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San Francisco, CA 94102

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

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND LAUREL HEIGHTS PARTNERS, LLC

FOR PROPERTY LOCATED AT 3333 CALIFORNIA STREET

Block 1032 Lot 003

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Exhibits

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- B Project Description
- B-1 Site Plan
- C Project Open Space
- C-1 Open Space Plan
- C-2 Regulations Regarding Access and Maintenance of Publicly Accessible Private Improvements
- C-3 Public Access Declaration
- D Affordable Housing Program
- D-1 Depiction of Walnut Land
- D-2 Baseball Arbitration Appraisal Process
- D-3 Form of Grant Deed
- D-4 Accepted Conditions of Title
- D-5 Form of Deed of Trust
- E List of Approvals
- F MMRP
- G Notice of Completion and Termination
- H Form of Assignment and Assumption Agreement
- I Workforce Agreement
- J Transportation Exhibit
- K Schedule Template for Later Approvals
- L Child Care Program
- M SUD Ordinance and Conditional Use/Planned Unit Development Exceptions
- N Notice of Special Restrictions – AB900 Determination Compliance

Schedules

- 1 Community Benefits Linkages and Impact Fees Schedule
- 2 AWSS Community Benefit Fee

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND LAUREL HEIGHTS PARTNERS, LLC

THIS DEVELOPMENT AGREEMENT dated for reference purposes only as of this ____ day of _____, 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company ("**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer is the owner of an irregularly-shaped parcel comprised of approximately 10.25 acres (approximately 446,468 square feet), generally bounded by California Street, Laurel Street, Euclid Avenue, Masonic Avenue, and Presidio Avenue, and further described on Exhibit A (the "**Project Site**"). The Project Site is improved with (i) a four-story, approximately 455,000 gross square foot office building with a three-level, partially below-grade garage that has 212 parking spaces and approximately 12,500 gross square feet of storage space, (ii) a one-story, approximately 14,000 gross square foot annex building with building facilities and plant operations, office space for physical plant engineers, and unused laboratory space, (iii) 2 circular garage ramp structures, (iv) 3 surface parking lots that collectively have 331 parking spaces, and (v) approximately 165,200 square feet of landscaping or landscaped open space.

B. The Developer proposes a mixed use development that will include on-site affordable units and that will include residential, retail, open space, parking, child care and related uses (the "**Project**"). Specifically, the Project includes (i) up to approximately 744 residential units consisting of a mix of market rate and on-site BMR Units, including 185 on-site senior affordable housing units (plus one (1) manager's unit), (ii) approximately 34,496 square feet for retail/restaurant/commercial use, (iii) 10 below-grade parking garages with approximately 857

parking spaces (including approximately ten car share spaces), (iv) an approximately 14,665 square foot space for child care use, and (v) approximately 236,000 square feet of landscaped or open space, which includes approximately 125,226 square feet of privately owned, public open space, more than 71,000 square feet of which is in excess of the open space requirements under the Code, all as more particularly described on Exhibit B.

C. The Project is anticipated to generate an annual average of approximately 675 construction jobs during construction and, upon completion, approximately 200 net new permanent on-site jobs, an approximate \$10 million annual increase in property taxes, and approximately \$15 million in development impact fees (including transportation, housing linkages, and school fees).

D. 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 Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

E. In addition to the significant housing, jobs, and economic benefits to the City from the Project, the City has determined that as a result of the development of the Project in accordance with this Agreement and the Special Use District and the Planned Unit Development approvals attached at Exhibit M, additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include: (i) an increase in affordable housing that exceeds amounts otherwise required and will equal approximately twenty-five percent (25%) of the total number of housing units for the Project, serving senior households with incomes below 80% of MOHCD AMI with an overall average of not more than 59% of MOCHD AMI; (ii) construction and maintenance of the Publicly Accessible Private Improvements (as defined in Section 1) for a total of approximately 125,226 square feet of public useable open area; (iii) transportation demand management measures that exceed the level otherwise required; (iv) the Child Care Program (as

defined in Section 1); (v) workforce obligations; and (vi) the Streetscape Improvements (as defined in Section 1).

F. 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 CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*; "**CEQA Guidelines**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinances and all other applicable Laws in effect as of the Effective Date. 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, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project.

G. Developer submitted its application and initial supporting materials for certification into the Environmental Leadership Development Project Program on August 23, 2018 (the "**AB900 Application**"), and, on January 30, 2019, the State of California Air Resources Board ("**CARB**") issued its Executive Order G-18-101 (the "**CARB Executive Order**") in which it determined, based on the CARB Staff Evaluation of AB 900 Application for 3333 California Street Mixed Use Project ("**CARB Staff Evaluation**"), dated January 30, 2019, and the AB900 Application that, pursuant California Public Resources Code section 21183(c), the Project would not result in any net additional GHG emissions (the "**CARB Executive Order**").

H. On June 7, 2019, the Governor's Office, with the concurrence of the Joint Legislative Budget Committee on July 8, 2019 (the "**JLBC Letter**"), determined that the Project is an eligible project under the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, Public Resources Code sections 21178 *et seq.* (the "**Determination**").

I. The Final Environmental Impact Report ("**FEIR**") prepared for the Project and certified by the Planning Commission on _____, 2019, together with the CEQA findings (the "**CEQA Findings**") and the Mitigation Measures adopted concurrently therewith and set forth in the MMRP, comply with CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The FEIR thoroughly analyzes the Project and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. On _____, 20__, the Board of Supervisors, in Motion No. [____], affirmed the decisions

of the Planning Commission to certify the FEIR. The information in the FEIR and the CEQA Findings were considered by the City in connection with approval of this Agreement.

J. On _____, 20__, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission adopted the CEQA findings and determined among other things that the FEIR thoroughly analyzes the Project and the Mitigation Measures are designed to mitigate significant impacts to the extent they are susceptible to a feasible mitigation, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). The information in the FEIR and the CEQA Findings has been considered by the City in connection with this Agreement.

K. On _____, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by CEQA, incorporating by reference the General Plan Consistency Findings.

L. On _____, the Board adopted Ordinance No. [____], amending the Planning Code, the Zoning Map, and the Height Map, Ordinance No. [____], approving this Agreement (File No. [____]), and authorizing the Planning Director to execute this Agreement on behalf of the City, and Ordinance No. _____, approving a street encroachment permit and associated encroachment permit and maintenance agreement for the Project (collectively, the "**Enacting Ordinances**"). The Enacting Ordinances took effect on _____.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. 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:

- 1.1 **"Administrative Code"** means the San Francisco Administrative Code.
- 1.2 **"Agreement"** means this Development Agreement, the Exhibits and Schedules that have been expressly incorporated herein, and any amendments thereto.
- 1.3 **"AMI"** means the unadjusted median income levels derived from the U.S. Department of Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.
- 1.4 **"Annual Review Date"** has the meaning set forth in Section 8.1.
- 1.5 **"Applicable Laws"** has the meaning set forth in Section 5.2 (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).
- 1.6 **"Approvals"** means the City approvals, entitlements, and permits listed on Exhibit E, including any Later Approvals at the time and to the extent they are included pursuant to Section 5.1.
- 1.7 **"Assignment and Assumption Agreement"** has the meaning set forth in Section 12.2.
- 1.8 **"Associated Community Benefit"** is defined in Section 4.1.
- 1.9 **"AWSS Community Benefit Fee"** is defined in Schedule 2.
- 1.10 **"BMR Units"** has the meaning set forth in the Housing Program.
- 1.11 **"Board of Supervisors"** or **"Board"** means the Board of Supervisors of the City and County of San Francisco.
- 1.12 **"Building"** or **"Buildings"** means each of the existing, modified and new buildings on the Project Site, as described in the Project description attached as Exhibit B.
- 1.13 **"California Plaza"** is described in Section 1.a of Exhibit C.
- 1.14 **"CEQA"** has the meaning set forth in Recital F.
- 1.15 **"CEQA Findings"** has the meaning set forth in Recital I.
- 1.16 **"CEQA Guidelines"** has the meaning set forth in Recital F.
- 1.17 **"Chapter 56"** has the meaning set forth in Recital D.
- 1.18 **"Child Care Program"** means the child care facility program attached as Exhibit L.
- 1.19 **"City"** means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City

means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

1.20 **"City Agency" or "City Agencies"** means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFMTA, PW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction under the City's Charter of a City department that has not approved or consented to this Agreement in connection with the issuance of a Later Approval. The City actions and proceedings subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).

1.21 **"City Attorney's Office"** means the Office of the City Attorney of the City and County of San Francisco.

1.22 **"City Costs"** means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 9.6 when Developer is the prevailing party.

1.23 **"City Parties"** has the meaning set forth in Section 4.7.

1.24 **"City Report"** has the meaning set forth in Section 8.2.2.

1.25 **"City-Wide"** means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.26 **"CMA"** is defined in Section 12.1.

1.27 **"Commence Construction", "Commenced Construction" or "Commencement of Construction"** means groundbreaking in connection with the

commencement of physical construction of the applicable Building foundation, but specifically excluding the demolition or partial demolition of existing structures.

1.28 **"Community Benefits"** has the meaning set forth in Section 4.1.

1.29 **"Community Benefits Linkages and Impact Fees Schedule"** means the schedule attached to this Agreement as Schedule 1.

1.30 **"Community Benefits Program"** has the meaning set forth in Section 4.1.1.

1.31 **"Costa Hawkins Act"** has the meaning set forth in Exhibit D.

1.32 **"Cypress Square"** is described in Section 1.b of Exhibit C.

1.33 **"Cypress Stairs"** are described in Section 1.b of Exhibit C.

1.34 **"Default"** has the meaning set forth in Section 9.3.

1.35 **"DBI"** means the Department of Building Inspection of the City and County of San Francisco.

1.36 **"Developer"** has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.

1.37 **"Development Agreement Statute"** has the meaning set forth in Recital D, as in effect as of the Effective Date.

