that has been Transferred to the Transferee as specified in the Assignment and Assumption Agreement, and the Transferee shall be deemed to be the "Developer" under this Agreement with all rights and obligations related thereto with respect to the real property conveyed to such Transferee. As further described in Section 12.3, if a Transferee defaults under this Agreement, such default shall not constitute a default by Developer or its Affiliates (or other Transferees not Affiliated with the defaulting Transferee) and shall not entitle City to Terminate or modify this Agreement with respect to such non-defaulting Parties. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to Complete a Mitigation Measure, Community Improvement, or Public Improvement that must be Completed by a specific Party (as an implementation trigger in the Phasing Plan or applicable Development Phase Approval) may, if not Completed, delay or prevent a different Party's ability to start or Complete a specific building or improvement under this Agreement, and Developer and all Transferees assume this risk. Accordingly, City may withhold Development Phase Approvals, Design Review Approvals, or Implementing Approvals based upon the acts or omissions of a different Party.

11.7 Rights of Developer. The provisions in this Article 11 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any mortgage, deed of trust, or other device securing financing with respect to the Project Site or Project, (iii) granting a leasehold interest in portions of the Project

Site in which persons or entities so granted will reside or will operate, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, *provided* that Developer retains control of such joint venture or partnership and *provided* none of the foregoing will affect or limit Developer's obligations or liabilities under this Agreement, (v) upon completion of a building, selling a fee interest in a condominium unit (excluding the Replacement Units, which shall all remain under common ownership as set forth above), or (vi) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage; *provided*, *however*, with respect to items (i) through (iii) above, Developer shall not grant any such easements or licenses, allow encumbrances, or grant leasehold interests over real property intended for conveyance to the City in accordance with the Parkmerced Plan Documents without the City's prior written consent unless such interests or encumbrances can be and in fact are terminated by Developer before conveyance to the City. None of the terms, covenants, conditions, or restrictions of this Agreement or the Basic Approvals or Implementing Approvals shall be deemed waived by City by reason of the rights given to Developer pursuant to this Section 11.7.

11.8 Developer's Responsibility for Performance. It is the intent of the Parties that as the Project is developed all applicable requirements of this Agreement and the Basic Approvals and Implementing Approvals shall be met. If Developer Transfers all or any portion of this Agreement, Developer shall continue to be responsible for performing the obligations under this Agreement until such time as there is delivered to the City a legally binding Assignment and Assumption Agreement that has been approved by the City in accordance with this Article 11. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the transfer or assignment, the Assignment and Assumption Agreement, the purchase and sale agreement, or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. Developer shall Indemnify the City from and against all Losses arising out of or connected with contracts or agreements entered into by Developer in connection with its performance under this Agreement, including any Assignment and Assumption Agreement and any dispute between parties relating to which such party is responsible for performing certain obligations under this Agreement.

11.9 Rights of Mortgagees; Not Obligated to Construct; Right to Cure Default.

11.9.1 Notwithstanding anything to the contrary contained in this Agreement (including without limitation those provisions that are or are intended to be covenants running with the land), a mortgagee, including any mortgagee who obtains title to the Project Site or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action ("**Mortgagee**"), shall not be obligated under this Agreement to construct or complete improvements required by the Basic Approvals, Implementing Approvals or this Agreement or to guarantee their construction or completion solely because the Mortgagee holds a mortgage or other

interest in the Project Site or this Agreement. The foregoing provisions shall not be applicable to any other party who, after such foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to the Project Site or a portion thereof from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself. A breach of any obligation secured by any mortgage or other lien against the mortgaged interest or a foreclosure under any mortgage or other lien shall not by itself defeat, diminish, render invalid or unenforceable, or otherwise impair the obligations or rights of Developer under this Agreement.

11.9.2 Subject to the provisions of the first sentence of Section 11.9.1, any person, including a Mortgagee, who acquires title to all or any portion of the Project Site by foreclosure, trustee's sale, deed in lieu of foreclosure, or other remedial action shall succeed to all of the rights and obligations of Developer under this Agreement and shall take title subject to all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote any portion of the Project Site to any uses, or to construct any improvements, other than the uses and improvements provided for or authorized by the Basic Approvals, Implementing Approvals and this Agreement.

11.9.3 If the City receives a written notice from a Mortgagee or from Developer requesting a copy of any Notice of Default delivered to Developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee at such Mortgagee's cost (or Developer's cost), concurrently with service thereon to Developer, any Notice of Default delivered to Developer under this Agreement. In accordance with Section 2924 of the California Civil Code, the City hereby requests that a copy of any notice of default and a copy of any notice of sale under any mortgage or deed of trust be mailed to the City at the address shown on the first page of this Agreement for recording.

11.9.4 A Mortgagee shall have the right, at its option, to cure any default or breach by Developer under this Agreement within the same time period as Developer has to remedy or cause to be remedied any default or breach, plus an additional period of (i) ninety (90) calendar days to cure a default or breach arising from Developer failure to pay any sum of money required to be paid hereunder and (ii) one hundred and eighty (180) days to cure or commence to cure a non-monetary default or breach and thereafter to pursue such cure diligently to completion, or such additional time as necessary for the Mortgagee to obtain physical possession of the Project Site or the part thereof to which the lien of such Mortgagee relates through judicial foreclosure or other means. Nothing in this Agreement shall prevent a Mortgagee from adding the cost of such cure to the indebtedness or other obligation evidenced by its mortgage, *provided* that if the breach or default is with respect to the construction of the improvements on the Project Site, nothing contained in this Section 11.9 or elsewhere in this Agreement shall be deemed to permit or authorize such Mortgagee, either before or after foreclosure or action in lieu thereof or other remedial measure, to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation, by written agreement reasonably satisfactory to the City, to complete in the

manner provided in this Agreement the improvements on the Project Site or the part thereof to which the lien or title of such Mortgagee relates.

11.10 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Project Site and either (i) undertakes any development activities at the Project Site, or (ii) owns the Replacement Units, BMR Units or other development permitted under this Agreement, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site.

12. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

12.1 Enforcement. The only Parties to this Agreement are the City and Developer (including any Transferee). Except as provided in Section 11.9 above and Section 12.2 below, this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

12.2 Private Right of Action. In addition to the options available to the City to enforce this Agreement, the Existing Tenants shall have a private right of action against the Developer, but not against the City, to enforce the Replacement Unit requirements set forth in Article 4 of this Agreement, with attorneys' fees and costs awarded to the prevailing party in any court action.

12.3 Default. For purposes of this Agreement, the following shall constitute an event of default (an "**Event of Default**") under this Agreement: (i) the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a "**Notice of Default**"); *provided*, *however*, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter. An Event of Default by Developer or an Affiliate of Developer shall be, at the City's option, an Event of Default by Developer and its Affiliates with all available remedies under Section 12.5; *provided, however*, (a) no Event of Default by Developer or an Affiliate of Developer in its capacity as a developer of vertical improvements (defined as improvements that are not Community Improvements, Public Improvements, Stormwater Management Improvements, or any other horizontal development) (each, a "**Vertical Obligation**", and the Affiliate, an "**Affiliated Vertical Developer**") shall be an Event of Default by other Affiliated Vertical Developers, (b) no Event of Default by Developer or an Affiliate of Developer with respect to the obligations of this Agreement regarding the construction, maintenance, or operation of

Community Improvements, Public Improvements, Transportation Mitigation Measures, Stormwater Management Improvements, or any other horizontal development (each, a "**Horizontal Obligation**") shall be deemed to be an Event of Default by an Affiliated Vertical Developer, and (c) notwithstanding anything to the contrary in clause (a) above, an Event of Default by an Affiliated Vertical Developer with respect to the Replacement Unit or the BMR Unit requirements shall, at the City's option, be deemed an Event of Default by Developer and all of its Affiliates for all purposes under this Agreement (including all Vertical Obligations or Horizontal Obligations). Notwithstanding the inability to cross-default certain obligations as set forth in (a) through (c) above, Developer and each Transferee assume the risk that another Party's failure to Complete a Mitigation Measure, Community Improvement or Public Improvement may delay or interfere with its development rights as set forth in Section 11.6.

12.4 Notice of Default. Prior to the initiation of any action for relief specified in Section 12.5 below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that an default has not occurred. The Parties shall meet to discuss resolution of the alleged default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section 12.5 to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section 12.5. The Parties may mutually agree in writing to extend the time periods set forth in this Section.