1.38 **"Development Parcel"** means a parcel within the Project Site on which a Building or other improvements will be constructed, as set forth in a Subdivision Map.

1.39 **"Effective Date"** has the meaning set forth in Section 2.1.

1.40 **"Enacting Ordinances"** has the meaning set forth in Recital L.

1.41 **"Euclid Green"** is described in Section 1.h of Exhibit C.

1.42 **"Excusable Delay"** has the meaning set forth in Section 11.5.2.

1.43 **"Existing Mortgage"** means the deed of trust recorded in the Official Records of San Francisco County on March 30, 2018 as Instrument Nos. 2018-K595916-00 and 2018-K595918-00, including all modification thereto.

1.44 **"Existing Standards"** has the meaning set forth in Section 5.2.

1.45 **"Existing Uses"** means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the

Planning Code) on the Project Site as of the Effective Date, as the same may be modified by the Approvals and any Later Approvals.

1.46 **"Federal or State Law Exception"** has the meaning set forth in Section 5.8.1.

1.47 **"FEIR"** has the meaning set forth in Recital I.

1.48 **"Finally Granted"** means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the FEIR shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the FEIR, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the FEIR and the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the FEIR and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

1.49 **"First Construction Document"** shall be as defined in San Francisco Building Code Section 107A.13.1(a)(8).

1.50 **"Foreclosed Property"** is defined in Section 10.5.

1.51 **"General Plan Consistency Findings"** has the meaning set forth in Recital J.

1.52 **"Gross Floor Area"** has the meaning set forth in the Planning Code as of the applicable date of determination of such area.

1.53 **"Housing Program"** means the Affordable Housing Program attached as Exhibit D.

1.54 **"Impact Fees and Exactions"** means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of Projects, including but not limited to transportation and transit fees, child care requirements or in-lieu fees, dedications, housing (including affordable housing) requirements or fees, dedication or

reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, SFPUC Capacity Charges, and any fees, taxes, assessments, and impositions imposed by any Non-City Agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

1.55 **"Later Approval"** means any other land use approvals, entitlements, or permits from the City or any City Agency, other than the Approvals, that are consistent with the Approvals and necessary or advisable for the implementation of the Project, including without limitation, demolition permits, grading permits, site permits, building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, permits to alter, certificates of occupancy, transit stop relocation permits, Subdivision Maps, improvement plans, lot mergers, and lot line adjustments. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

1.56 **"Law(s)"** means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term **"Laws"** shall refer to any or all Laws as the context may require.

1.57 **"Law Adverse to City"** is defined in Section 5.8.4.

1.58 **"Law Adverse to Developer"** is defined in Section 5.8.4.

1.59 **"Life of the Project"** shall mean, for each Building that is constructed on the Project Site under this Agreement, the life of that Building.

1.60 **"Litigation Extension"** has the meaning set forth in Section 11.5.1.

1.61 **"Losses"** has the meaning set forth in Section 4.7.

1.62 **"Material Change"** means any modification that (a) would materially alter the rights, benefits or obligations of the City or Developer under this Agreement, (b) is not consistent with the Project SUD or a planned unit development authorization made under the Project SUD, (c) extends the Term, (d) changes the uses of the Project Site from those described in this Agreement, (e) decreases the Community Benefits, (f) increases the maximum height,

density, bulk or size of the Project (except to the extent permitted under the Project SUD or a planned unit development authorization for the Project), (g) increases parking ratios, or (h) reduces the Impact Fees and Exactions.

1.63 **"Mayfair Walk"** is described in Section 1.c of Exhibit C.

1.64 **"Mitigation Measures"** means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.

1.65 **"MMRP"** means that certain mitigation monitoring and reporting program attached as Exhibit F.

1.66 **"MOHCD"** means the Mayor's Office of Housing and Community Development.

1.67 **"MOHCD AMI"** is defined in Exhibit D (Affordable Housing Program).

1.68 **"Mortgage"** means a mortgage, deed of trust or other lien on all or part of the Project Site to secure an obligation made by the applicable property owner, including the Existing Mortgage.

1.69 **"Mortgagee"** means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

1.70 **"Municipal Code"** means the San Francisco Municipal Code. All references to any part of the Municipal Code in this Agreement shall mean that part of the Municipal Code in effect on the Effective Date, as the Municipal Code may be modified by changes and updates that are adopted from time to time in accordance with Section 5.4 or by permitted New City Laws as set forth in Section 5.6.

1.71 **"New City Laws"** has the meaning set forth in Section 5.6.

1.72 **"Non-City Agency"** means Federal, State, and local governmental agencies that are independent of the City and not parties to this Agreement.

1.73 **"Non-City Approval"** means any permits, agreements, or entitlements from Non-City Agencies as may be necessary for the development of the Project.

1.74 **"OEWD"** means the San Francisco Office of Economic and Workforce Development.

1.75 **"Official Records"** means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

1.76 **"Party"** and **"Parties"** has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee (each during its period of ownership of all or part of the Project Site).

1.77 **"Pine Street Steps"** are described in Section 1.e of Exhibit C.

1.78 **"Planning Code"** means the San Francisco Planning Code.

1.79 **"Planning Commission"** means the Planning Commission of the City and County of San Francisco.

1.80 **"Planning Department"** means the Planning Department of the City and County of San Francisco.

1.81 **"Planning Director"** means the Director of Planning of the City and County of San Francisco.

1.82 **"Presidio Overlook"** is described in Section 1.d of Exhibit C.

1.83 **"Processing Fees"** means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.

1.84 **"Project"** means the project as described in Recital B, Exhibit B, and the Approvals, including, without limitation, the Project variant and Project alternatives described in the Project SUD, together with Developer's rights and obligations under this Agreement.

1.85 **"Project Site"** has the meaning set forth in Recital A, and as more particularly described in Exhibit A.

1.86 **"Project SUD"** means Planning Code Section 249.[____] as adopted by the Board in Ordinance No. [____].

1.87 **"Public Health and Safety Exception"** has the meaning set forth in Section 5.8.1.

1.88 **"Publicly Accessible Private Improvements"** means the privately-owned and publicly-accessible California Plaza, Cypress Square, Cypress Stairs, Mayfair Walk, Presidio Overlook, Pine Street Steps, Walnut Walk North, Walnut Walk South, Walnut Drive and Walnut Court, and Euclid Green, all as further described and depicted in Exhibit C, Exhibit C-1, and Schedule 1 and which exceeds the Required Open Space for the Project.

1.89 **"PW"** means San Francisco Public Works.

1.90 **"Required Open Space"** has the meaning given such term in Section 102 of the Planning Code.

1.91 **"SFMTA"** means the San Francisco Municipal Transportation Agency.

1.92 **"SFPUC"** means the San Francisco Public Utilities Commission.

1.93 **"SFPUC Capacity Charges"** means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with the applicable City requirements.

1.94 **"Streetscape Improvements"** means the following improvements, all as further described and depicted in Exhibit C, Exhibit C-1, and Schedule 1: (i) reconfiguring portions of the curb lines at Presidio Avenue and Masonic Avenue; (ii) reconfiguring the triangular-shaped pedestrian island and the right-most travel lane for southbound traffic on Presidio Avenue merging onto Masonic and incorporating it into the Pine Street Steps, (iii) reconfiguring the triangular-shaped pedestrian island and the right-most travel lane for southbound traffic on Masonic Avenue merging onto Euclid Avenue and incorporating it into Walnut Walk South (iv) constructing corner bulb-outs on the west side of the Masonic Avenue/Presidio Avenue/Pine Street intersection, the northeast corner of Laurel Street/Mayfair Drive, the southwest corner of the California Street/Laurel Street intersection, the southeast and southwest corners of the California Street/Walnut Street intersection, and the northeast corner of the Laurel Street/Euclid Avenue intersection; (v) installing a continental crosswalk crossing Presidio Avenue to Pine Street and an eastside crosswalk at the three-way intersection at Laurel Street crossing Mayfair Drive; and (vi) widening sidewalks on portions of Presidio Avenue, Masonic Avenue, Euclid Avenue, and Laurel Street.

1.95 **"Subdivision Code"** means the San Francisco Subdivision Code.

1.96 **"Subdivision Map"** means any map that Developer submits for the Project Site with respect to the Project under the Subdivision Map Act and the Subdivision Code, which may include, but not be limited to, tentative or vesting tentative subdivision maps, final or vesting final subdivision maps and any tentative or final parcel map, or transfer map, including phased final maps to the extent authorized under an approved tentative subdivision map, but excluding the Tentative Map.

1.97 **"Subdivision Map Act"** means the California Subdivision Map Act, California Government Code Section 66410 *et seq.*

1.98 **"Tentative Map"** means the tentative map for the Project Site approved by PW on [REDACTED], 2019.

1.99 **"Term"** has the meaning set forth in Section 2.2.

1.100 **"Third-Party Challenge"** means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals or Later Approvals, the adoption or certification of the FEIR or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.

1.101 **"Transfer," "Transferee" and "Transferred Property"** have the meanings set forth in Section 12.1, and in all events excludes (1) a transfer of ownership or membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

1.102 **"Transportation Demand Management"** benefits are described in Exhibit J.

1.103 **"Vested Elements"** has the meaning set forth in Section 5.1.

1.104 **"Walnut Walk North"** is described in Section 1.f of Exhibit C.

1.105 **"Walnut Walk South"** is described in Section 1.f of Exhibit C.

1.106 **"Workforce Agreement"** means the Workforce Agreement attached as Exhibit I.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinances are effective and operative ("**Effective Date**").

2.2 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for fifteen (15) years thereafter unless extended or earlier terminated as provided herein ("**Term**"); provided, however, that (i) the Term shall be

extended for each day of a Litigation Extension and (ii) Developer shall have the right to terminate this Agreement with respect to a Development Parcel upon completion of the Building within that Development Parcel and the Associated Community Benefits for that Building, as set forth in Section 7.1. The term of any conditional use permit or planned unit development shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the conditional use or planned unit development approval, as applicable. The term of the Tentative Map and any Subdivision Map shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the Subdivision Map Act.