12.5 Remedies.

12.5.1 Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section 12.5.2 below). The City's specific performance remedy shall include the right to require that Developer Complete any Public Improvement that Developer has commenced (through exercise of rights under payment and performance bonds or otherwise), and to require dedication of the Public Improvement to the City upon Completion together with the conveyance of real property as contemplated by this Agreement. In addition, in the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

12.5.2 Limited Damages. The Parties have determined that, except as set forth in this Section 12.5.2, (i) monetary damages are generally inappropriate and in no event shall the City be liable for any damages whatsoever for any breach of this Agreement, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a breach hereunder and (iii) equitable remedies and remedies at law not including damages but including termination are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) the City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in this Agreement, (2) the City shall have the right to recover any and all damages relating to Developer's failure to construct Public Improvements in accordance with the City approved plans and specifications and in accordance with all applicable laws (but only to the extent that the City first collects against any security, including but not limited to bonds, for such Public Improvements), and (3) either Party shall have the right to recover attorneys' fees and costs as set forth in Section 12.8, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

12.6 Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project and the Project Site of the Existing Standards or Future Changes to the Existing Standards. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in this Section 12.6 that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project or the Project Site of Existing Standards or Future Changes to the Existing Standards, the dispute shall initially be presented by Planning Department staff to the Planning Director, by DPW staff to the Director of DPW, or to DBI staff to the Director of DBI, whichever is appropriate, for resolution. If the Planning Director, Director of DPW, or Director of DBI, as applicable, decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

12.7 Dispute Resolution Related to Changes in State and Federal Rules and Regulations or Failure to Agree on Equal Opportunity and Training Program. The Parties agree to the follow the dispute resolution procedure in this Section 12.7 for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section

2.5.2 hereof, or if the Parties are not able to reach agreement on an Equal Opportunity and Training Program pursuant to Section 6.11 hereof.

12.7.1 Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section 12.7.2.

12.7.2 Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to Arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "Arbiters' Qualifications" shall be defined as at least ten (10) years experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a brief with all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10) business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) usiness days after initiation of the non-binding arbitration. Each Party will give due consideration to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

12.8 Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 City

Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

12.9 No Waiver. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

12.10 Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section 12.5, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself), including any Future Changes to Existing Standards, subject to the terms of Section 2.5.

12.11 Joint and Several Liability. If Developer consists of more than one person or entity with respect to any real property within the Project Site or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

13. MISCELLANEOUS PROVISIONS

13.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

13.2 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article 11 above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the limitations on Transfers set forth in Article 11 above, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468.

13.3 Planning Code Section 317. The Parties acknowledge that the Project involves the demolition of dwelling units but that the Project replaces all demolished dwelling units with the Replacement Units and increases the City's overall supply of housing, including the supply

of BMR Units. By adopting this Agreement, the City acknowledges that it has thoroughly considered the Project's effects on housing supply and therefore, during the Term of this Agreement, shall not require Developer to obtain conditional use authorization for the demolition of any dwelling units on the Project Site that may be required by Planning Code section 317 or subsequent amendment of the Planning Code, Administrative Code or any other City code or regulation.

13.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

13.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Basic Approvals or Implementing Approvals shall be deemed to refer to the Agreement or the Basic Approvals or Implementing Approvals as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

13.6 Project Is a Private Undertaking; No Joint Venture or Partnership.

13.6.1 The development proposed to be undertaken by Developer on the Project Site is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning any of the improvements on the Project Site. Unless and until portions of the Project Site are dedicated to the City, Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

13.6.2 Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

13.7 Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute and Section 56.16 of the Administrative Code as of the Effective Date, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official

Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

13.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

13.9 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

13.10 Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

13.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall 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. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

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

with a copy to:

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

To Developer:

Robert Rosania
Parkmerced Investors, LLC
156 Williams Street, 10th Floor
New York, New York 10038

Seth Mallen
Parkmerced Investors, LLC
3711 Nineteenth Avenue
San Francisco, California 94132

Dean Dakolias
c/o Parkmerced Investors, LLC
Fortress Credit Corp.
1345 Avenue of the Americas
46th Floor
New York, New York 10105