3. GENERAL RIGHTS AND OBLIGATIONS

3.1 Development of the Project. Developer shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement, and the City shall consider and process all Later Approvals for development of the Project in accordance with and subject to the provisions of this Agreement. The Parties acknowledge that Developer (i) has obtained all Approvals from the City required to Commence Construction of the Project, other than any required Later Approvals, and (ii) may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals.

3.2 Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in accordance with the Workforce Agreement attached as Exhibit I.

4. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

4.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 4 (the "**Community Benefits**"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and the City would not be willing to enter into this Agreement without

the Community Benefits. Payment or delivery of each of the Community Benefits is tied to a specific Building or the number of constructed residential units as described in the Community Benefits Linkages and Impact Fees Schedule attached as Schedule 1 to this Agreement or as described elsewhere in this Agreement (each, an "**Associated Community Benefit**"). Upon Developer's Commencement of Construction of a Building, the Associated Community Benefits tied to that Building shall survive the expiration or termination of this Agreement to the date of completion of the Associated Community Benefit. Time is of the essence with respect to the completion of the Associated Community Benefits.

4.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the "**Community Benefits Program**") at the times specified in the Community Benefits Linkages and Impact Fees Schedule:

(a) the Publicly Accessible Private Improvements, as further described in Exhibit C, Exhibit C-1, Exhibit C-2 and Schedule 1;

(b) the Streetscape Improvements, as further described in, Exhibit C, Exhibit C-1 and Schedule 1;

(c) the Housing Program benefits, as further described in Exhibit D and Schedule 1;

(d) the AWSS Community Benefit Fee as further described in Schedule 2;

(e) the Workforce Agreement benefits, as further described in Exhibit I;

(f) the Transportation Demand Management benefits, as further described in Exhibit J; and

(g) the Child Care Program benefits, as further described in Exhibit L.

4.2 Conditions to Performance of Community Benefits. Developer's obligation to perform each Associated Community Benefit tied to a specific Building is expressly conditioned upon each and all of the following conditions precedent:

(a) All Approvals for the applicable Building to which the Associated Community Benefit is tied shall have been Finally Granted;

(b) Developer shall have obtained all Later Approvals necessary

to Commence Construction of the applicable Building to which the Associated Community Benefit is tied, and the same shall have been Finally Granted, except to the extent that such Later Approvals have not been obtained or Finally Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit at or before the completion of or receipt of first certificate of occupancy for a Building, the City may withhold a certificate of occupancy for that Building until the required Associated Community Benefit is completed except as otherwise expressly set forth in Exhibit C, Exhibit D, Exhibit L, Schedule 1 or elsewhere in this Agreement or any Approvals; and

(c) Developer shall have Commenced Construction of the Building to which the Associated Community Benefit applies.

4.3 No Additional CEQA Review Required; Reliance on FEIR for Future Discretionary Approvals. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (a) the FEIR contains a thorough analysis of the Project and possible alternatives, (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings, including a statement of overriding considerations in connection with the Approvals, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. Accordingly, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the FEIR, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related 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 Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

4.3.1 Compliance with CEQA Mitigation Measures; AB900 Compliance. Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all Mitigation Measures identified as the responsibility of the "owner" or the "project sponsor". The

Parties expressly acknowledge that the FEIR and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes 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 Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law. In addition to complying with all Mitigation Measures, Developer shall cause the Notice of Special Restrictions attached hereto as Exhibit N to be recorded in the Official Records at the same, or substantially the same, time as Developer records any other notices of special restrictions with respect to the Project and in any event prior to the issuance of a permit (including site or building permit) for grading related to the construction of any phase of the Project, and Developer shall comply with the requirements of such Notice of Special Restrictions as more specifically set forth therein.

4.4 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City 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.

4.5 City Cost Recovery.

4.5.1 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 5.7.

4.5.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.

4.5.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals,

and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 4.5.4 from the City.

4.5.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 4.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

4.5.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.

4.6 Prevailing Wages. Developer agrees that all persons performing labor in the construction of the Streetscape Improvements and the Publicly Accessible Private Improvements shall be paid not less than the highest prevailing rate of wages for the labor so performed consistent

with the requirements of 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, and Developer shall include this requirement in any construction contract entered into by Developer for any such improvements. Upon request, Developer and its contractors will provide to City any workforce payroll records as needed to confirm compliance with this Section. Without limiting the foregoing, Developer shall comply with all applicable state law requirements relating to the payment of prevailing wages, and to the extent there is any difference between the requirements of such state law requirements and Section 6.22(e) of the Administrative Code, the stricter requirements shall apply to the construction of the Streetscape Improvements and the Publicly Accessible Private Improvements.

4.7 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") 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 (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing

indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

5. VESTING AND CITY OBLIGATIONS

5.1 Vested Rights. By the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Developer shall have the vested right to develop the Project as set forth in this Agreement and the Project SUD, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access, and parking (collectively, the "**Vested Elements**"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval, once granted, shall be deemed an Approval for purposes of this Section 5.1.

5.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the 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**"), as the same may be amended or updated in accordance with Section 5.4 or with permitted New City Laws as set forth in Section 5.6, (iii) California and Federal law, as applicable, and (iv) this Agreement (collectively, "**Applicable Laws**"). The Enacting Ordinances contain express waivers and amendments to Chapter 56 consistent with this Development Agreement.

5.2.1 No Implied Waiver of Codes. Nothing in this Agreement constitutes an implied waiver or exemption of the Subdivision Code or the Public Works Code. For any waiver or exemption, Developer shall comply with the City's existing processes to seek any necessary waivers or exemptions. The City's failure to enforce any part of the Subdivision Code or Public Works Code shall not be deemed a waiver of its right to do so thereafter, but it shall not override the Approvals standards set forth in Sections 5.2, 5.3, and 5.4.

5.2.2 General Plan Consistency Findings. The Parties acknowledge the Project is consistent with the City's General Plan and the General Plan Consistency Findings are intended to support all Later Approvals that are consistent with the Approvals. To the maximum extent practicable, the Planning Department shall rely exclusively on the General Plan Consistency Findings when processing and reviewing all Later Approvals, including proposed Subdivision Maps and any other actions related to the Project requiring General Plan determinations; provided Developer acknowledges that the General Plan Consistency Findings do not limit the City's discretion in connection with any Later Approval that (a) requires new or revised General Plan consistency findings because of Material Changes or amendments to any of the Approvals or (b) is analyzed in the context of a future General Plan amendment that is a non-conflicting New City Law.

5.3 Criteria for Later Approvals. Developer shall be responsible for obtaining all required Later Approvals before the start of any construction and timely providing project schedules to OEWD as described in Exhibit K. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approvals based upon an item or element that is consistent with the Approvals, and shall consider all such applications in accordance with its customary practices (subject to the requirements of this Agreement). Subject to the requirements of this Agreement, the City shall not impose any new condition for a Later Approval that conflicts with the Approvals except when such condition is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Municipal Code and the Approvals and otherwise in accordance with the City's customary practice (but subject to the requirements of this

Agreement). Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" under this Agreement.

5.4 Strict Building Code Compliance.

5.4.1 City-Wide Building Codes. Notwithstanding anything in this Agreement to the contrary, except as otherwise provided in Section 5.4.2, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the then-applicable provisions, requirements, rules, or regulations (including any applicable exceptions) that are contained in the San Francisco Building Codes, including the Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Housing Code, Plumbing Code, Fire Code, or other uniform construction codes applicable on a City-Wide basis.

5.4.2 Sidewalks, Streets and Infrastructure. By entering into this Agreement, the City's Board of Supervisors and the City Agencies have reviewed and approved (i) the Streetscape Improvements and the Publicly Accessible Private Improvements, including sidewalk, pathway, street widths, and general right of way configurations with respect to location and relationship of major elements, curbs, bicycle facilities, parking, loading areas, and landscaping, including the general location and number of new Street Trees (as defined in San Francisco Public Works Code Section 802) and the removal of certain existing Street Trees and Significant Trees (as defined in San Francisco Public Works Code Section 810A), as set forth in the Approvals described in Exhibit E (including the plans incorporated in such Approvals) and the Project SUD, as consistent with the City's central policy objective to ensure street safety for all users while maintaining adequate clearances, including for fire apparatus vehicles. No City Agency with jurisdiction may object to a Later Approval for any of the Buildings, Streetscape Improvements, or Publicly Accessible Private Improvements due to the proposed width of a sidewalk, pathway, or street, unless such objection is based upon the applicable City Agency's reserved authority to review engineering design for compliance with Applicable Laws or other authority under State law. In the case of such objection, then within five (5) business days of the objection being raised (whether raised formally or informally), representatives from Developer, PW, the Planning Department and the objecting City Agency shall meet and confer in good faith to attempt to find a mutually satisfactory resolution to the objection. If the matter is not resolved within fourteen (14) days following the objection, then the Planning Director shall notify the Clerk

of the Board of Supervisors and the members of the Board of Supervisors' Land Use and Transportation Committee. The City Agencies and Developer agree to act in good faith to resolve the matter quickly and in a manner that does not conflict with the City policy, Approvals, this Agreement, or applicable Law. For purposes of this Section, "engineering design" shall mean professional engineering work as set forth in the Professional Engineers Act, California Business and Professions Code Sections 6700 *et seq.*

5.5 Denial of a Later Approval. If the City denies any application for a Later Approval that implements a Building, such denial must be consistent with Applicable Laws, and the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with Applicable Laws and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.

5.6 New City Laws. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**New City Laws**") 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 Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.

5.6.1 New City Laws shall be deemed to conflict with this Agreement and the 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 or change the location of proposed Buildings or change or reduce other improvements from that permitted under the 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 Buildings or other improvements that are part of the Project under the Approvals;

(c) limit, reduce or change the location of vehicular access, parking or loading for the Project from that permitted under the Approvals;

(d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;

(g) require the issuance of permits or approvals for the Project by the City other than those required under the Existing Standards, except for (i) permits or approvals that are required on a City-Wide basis, relate to the construction of improvements, and do not prevent construction of the applicable aspects of the Project that would be subject to such permits or approvals as and when intended by this Agreement or (ii) permits that replace (but do not expand the scope or purpose of) existing permits;

(h) 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;

(i) materially and adversely limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;

(j) increase the percentage of required affordable or BMR Units, change the AMI percentage levels for the affordable housing pricing or income eligibility, change the requirements regarding unit size or unit type, control or limit homeowner association or common area dues or amenity charges, or place restrictions on the right to alienate, transfer or otherwise dispose of property, or increase the amount or change the configuration of required open space for the Project;

(k) designate any existing tree on the Project Site as a Landmark Tree (as defined in San Francisco Public Works Code Section 802) if such designation would interfere with the construction of the Project; or

(l) impose new or modified Impact Fees and Exactions on the Project that are expressly prohibited in Section 5.7.2.

5.6.2 Developer shall have the right, from time to time and at any time, to file Subdivision Map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site and subdivide (including reconfiguring or merging parcels, subject to Developer's obligations under

the Housing Program and the Child Care Program) the Project Site as may be necessary or desirable in order to develop a particular part of the Project as shown generally in Exhibit B-1. The specific boundaries of Development Parcels shall be set by Developer and approved by the City during the subdivision process. 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 Subdivision Map Act or with the Subdivision Code. 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 Approvals. Prior to recording any final Subdivision Map with respect to the Project, Developer shall cause any then-existing Mortgagee to provide its authorized signature on such final Subdivision Map (or any other written approval permitted under Applicable Law), which shall include consent and acknowledgement of the BMR Units requirements with specified AMI levels for the life of the Project, in accordance with this Agreement.

5.7 Fees and Exactions.

5.7.1 Generally. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 5.7, and the City shall not impose any new Processing Fees or Impact Fees and 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. The Parties acknowledge that the provisions contained in this Section 5.7 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, except as specifically provided in this Agreement.

5.7.2 Impact Fees and Exactions. During the Term, as extended by any Litigation Extensions, no Impact Fees and Exactions shall apply to the Project or components thereof except for (i) those Impact Fees and Exactions specifically set forth on Schedule 1, Schedule 2, Exhibit D and Exhibit L, (ii) the SFPUC Capacity Charges, (iii) New City Laws that do not conflict with this Agreement as set forth in Section 5.6, and (iv) as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the

parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined. Accordingly, Developer shall be subject to any increase or decrease in the fee amount payable and any changes in methodology of calculation (e.g., use of a different index to calculate annual increases) but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date except as described in Section 5.6 and this Section. Developer agrees that any new or reduced impact fee or exaction enacted after the Effective Date that (i) is of City-Wide applicability (e.g., applies to all retail development in the City), (ii) does not pertain to affordable housing, open space or community improvements (for which this Agreement reflects the required Developer contributions), and (iii) would otherwise apply to the Project, shall apply to the Project or the applicable portion thereof.

5.7.3 Processing Fees. Developer shall pay all Processing Fees in effect, on a City-Wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

5.8 Changes in Federal or State Laws.

5.8.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its 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 reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. 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.

5.8.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 5.8.4, as applicable.

5.8.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute that would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder 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.

5.8.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 5.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "**Law Adverse to Developer**"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 5.8 would materially and adversely affect or limit the Community Benefits (a "**Law Adverse to the City**"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 5.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then

the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then either party shall have the right to seek available remedies at law or in equity to maintain the benefit of the bargain or alternatively to seek termination of this Agreement if the benefit of the bargain cannot be maintained in light of the Law Adverse to Developer or Law Adverse to the City.

5.9 No Action to Impede Approvals. Except and only as required under Section 5.8, the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 5.6.1.

5.10 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's 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, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe 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 8. The Planning Director, acting on behalf of the City, shall execute and return such certificate within twenty (20) days following receipt of the request.

5.11 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 5. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Project Site's zoning, the Approvals, the Project SUD, or any planned unit development authorization granted under the Project SUD, as applicable.

5.12 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 (Government Code Section 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests 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 all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building (or for any market rate residential unit in excess of three hundred eighty-six (386), as applicable) commenced by Developer as set forth in Section 4.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. Accordingly, the Parties agree that except as expressly set forth in this Agreement and any express construction dates set forth in a Later Approval, (i) 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, (ii) such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and (iii) without such a right, Developer's development of the Project would be subject to the

uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

7. MUTUAL OBLIGATIONS

7.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when a Building and all of the Associated Community Benefits tied to that Building have been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit G for the applicable Building property.

7.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals and any Later Approvals are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for the Project.

7.3 Third-Party Challenge. Developer shall assist and cooperate with the City at Developer's 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 (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

7.3.1 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project commenced or not), including the City's actions

taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal (other than, in the case of a partial termination by Developer, any defense costs with respect to the remaining portions of the Project). Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project (and only as to such portion), and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

7.3.2 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.

7.4 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 Approvals and any Later Approvals.

7.5 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 Approvals and any Later 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.

8. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

8.1 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 in any calendar year shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect

to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

8.2 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 8.2.

8.2.1 Required Information from Developer. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation, Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

8.2.2 City Report. Within sixty (60) 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, and shall consult with applicable City Agencies as appropriate. 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 (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be 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.

8.2.3 Effect on Transferees. If a Developer has effected a Transfer so that its interest in the Project Site is divided among multiple Developers at the time of an annual review, then that annual review shall be conducted separately with respect to each Developer, each Developer shall submit the materials required by this Article 8 with respect to the portion of the Project Site owned by such Developer, and the City review process will proceed as one for the whole Project. Notwithstanding the foregoing, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to each Developer pursuant

to Chapter 56. If there are multiple Developers and the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Chapter 56 and this Agreement in connection with a determination that a Developer 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 to whom the determination is made and the portions of the Project Site in which such Party has an interest. In other words, even when the review process is bundled for multiple Developers, any action determination of noncompliance or default will be made only against the defaulting Party and not against any of the other Developers.

8.2.4 Default. The rights and powers of the City under this Section 8.2 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 a Default by Developer.

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

9.1 Enforcement. As of the date of this Agreement, the only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

9.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 9.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 9.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 9.3.

9.3 Default. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was

not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations. Accordingly, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site.

9.4 Remedies.

9.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 9.4.3, 9.4.4, and 9.5, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

9.4.2 Termination. Subject to the limitation set forth in Section 9.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with Sections 9.3 and 12.3, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer" (as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.

9.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 9.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a

result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and 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) either Party 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 Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 9.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "**actual damages**" means 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.

9.4.4 City Processing/Certificates of Occupancy. 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 due the City from Developer are past due; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City. The City shall have the right to withhold a final certificate of occupancy for a Building until all of the

Associated Community Benefits tied to that Building have been completed. For a Building to be deemed completed, Developer shall have completed all of the streetscape and open space improvements described in Exhibit C and Exhibit J, or a Later Approval, for that Building; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance.

9.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

9.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a 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**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, 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 reasonable 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 Office of the City Attorney.

10. FINANCING; RIGHTS OF MORTGAGEES

10.1 Developer's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site other than the Existing Mortgage. Prior to commencing construction under the First Construction Document for the Project, Developer shall cause the Existing Mortgage, if then still in effect, and any other then-existing Mortgage(s), to be subordinated to this Agreement.

10.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 10.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, conveyance or other action in lieu thereof, or other remedial action shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 4.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

10.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee.

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

10.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 10.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) sixty (60) days to cure a monetary Default; and (b) one hundred twenty (120) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

10.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 4.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

10.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

10.7 Cured Defaults. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

11.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided, however, that following a Transfer, the City and Developer or any Transferee may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 7.3, 9.4.2, and 11.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with

the approval of that City department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City Department). The determination of whether a proposed change constitutes a Material Change shall be made, on City's behalf, by the Planning Director following consultation with the City Attorney and any affected City Agency.

11.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date as such five (5) year date may be extended by any Litigation Extension. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to start construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.

11.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Building that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Building that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 11.3 shall survive the termination of this Agreement.

11.4 Amendment Exemptions. No issuance of a Later Approval, or amendment

of an Approval or Later Approval, shall by itself require an amendment to this Agreement. And no change to the Project that is permitted under the Project SUD or a planned unit development authorization issued under the Project SUD shall by itself require an amendment to this Agreement. Upon issuance or 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 Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later 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 Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project as described in the Exhibits in keeping with its customary practices and the Project SUD, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

11.5 Extension Due to Legal Action or Referendum; Excusable Delay.

11.5.1 Litigation and Referendum Extension. If any litigation is filed challenging this Agreement or any of the Approvals described on Exhibit E (the "**Initial Approvals**") and it directly or indirectly delays this Agreement or such Initial Approval, or if this Agreement or any of the Initial Approvals is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and the effectiveness of the Initial Approvals (starting from the date of the initial grant of the Initial Approval) 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 (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

11.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or

the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

12.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") to a party (including any Mortgagee) without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior

written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be the sole responsibility of the applicable Developer (*i.e.*, the person or entity that is the Developer for the Development Parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

12.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit H (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review and grant or withhold approval within thirty (30) days after the Director of Planning's receipt of such material changes. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 12.1 shall not require the transfer of land or any other real property interests to the CMA.

12.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 12.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "**Developer**" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City

to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 8 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

12.4 Responsibility for Performance. 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 the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.

12.5 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 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 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 Site and undertakes any development activities at the Project Site, 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 (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

12.6 Rights of Developer. The provisions in this Section 12 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, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) 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, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

13. DEVELOPER REPRESENTATIONS AND WARRANTIES

13.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the sole owner of the Project Site, with the right and authority to enter into this Agreement. Developer is a 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 represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

13.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and 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.

13.3 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.

13.4 Notification of Limitations on Contributions. Through its execution of this

Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the 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 (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. 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.