Rick Noble
c/o Parkmerced Investors, LLC
Fortress Credit Corp.
1345 Avenue of the Americas
46th Floor
New York, New York 10105

with a copy to:

Mary G. Murphy, Esq.
Jim M. Abrams, Esq.
Gibson Dunn & Crutcher, LLP
555 Mission Street Suite 3000
San Francisco, California 94105

13.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

13.13 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

13.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.*

The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

13.15 Tropical Hardwood and Virgin Redwood. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

13.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

[Remainder of Page Intentionally Blank;

Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

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

Approved on ___________________
Board of Supervisors Ordinance No. ______

Approved:

By: ______________________________
Amy Brown, Acting City Administrator

By: ______________________________
Ed Reiskin, Director of Public Works

By: ______________________________
Joanne Hayes-White, SFFD Fire Chief

By: ______________________________
______________, SFFD Fire Marhsall

DEVELOPER

PARKMERCED INVESTORS, LLC,
a Delaware limited liability company

By:______________________________

Its:______________________________

By:______________________________

Its:_____________________________

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco ("**SFMTA**") has reviewed the Development Agreement between the City and PARKMERCED INVESTORS LLC, a Delaware limited liability company (the "**Development Agreement**"), relating to the proposed Parkmerced development project to which this Consent to Development Agreement (this "**SFMTA Consent**") is attached and incorporated. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the Infrastructure Plan, the Transportation Plan, and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program contained or referenced therein, consented to the following:

1. The Development Agreement as it relates to matters under SFMTA jurisdiction, including the SFMTA Infrastructure and the transportation-related Mitigation Measures; and

2. Subject to Developer satisfying SFMTA's requirements and the transportation-related Mitigation Measures for design, construction, testing, performance, training, documentation, warranties and guarantees, that are consistent with the applicable City regulations and applicable State and federal law and the plans and specifications approved by the SFMTA under the terms of the Development Agreement, SFMTA's accepting the SFMTA Infrastructure described in the Infrastructure Plan and the Transportation Plan that will be under SFMTA jurisdiction.

By executing this SFMTA Consent, the SFMTA does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA as set forth in Article VIIIA of the City's Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: ______________________________
NATHANIEL P. FORD,
Executive Director

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: ______________________________
Deputy City Attorney

San Francisco Municipal Transportation Agency Resolution No. _____
Approved ___________.

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Public Utilities Commission

The Public Utilities Commission of the City and County of San Francisco (the "**SFPUC**") has reviewed the Development Agreement to which this Consent to Development Agreement (this "**SFPUC Consent**") is attached and incorporated. Except as otherwise defined in this SFPUC Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFPUC Consent, the undersigned confirms that the SFPUC, after considering the Development Agreement, the Parkmerced Plan Documents, and utility-related Mitigation Measures at a duly noticed public hearing, consented to:

1. The Development Agreement as it relates to matters under SFPUC jurisdiction, including the Stormwater Management Improvements and the SFPUC-related Mitigation Measures;

2. Subject to Developer satisfying the SFPUC's requirements for construction, operation, and maintenance that are consistent with the Existing Standards, Future Changes to Existing Standards permitted by <u>Section 2.2</u> of the Development Agreement, the Uniform Codes, the Agency Design Standards, and applicable State and federal law, and the plans and specifications approved by the SFMTA under the terms of the Development Agreement, and meeting the SFPUC-related Mitigation Measures, the SFPUC's accepting and then, subject to appropriation, operating and maintaining SFPUC-related infrastructure; and

3. Delegating to the SFPUC General Manager or his or her designee any future approvals of the SFPUC under the Development Agreement, including approvals of Development Phase Applications, subject to applicable law including the City's Charter.

By authorizing this SFPUC Consent, the SFPUC does not intend to in any way limit the exclusive authority of the SFPUC as set forth in Article XIIIB of the City's Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the SAN FRANCISCO PUBLIC UTILITY COMMISSION

By: ______________________________
EDWARD HARRINGTON,
General Manager

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: ______________________________
Deputy City Attorney

San Francisco Public Utility Commission Resolution No. _____
Approved ___________

[Rent Board Consent]

Document comparison by Workshare Professional on Friday, May 13, 2011 11:15:23 AM

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Moved cell	
Split/Merged cell	
Padding cell	

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