Developer acknowledges that (i) the prohibition on contributions applies to Developer, each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Developer, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Developer certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

13.5 Other Documents. To the current, actual knowledge of Dan Safier, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material

fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

13.6 No Bankruptcy. Developer represents and warrants to the 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.

14. MISCELLANEOUS PROVISIONS

14.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

14.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

14.3 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 the provisions of this Agreement, including without limitation Section 12, 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 provisions of this Agreement, including without limitation Section 12, 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.

14.4 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 the City and County of San Francisco 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.

14.5 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 Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

14.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. 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.

14.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.

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

14.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

14.10 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.

14.11 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 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, CA 94102
Attn: Real Estate/Finance, 3333 California Project

To Developer:

c/o The Prado Group, Inc.
150 Post Street, Suite 320
San Francisco, CA 94108
Attn: Dan Safier

14.12 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 of Supervisors 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.

14.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.14 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.

14.15 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.

14.16 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 250 *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 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.

14.17 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, its successors and assigns, in the event of any Default by City, or for any amount which may become due to Developer, its successors and assigns, under this Agreement.

14.18 Non-Liability of Developer Officers and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, officer, employee, official, partner, employee, or agent of Developer or any affiliate of Developer shall be personally liable to City, its successors and assigns, in the event of any Default by Developer, or for any amount which may become due to City, its successors and assigns, under this Agreement.

14.19 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

CITY:

Approved as to form:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

DENNIS J. HERRERA, City Attorney

By: _____
John Rahaim
Director of Planning

By: _____
Carol Wong, Deputy City Attorney

RECOMMENDED:

By: _____
[Name]
Director, MOHCD

By: _____
Mohammed Nuru
Director of Public Works

Approved on _____, 20____
Board of Supervisors Ordinance No. ____

[DEVELOPER'S SIGNATURE ON FOLLOWING PAGE]

DEVELOPER:

LAUREL HEIGHTS PARTNERS LLC,
a Delaware limited liability company

By: 3333 California LP,
a Delaware limited partnership,
its Manager

By: PSKS LH LLC,
a Delaware limited liability company,
its General Partner

By: Prado LH LLC,
a California limited liability company,
its Manager

By: _____
Name: Dan Safier
Title: Manager

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A

Project Site Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

BEGINNING at a point on the Southerly line of California Street, said point being the Easterly extremity of the curve with a 15 foot radius joining the Easterly line of Laurel Street with the Southerly line of California Street, as shown on "Map of Laurel Heights, filed July 28, 1947, in Map Book "P", at Pages 55 and 56, Official Records of the City and County of San Francisco; running thence North 80°54' East 707.375 feet along the Southerly line of California Street to the Southwesterly boundary of the property of the Standard Oil Company of California; thence South 52°36' 29.74 seconds East along said boundary 232.860 feet; thence Southwesterly along the arc of a curve to the right whose tangent deflects 54°14' 30.74 seconds to the right from the preceding course, radius 425 feet, central angle 34°15'59", a distance of 254.176 feet; thence South 35°54' West tangent to the preceding curve 380.066 feet; thence Southwesterly along the arc of a curve to the right, tangent to the preceding course, radius 65 feet, central angle 37°18' a distance of 42.316 feet to tangency with the Northwesternly line of Euclid Avenue; thence South 73°12' West along said line of Euclid Avenue 312.934 feet; thence leaving said line of Euclid Avenue, and running Southwesterly, Westerly, and Northwesternly along the arc of a curve to the right, tangent to the preceding course, radius 20 feet, central angle 100°48' 01.51", a distance of 35.186 feet; thence Northwesternly along the arc of a reverse curve to the left, parallel to and concentric with and radially distant 6 feet Northeastly from the Northeastly line of Laurel Street, as shown on said map of Laurel Heights, radius 4033 feet, central angle 5°31' 20.27", a distance of 388.710 feet; thence Northwesternly along the arc of a compound curve to the left, radius 120 feet, central angle 71°12' 55.45", a distance of 149.153 feet; thence Northwesternly along the arc of a reverse curve to the right, radius 60 feet, central angle 73°38' 14.21", a distance of 77.113 feet to tangency with the Easterly line of Laurel Street; thence North 9°06' West along said line of Laurel Street 127.290 feet to the beginning of the above mentioned curve joining the Easterly line of Laurel Street with Southerly line of California Street; thence Northwesternly, Northerly, and Northeastly along the arc of a curve to the right, radius 15 feet 90°00', a distance of 23.562 feet to tangency with the Southerly line of California Street and the point of beginning.

APN: Lot 003, Block 1032|

Exhibit B

Project Description

The Project Site is an approximately 446,490-square-foot, or 10.25-acre, parcel bounded by California Street to the north, Presidio Avenue to the east, Masonic Avenue to southeast, Euclid Avenue to the south, and Laurel Street/Mayfair Drive to the west, at the southern edge of San Francisco's Presidio Heights neighborhood in the northwest portion of San Francisco. The project sponsor, Laurel Heights Partners, LLC, owns the site and temporarily leases it to the Regents of the University of California, which uses the Project Site for its University of California San Francisco (UCSF) Laurel Heights Campus. The Project Site does not include the San Francisco Fireman's Credit Union (now called the SF Fire Credit Union) at the southwest corner of California Street and Presidio Avenue, which is on a separate parcel.

The Project Site is currently used as office and related research, child care, and parking. It is developed with a four-story, approximately 455,000-gross-square-foot office building including a three-level, 212-space, an approximately 93,000-gross-square-foot partially below-grade parking garage at the center of the site; a one-story, approximately 14,000-gross-square-foot annex building at the corner of California and Laurel streets; three surface parking lots with a total of 331 spaces connected by internal roadways; two circular garage ramp structures leading to below-grade parking levels; and landscaping or landscaped open space for the UCSF Laurel Heights Campus occupants.

The proposed project includes approximately **1,427,832** gross square feet of new and rehabilitated space, comprising approximately **977,437** gross square feet of residential floor area with approximately **744** dwelling units; approximately **34,496** gross square feet of retail floor area; and an approximately **14,665** gross-square-foot child care center use. The proposed project would provide approximately **857** off-street parking spaces (including approximately 10 car share spaces), approximately **762** Class One bicycle spaces, and **77** Class Two bicycle spaces. These proposed uses would be located in 13 new buildings (known as Plaza A, Plaza B, Walnut, Mayfair, Laurel Townhomes, Euclid and Masonic) and in the adaptively reused office building (known as Center A and Center B), which would be divided into two separate buildings and converted to residential use.

25% of the proposed project's units will be deed-restricted, on-site affordable units designated for low-income senior households. These affordable units will be located in the proposed Walnut Building on California Street and consist of 185 studios and 1-bedrooms for seniors plus one (1) on-site manager's unit. The Walnut Building would also include an approximately **175-seat child care facility**, including a contiguous outdoor activity area. The project includes approximately **34,496 square feet of neighborhood-serving retail** located in the buildings fronting onto California Street (Plaza A, Plaza B and the Walnut Building). This retail

corridor is aligned with the existing Laurel Village shopping center on California Street and will be designed to enhance the retail offerings for the neighborhood.

The proposed project would contain approximately 52 percent of the overall lot area (approximately 236,000 square feet – excluding green roofs) as open area, with portions to be developed with a combination of public open space, common open space (some of which would be open to the public) and private open space for residents. The proposed project would include **2.87 acres of publicly accessible landscaped open space** with multi-purpose plazas, lawns, pathways and streetscape improvements as further described in Exhibit C, which will provide the public with new open space amenities and improve pedestrian connectivity and safety through the neighborhood.

The Project's circulation and open space plan includes multiple new public entrances into and through the Site in order to integrate the Site with the surrounding neighborhood and street network. The proposed north-south pedestrian connection (Walnut Walk) and the proposed east-west pedestrian connection (Mayfair Walk) would be open to the public and would provide the primary points of access to other publicly accessible common open spaces, plazas, squares, and vista points within the Project Site. The proposed Walnut Walk would align with Walnut Street to the north and the intersection of Euclid and Masonic to the south, incorporating the site into the surrounding street grid.

Exhibit B-1
Project Site Plan



Exhibit C

Project Open Space

The Project would provide the following open space, substantially in accordance with Attachment C-1, Attachment C-2, Attachment C-3, and Schedule 1 to the Agreement:

1. Publicly Accessible Private Improvements. The Project would include the construction, operation, and maintenance of the Publicly Accessible Private Improvements, which is comprised of approximately 2.87 acres of open space (1.63 acres of which exceed the Planning Code open space requirements that would otherwise apply for the Project) developed as follows:
 - a. California Plaza: An approximately 4,290 square foot plaza adjacent to California Street and the Plaza A and B retail uses. California Plaza will be improved with a combination of quality hardscape, planters and seating elements adjacent to the City sidewalk and designed to comply with the City's Better Streets policies.
 - b. Cypress Square and Stairs: Cypress Stairs (approximately 1,255 sq. ft.) are one of several pedestrian access points into the Project and would connect pedestrians from California Street to Cypress Square and the network of internal public open spaces throughout the Project Site. There will also be ADA access from California Street to Cypress Square adjacent to the Cypress Stairs. Cypress Square would be an approximately 12,052 square foot south-facing plaza that would retain the existing mature and healthy Cypress trees identified in the landscape plan. It would include hardscaped walkways and a central, paved open plaza area with wood decking, seating and landscaping.
 - c. Mayfair Walk: Mayfair Walk (approximately 30,685 sq. ft.) is the Project's main east-west pedestrian connector that will stitch the site back into the adjacent neighborhood's urban fabric with publicly-accessible landscaped pathways. The Walk includes a connection to Mayfair Drive/Laurel Street to the west with seating, stairs and landscaping, including the retention of existing mature and healthy oak trees and the addition of new trees as identified in the landscape plan. The Walk would include a hardscape pathway with landscaped borders and access to ground floor residential units. The Walk would connect with the ADA-accessible Pine Street Stairs to Presidio Avenue to the east.
 - d. Presidio Overlook: At the east side of the Project Site atop Pine Street Stairs, the Presidio Overlook will provide scenic views of downtown San Francisco for the public and ADA and stair access to Presidio Avenue. The Overlook will consist of approximately 10,450 square feet of open space and would include a large terrace with trees, planters and seating. The Overlook would act as an interconnection and scenic area between the east portion of the Mayfair Walk and the Pine Street Stairs.

- e. Pine Street Steps: The Pine Street Steps would be approximately 7,015 square feet and are inspired by California's indigenous biodiversity and include a grove of mature existing and new Redwood trees. They have been designed to provide the public with an ADA-accessible connection from the east side of the Project Site to the west.
- f. Walnut Walk North and Walnut Walk South: Walnut Walk would consist of a total of approximately 23,730 square feet of open space and will be the Project's main north-south public pedestrian access. Walnut Walk would run through the center of the Project Site from California Street (via Walnut Court) to the Masonic and Euclid Avenue intersection, helping to stitch the site back into the neighborhood's urban fabric. Walnut Walk would be a pedestrian pathway with a network of landscaped open spaces and seating.
- g. Walnut Drive and Walnut Court: Walnut Drive and Walnut Court would consist of approximately 17,825 square feet of open space and would include tree-lined hardscape pedestrian walkways on either side of Walnut Drive leading into Walnut Court, which would include a tree-lined vehicular turnaround plaza with a tree feature at the center. The drive and court areas would provide direct access to California Street, Mayfair Walk and Walnut Walk.
- h. Euclid Green: The new green lawn at the corner of Euclid and Laurel would provide the public with views of downtown San Francisco to the east, and views of the Golden Gate Bridge to the northwest. Euclid Green will consist of approximately 18,004 square feet of open space at the southwest corner of the Project at Laurel Street and Euclid Avenue. The existing green lawn will be renovated and maintained as a large, naturally sloping lawn with plantings and a direct access to the sidewalks on Euclid Avenue and Laurel Street.

The Publicly Accessible Private Improvements will be privately owned but accessible to the public on the terms described in Attachment C-2 and Attachment C-3. The Publicly Accessible Private Improvements would be provided substantially as depicted in Attachment C-1, constructed in accordance with the terms of Attachment C-2 and Schedule 1, and operated and maintained on the terms of Attachment C-2 and Attachment C-3.

- 2. Streetscape Improvements. The Project would include the streetscape improvements depicted in Attachment C-1 to enhance the safety of, and strengthen the network of, existing sidewalks and street crossings that abut the Project Site including Presidio Avenue, Masonic Avenue, Euclid Avenue, Laurel Street, Mayfair Street and California Street.
- 3. Provision of Required Open Space. The amount and phasing of private and/or common usable open space for the residential uses on the Project shall be governed by the Approvals.

Exhibit C-1
Open Space Plan



Exhibit C-2

Regulations Regarding Access and Maintenance of Publicly Accessible Private Improvements

These Regulations Regarding Access and Maintenance of Publicly Accessible Private Improvements (these “Regulations”) shall govern the use, maintenance, and operation of each completed Publicly Accessible Private Improvement (each, a “Publicly Accessible Private Improvement” and collectively, the “Publicly Accessible Private Improvements”) as defined in Section 1 of this Agreement. The Publicly Accessible Private Improvements are the open spaces proposed for the Project that are privately owned, but will remain accessible to the public, as described in this Exhibit, and include California Plaza, Cypress Stairs, Cypress Square, Euclid Green, Mayfair Walk those portions of the Pine Street Steps that are privately owned, Presidio Overlook, Walnut Drive and Walnut Court, Walnut Walk North, and Walnut Walk South.

1. Permitted Uses. Upon completion of a Publicly Accessible Private Improvement in accordance with this Agreement, Developer shall make that Publicly Accessible Private Improvement available for the use, enjoyment and benefit of the public for open space and recreational purposes in accordance with these Regulations, including, without limitation, (i) quiet contemplation and rest without the use of audible electronic devices (although headphones are permitted), (ii) pedestrian access through the Project Site from one Project Site boundary to the others (bicycles, scooters, skateboards and the like to be walked, not ridden on site for safety reasons), and (iii) short term use of designated seating areas (excluding planter walls and/or landscaped areas). These Regulations do not require Developer to make its Publicly Accessible Private Improvement available to the public for more than open space and recreational purposes.
2. Prohibited Use. The following shall be prohibited in any Publicly Accessible Private Improvement, (i) smoking of any form, including cigarettes, cigars, pipes, e-cigarettes and smokeless cigarettes (including tobacco or other controlled substances), (ii) consumption or possession of open alcoholic beverages (unless permitted by special permit), (iii) camping or sleeping, (iv) climbing or affixing items to trees, other landscaping, furniture or infrastructure, (v) disorderly conduct, as defined in Article 4 of the City’s Park Code, as amended from time to time, (vi) building fires or cooking (unless permitted by special permit), (vii) peddling or vending merchandise (unless permitted by special permit), (viii) temporary structures or installations (unless permitted by special permit), (ix) littering or dumping of waste, (x) removal of plants, soil, furniture, or other facilities of the open space, (xi) graffiti or the damage or destruction of property, and (xii) amplified sound. Developer may limit off-leash animals to designated areas but shall permit leashed animals, including leashed service animals, in the Publicly Accessible Private Improvements. Organized sporting events are not permitted in the Publicly Accessible Private Improvements due to their slope and limited size. However, active recreation (e.g., kicking a soccer ball or

throwing a football) among groups of up to four (4) people shall be permitted on Euclid Green provided it does not endanger other users of Euclid Green. Developer may use a completed Publicly Accessible Private Improvement for temporary construction staging related to adjacent development on the Project Site (during which time the subject Publicly Accessible Private Improvement shall not be used by the public) to the extent that such construction is contemplated under, and performed in accordance with, this Agreement, the Approvals, and any Later Approvals.

3. No Discrimination. Developer shall not discriminate against or segregate any person, or group of persons, on account of the basis of fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or acquired immune deficiency syndrome, HIV status, weight, height, medical condition, or association with members of any of the foregoing classes, in the use, occupancy, tenure, or enjoyment of a Publicly Accessible Private Improvement.
4. Maintenance Standard. Each Publicly Accessible Private Improvement shall be operated, managed, and maintained in a clean and safe condition in accordance with the anticipated and foreseeable use thereof.
5. Temporary Closure. Developer shall have the right, without obtaining the prior consent of the City or any other person or entity, to temporarily close a Publicly Accessible Private Improvement to the public from time to time for one of the following two reasons. In each instance, such temporary closure shall continue for as long as Developer reasonably deems necessary to address either of the circumstances below:
 - a. Emergency; Public Safety. In the event of an emergency or danger to the public health or safety created from whatever cause (including, but not limited to, flood, storm, fire, earthquake, explosion, accident, criminal activity, riot, civil disturbances, civil unrest, unlawful assembly, or loitering). Developer may temporarily close a Publicly Accessible Private Improvement (or affected portions thereof) in any manner deemed necessary or desirable to promote public safety, security, and the protection of persons and property.
 - b. Maintenance and Repairs. Developer may temporarily close a Publicly Accessible Private Improvement (or affected portions thereof) in order to make any repairs or perform any maintenance as Developer, in its reasonable discretion, deems necessary or desirable to repair, maintain, or operate that Publicly Accessible Private Improvement; provided such closure may not impede emergency vehicle access.

6. Operation of the Publicly Accessible Private Improvements. Operation of each Publicly Accessible Private Improvement shall be subject to the additional requirements of this Paragraph.
 - a. Hours of Operation. Each Publicly Accessible Private Improvement shall be open and accessible to the public seven (7) days per week during the daylight hours (or 30 minutes prior to sunset) (the “Operating Hours”), unless reduced hours are (i) approved in writing by the City, (ii) otherwise expressly provided for in this Agreement (including, without limitation, Paragraphs 4 and 5(b) of these Regulations), or (iii) reasonably imposed by Developer, with the City’s reasonable consent, to address security concerns. None of the Publicly Accessible Private Improvements shall be closed to the public during Operating Hours for special events. No person shall enter, remain, stay, or loiter in a Publicly Accessible Private Improvement when it is closed to the public, except persons authorized in conjunction with a temporary closure, authorized service and maintenance personnel, or an authorized resident, guest or employee of the project.
 - b. Signs. Developer shall post signs at the major public entrances to each of its Publicly Accessible Private Improvement, indicating that it is a privately-owned public open space (“POPOS”) in accordance with all laws and signage requirements. The signs, at a minimum, shall indicate the public right to use the space in accordance with these Regulations, setting forth the applicable regulations imposed by these Regulations, hours of operation, and a telephone number to call regarding security, management or other inquiries.
7. Permissive Use. Developer may post at each entrance to each of its Publicly Accessible Private Improvement, or at intervals of not more than 200 feet along the boundary, signs reading substantially as follows: “Right to pass by permission, and subject to control of owner: Section 1008, Civil Code.” Notwithstanding the posting of any such sign, no use by the public nor any person of any portion of the Publicly Accessible Private Improvement for any purpose or period of time shall be construed, interpreted, or deemed to create any rights or interests to or in the Publicly Accessible Private Improvement other than the rights and interests expressly granted in this Agreement. The right of the public or any person to make any use whatsoever of a Publicly Accessible Private Improvement or any portion thereof is not meant to be an implied dedication for the benefit of, or to create any rights or interests in, any third parties.
8. Arrest or Removal of Persons. Developer shall have the right (but not the obligation) to use all lawful means to effect the removal of any person or persons who creates a public nuisance or causes safety concerns for the occupants or neighbors of the Project, or who otherwise violates the applicable rules and regulations, or who commits any crime including, without limitation, infractions or misdemeanors, in or around a Publicly

Accessible Private Improvements. To the extent permitted by law, Developer may prohibit members of the public who have repeatedly broken the Regulations in any material respect from entering the Publicly Accessible Private Improvements, and if such person enters a Publicly Accessible Private Improvement, may ask such person to leave the Publicly Accessible Private Improvement. Developer shall have the right to exercise its power and authority as owner consistent with other publicly accessible but privately-owned areas in the City, such as other privately owned public open space.

9. Project Security During Period of Non-Access. Developer shall have the right to block entrances to install and operate security devices and to maintain security personnel in and around the Publicly Accessible Private Improvements to prevent the entry of persons or vehicles during the time periods when public access to a Publicly Accessible Private Improvement or any portion thereof is restricted or not permitted. Subject to the access requirements for City's emergency vehicles, as described in the Subdivision Map, and Developer's obligations under Applicable Law, Developer shall have a right to install permanent architectural features that serve as security devices such as gates, fences and bollards, and close such devices during non-operating hours or during periods of closure as identified in these Regulations. Design of such devices shall be subject to approval by the San Francisco Planning Department which shall not be unreasonably withheld and subject to any permits required under Applicable Law. Such design review by the San Francisco Planning Department shall not be construed as a change in entitlement and shall not be subject to a planning application or require a separate entitlement. It shall not be unreasonable for the Planning Department to withhold its consent if any such devices would impede emergency access that may be required under Applicable Law or in the Approvals. Nothing shall restrict Developer's right to install security cameras and monitoring devices anywhere on the Project.
10. Removal of Obstructions. Developer shall have the right to remove and dispose of, in any lawful manner it deems appropriate, any object or thing left or deposited on a Publicly Accessible Private Improvement deemed to be an obstruction, interference, or restriction of use of that Publicly Accessible Private Improvement for the purposes set forth in this Agreement, including, but not limited to, personal belongings or equipment in a Publicly Accessible Private Improvement during hours when public access is not allowed pursuant to these Regulations.
11. Temporary Structures. Subject to Developer's right to use a Publicly Accessible Private Improvement for temporary construction staging related to adjacent development as set forth in Paragraph 1 of these Regulations, no trailer, tent, shack, or other outbuilding, or structure of a temporary character, shall be used on any portion of the Publicly Accessible Private Improvements at any time during Operating Hours, either temporarily or permanently.

Exhibit C-3

Public Access Declaration

WHEN RECORDED MAIL TO:

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

The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and from Documentary Transfer Tax (CA Rev. & Tax. Code § 11922 and SF Bus. and Tax Reg. Code § 1105)

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

3333 California Street
APN 1032-003

DECLARATION OF PUBLIC ACCESS COVENANTS AND RESTRICTIONS

This Declaration of Public Access Covenants and Restrictions ("**Declaration**") is made as of _____, 2019, by LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company ("**Declarant**"), in favor of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**").

RECITALS

A. Declarant owns an irregularly-shaped parcel in the City and County of San Francisco comprised of approximately 10.25 acres (approximately 446,468 square feet), generally bounded by California Street, Laurel Street, Euclid Avenue, Masonic Avenue, and Presidio Avenue, and further described in the attached Exhibit A (the "**Project Site**").

B. Declarant intends to redevelop the Project Site as a large mixed-use development that will include residential, retail, commercial, child care, open space, parking, and related uses (the "**Project**"), under a Development Agreement between Declarant and City dated _____, 2019 (the "**Development Agreement**"), approved by the City's Board of Supervisors by Ordinance No. _____ on November __, 2019, a Special Use District approved by the City's Board of Supervisors by Ordinance No. _____ on November __, 2019, amendments to the City's Planning Code, Zoning Map, and Height Map adopted by the Board of Supervisors under Ordinance No. _____ on November __, 2019, and a street encroachment permit and associated encroachment permit and maintenance agreement approved by the Board of Supervisors by Ordinance No. _____ on November __, 2019.

C. Declarant's proposed Project buildings (each a "**Building**") are described in the attached Exhibit B-1 and depicted in the attached Exhibit B-2. Such descriptions and depictions are approximate. As part of the Project and pursuant to the Development Agreement, if Declarant constructs any Building during the term of the Development Agreement ("**DA Term**"), Declarant will develop certain publicly-accessible open spaces on the Project Site and operate and maintain such open space in accordance on the terms and conditions of this Declaration.

AGREEMENT

Now, therefore, in consideration of the City's approval and execution of the Development Agreement, Declarant declares as follows on behalf of itself and all future owners of the Project Site:

1. Construction.

(a) Timing. If Declarant constructs any Building during the DA Term, Declarant shall build the applicable Publicly Accessible Private Improvements (as defined in the attached Exhibit C) specified in the attached Exhibit C in compliance with the requirements of the Development Agreement.

(b) Conceptual Plans; Changes. If Declarant is obligated to construct Publicly Accessible Private Improvement pursuant to Section 1(a) above, then Declarant shall construct the Publicly Accessible Private Improvement substantially as described in the conceptual plans dated _____, and stamped as Exhibit ____ in the City's Planning Department docket for Case No. _____, as such plans may be modified pursuant to conditions of approval for the Project adopted by the City's Planning Commission on September ____, 2019 (the "**Conceptual Plans**"). The improvements described in the Conceptual Plans, as may be modified pursuant to this subsection (b), and as constructed pursuant thereto shall constitute the Publicly Accessible Private Improvements. Declarant shall have the right to modify and/or update the Conceptual Plans from time to time as it may determine in its sole business judgment, subject to the provisions of the following paragraph and provided further that any such modifications shall be subject to review and approval by the City acting in its regulatory capacity with respect to permit issuance, if applicable.

If, prior to completion of the Publicly Accessible Private Improvement, Declarant wishes to apply for any permits for improvements to a Publicly Accessible Private Improvement that materially differ from the Conceptual Plans or would materially and adversely impact the public's ability to access or use that Publicly Accessible Private Improvement for the Permitted Uses (as defined in Section 4) (a "**Construction Modification**"), Declarant shall provide a copy of such plans to the City's Director of Planning (or successor City officer, if applicable) (the "**Planning Director**"). Any proposed Construction Modification shall be subject to the approval of the Planning Director, which may be withheld in his or her reasonable discretion. Declarant agrees it shall be reasonable for the Planning Director to withhold such approval if she or he determines the proposed Construction Modification does not meet the regulatory requirements or standards for the affected area.

Following completion of any Publicly Accessible Private Improvement, Declarant shall have the right to prepare a legal description of the Publicly Accessible Private Improvement and an amendment to this Declaration in which the precise location or boundaries of the particular Publicly Accessible Private Improvement are described in the legal description or shown on a site plan or map, and, subject to the City's review and approval of such amendment, record such amendment in the Official Records of the City and County of San Francisco ("**Official Records**")

2. Maintenance and Modifications. Following the completion of the Publicly Accessible Private Improvement, Declarant shall maintain that Publicly Accessible Private Improvement in a clean, litter-free and good condition for the life of the last remaining Building at the Project Site. Notwithstanding the foregoing, after the substantial completion of the Publicly Accessible Private Improvement, Declarant shall have the right to modify, renovate, replace and/or update the Publicly Accessible Private Improvement, including any improvements located within the boundaries of any Publicly Accessible Private Improvement (each, "**Change**"), subject to the provisions of this Declaration. Before submitting any permit application for a Change that would or could materially and adversely impact the public's ability to access or use any Publicly Accessible Private Improvement for the Permitted Use (each, "**Material Change**"), Declarant shall provide a copy of the plans to be submitted with such permit application to the Planning Director. All Material Changes are subject to the approval of the Planning Director, which approval may be withheld in his or her reasonable discretion. If the Planning Director fails to respond to an initial written request for approval to a proposed Material Change within sixty (60) days of receiving the initial request, Declarant shall send a second notice of the request, with a statement that failure to respond within twenty (20) days to the second notice will result in a deemed approval of the proposed Material Change. The Director's failure to respond to the second notice within twenty (20) days of receiving the second notice shall be deemed a City approval of the Material Change described in the notices.

In addition to the foregoing paragraph, Declarant shall give the Planning Director at least thirty (30) days advance notice of any proposed Change that is not a Material Change if the hard cost of such proposed modification is anticipated to exceed the Threshold Amount (defined as follows), but the Planning Director shall have no consent rights with respect to such modification. The "**Threshold Amount**" means an amount equal to One Hundred Thousand Dollars (\$100,000), which shall be increased by three percent (3%) on each anniversary of the recordation of this Declaration in the Official Records of San Francisco County.

3. City Regulatory Approvals. Prior to commencing the construction or maintenance of any Publicly Accessible Private Improvements, Changes, or Material Changes, Declarant shall obtain all City approvals Declarant is required to obtain from City for such activities in its regulatory capacity.

4. Use; Operation. On substantial completion of a Publicly Accessible Private Improvement, Declarant shall maintain and make that Publicly Accessible Private Improvement available for the use, enjoyment and benefit of the public for open space and recreational purposes (the "**Permitted Public Use**") in accordance with the regulations attached as Exhibit D ("**Regulations**"). If Declarant closes any Publicly Accessible Private Improvement pursuant to Section 5 of the Regulations, Declarant shall use commercially reasonable efforts to make note of and keep a record

of such closure for at least two (2) years and shall provide a copy of such record to the City's Planning Director on request.

5. Notice and Cure Rights. Except as provided in this Section, City shall provide written notice to the Declarant of any actual or alleged violation of the covenants or restrictions set forth in this Declaration before taking any enforcement action. Such notices shall be given to Declarant at the address last furnished to the City; provided, however, that following completion of a Publicly Accessible Private Improvement, such notices shall be given to any Association (as defined in Section 12 below), the owner of the legal parcel on which such Publicly Accessible Private Improvement is located (the "**Improvement Owner**"), and the owner of the legal parcel of each Building to which such completed Publicly Accessible Private Improvement is associated, as set forth in Exhibit C (the "**Associated Owner**"). Declarant shall have (i) a period of five (5) business days after receipt of such notice to cure any violation in making a Publicly Accessible Private Improvement available for the Permitted Public Use as required in this Declaration ("**Public Access Violations**") and (ii) a period of thirty (30) days after receipt of such notice to cure any other violation, provided that if the violation is not capable of cure within such 30-day period, Declarant shall have such additional time as shall be reasonably required to complete a cure as long as Declarant promptly undertakes action to commence the cure within the 30-day period and thereafter diligently prosecutes the same to completion. The time in which Declarant may cure is herein called the "**Declarant Cure Period**," and except for any Public Access Violations, City shall not exercise any legal or equitable remedies during the Declarant Cure Period (or the Lender Cure Period, as defined in Section 6 below) as long as Declarant (or any applicable Lender, as defined in Section 6 below) is diligently pursuing such cure. Notwithstanding anything to the contrary herein, in no event shall the Declarant Cure Period exceed six (6) months. The City's rights and remedies in this Section 5 shall be subject to the provisions of Section 12 below regarding responsibility for the Publicly Accessible Private Improvements following completion thereof and transfer to an association.

Any notices required or permitted to be given under this Declaration shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows, or such other address as either party may from time to time specify in writing to the other party:

Declarant: c/o The Prado Group, Inc.
150 Post Street, Suite 320
San Francisco, CA 94108
Attn: Dan Safier

City: Planning Director
City and County of San Francisco
1650 Mission Street, Suite 400
San Francisco, CA 94103

with a copy to: Real Estate Division
City and County of San Francisco

25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

and to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance Team

6. Lender Notice and Cure Rights. As long as any deed of trust encumbering any portion of the Project Site made in good faith and for value (each, an "**Encumbrance**") shall remain unsatisfied of record, the City shall give to the beneficiary of such Encumbrance (each, a "**Lender**") a copy of each notice the City gives to Declarant from time to time of the occurrence of a violation under this Declaration if that Lender has given to the City a written request for such notices. Copies of such notices shall be given to any requesting Lender at the address that requesting Lender last furnished to the City. Nothing in this Section shall be construed to mean that City must provide a Lender with a copy of any Self-Help Notices (as defined in Section 7 below).

Each Lender shall have the right, but not the obligation, to do any act or thing required of Declarant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof; provided, however, that no such action shall constitute an assumption by such Lender of the obligations of Declarant under this Declaration. In the case of any notice of violation given by the City to Declarant, the Lender shall have the same concurrent cure periods as are given Declarant under this Declaration for remedying a default or causing it to be remedied and, except in the event of a Public Access Violation, if prior to the expiration of the applicable cure period specified in Section 5 above, a Lender gives City written notice that it intends to undertake the curing of such default or to cause the same to be cured, and then proceeds with all due diligence to do so, Lender shall have, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary) as long as Lender commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of such cure period, or (ii) the date that the City has served such notice of default upon Lender, and the City shall accept such performance by or at the instance of the Lender as if the same had been made by Declarant. The time in which Lender may cure is herein called the "**Lender Cure Period**". Notwithstanding anything to the contrary herein, in no event shall the additional Lender Cure Period exceed six (6) months beyond the applicable Declarant Cure Period.

7. Enforcement. Declarant acknowledges that its failure to construct any required Publicly Accessible Private Improvement in a timely manner or to properly maintain or operate them as required in this Declaration will cause irreparable harm to the City and that the City will not have an adequate remedy at law for such breach. Accordingly, City shall be entitled to specific performance or injunctive or other equitable relief by reason of such breach. City may, in its sole discretion, rely on this Declaration to enforce any of the covenants or restrictions hereunder. City, but not the general public, shall have all rights and remedies available at law or in equity in order

to enforce the covenants and restrictions set forth in this Declaration. All rights and remedies available to City under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy. If there is any breach of the covenants or restrictions hereunder, City shall be entitled to recover all attorneys' fees and costs in connection with City's enforcement activities and actions.

If Declarant fails to maintain a Publicly Accessible Private Improvement in the manner required in this Declaration, and Declarant fails to timely cure such failure pursuant to Section 5 above and no Lender cures such failure pursuant to Section 6 above, City shall further have the right, at its sole option, to remedy such failure at Declarant's expense by providing ten (10) days' prior written notice of City's intention to cure such failure (a "**Self-Help Notice**") to the Association (if any), the applicable Improvement Owner, and the applicable Associated Owner. Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Declarant is obligated to perform. Association shall reimburse City for all of its costs and expenses, including without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such failure (collectively, "**City's Costs**"), within thirty (30) days' of receiving City's invoice for City's Costs, together with documentation reasonably evidencing City's Costs; provided, however, if there is no Association or an existing Association or Improvement Owner fails to timely reimburse City for City's Costs, then the applicable Associated Owner shall reimburse City for City's Costs within thirty (30) days' of receiving City's invoice for City's Costs, together with documentation reasonably evidencing City's Costs. If neither the Association (if any), the applicable Improvement Owner, nor the applicable Associated Owner timely reimburses City for City's Costs, City shall have the right to record a notice of such unpaid costs and expenses against record title to the legal parcel on which the Publicly Accessible Private Improvement is located and the legal parcel of each Building to which such Publicly Accessible Private Improvement is associated, as described in the attached Exhibit C. At City's request, Declarant shall provide security in a form and amount satisfactory to City to ensure Declarant's prompt reimbursement of any amounts owed by Declarant to City pursuant to this Section.

8. Priority of Lien. No violation or breach of any provision of this Declaration shall impair, defeat or invalidate the lien of any Encumbrance, but all provisions hereof shall thereafter be binding upon and effective against any owner whose title is derived through foreclosure of any Encumbrance or acceptance of any deed in lieu of foreclosure.

9. No Waiver. No waiver by City of any violation under this Declaration shall be effective or binding unless and to the extent expressly made in writing by City, and no such waiver may be implied from any failure by City to take action with respect to such violation. No express written waiver of any violation shall constitute a waiver of any subsequent violation in the performance of the same or any other provision of this Declaration.

10. Compliance With Laws. Declarant shall comply with all laws, statutes, ordinances, rules, and regulations of federal, state and local authorities (including, without limitation, City laws of general applicability) having jurisdiction over the Project Site, now in force or hereafter adopted with respect to its use, in the performance of its obligations under this Declaration; provided,

however, such compliance obligation as to City laws shall be subject to the terms and conditions of Section 5.6 of the Development Agreement during the DA Term.

11. Litigation Expenses. If City brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against Declarant or the then-owner(s) of the Project Site by reason of a default, or otherwise arising out of this Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing Party**" shall include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action. Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. For purposes of this Declaration, reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's services were rendered who practice in the City and County of San Francisco, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

12. Binding on Successors; No Merger; Post-Construction Responsibility. This Declaration and the covenants and restrictions set forth herein constitute restrictions and covenants running with the land and shall bind and burden Declarant, in its capacity as owner of the Project Site, and each successor owner and occupier of the Project Site. Declarant may require a residential, commercial or other management association for the Project Site (an "**Association**") to perform its obligations under this Declaration for a completed Publicly Accessible Private Improvement, but Declarant's rights and obligations under this Declaration in maintaining and operating a completed Publicly Accessible Private Improvement shall remain with the applicable Improvement Owner and the applicable Associated Owner.

13. Severability. Should any provision or portion hereof be declared invalid or in conflict with any law, the validity of all remaining provisions shall remain unaffected and in full force and effect.

14. Time. Time is of the essence of this Declaration and each and every part hereof.

15. Term; Amendment. This Declaration shall be effective on the date it is recorded in the Official Records of San Francisco County, shall continue as to each Publicly Accessible Private Improvement for the life of each Building to which it is specifically associated as set forth in Exhibit C; provided, however, that if this Declaration terminates as to only a portion of Walnut Walk North or Walnut Walk South or a portion of Mayfair Walk, the then owner of the legal parcel to the Building to which such portion had been associated shall provide a reasonable connection across such legal parcel to provide for continued public pedestrian access between the remaining portions of Walnut Walk North and Walnut Walk South or the remaining portions of Mayfair Walk, as applicable, all as more specifically set forth in Section 4 (Alternative Pedestrian Access) of Exhibit C (Completion Schedule) to this Declaration. Notwithstanding anything to the contrary in the foregoing sentence, if Declarant does not build any Building at the Project Site during the

DA Term, this Declaration shall automatically terminate on the expiration of the DA Term. This Declaration may be amended or otherwise modified only in a writing signed and acknowledged by Declarant (or its successors in interest to any fee interest of the Project Site) and City.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

17. Recordation. Declarant shall record this Declaration in the Official Records prior to the issuance of the First Construction Document (as defined in San Francisco Building Code Section 107A.13.1(a)(8) for the Project.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Declarant and City have executed this Declaration as of the date first written above.

DECLARANT:

LAUREL HEIGHTS PARTNERS LLC,
a Delaware limited liability company

By: 3333 California LP,
a Delaware limited partnership,
its Manager

By: PSKS LH LLC,
a Delaware limited liability company,
its General Partner

By: Prado LH LLC,
a California limited liability company,
its Manager

By: _____
Name: Dan Safier
Title: Manager

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
[Name], Director of Planning

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By: _____
Carol Wong
Deputy City Attorney

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

State of California)
) ss
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
) ss
County of San Francisco)

EXHIBIT A

Legal Description of Project Site

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

BEGINNING at a point on the Southerly line of California Street, said point being the Easterly extremity of the curve with a 15 foot radius joining the Easterly line of Laurel Street with the Southerly line of California Street, as shown on "Map of Laurel Heights, filed July 28, 1947, in Map Book "P", at Pages 55 and 56" Official Records of the City and County of San Francisco; running thence North 80°54' East 707.375 feet along the Southerly line of California Street to the Southwesterly boundary of the property of the Standard Oil Company of California; thence South 52°36' 29.74 seconds East along said boundary 232.860 feet; thence Southwesterly along the arc of a curve to the right whose tangent deflects 54°14' 30.74 seconds to the right from the preceding course, radius 425 feet, central angle 34°15'59", a distance of 254.176 feet; thence South 35°54' West tangent to the preceding curve 380.066 feet; thence Southwesterly along the arc of a curve to the right, tangent to the preceding course, radius 65 feet, central angle 37°18' a distance of 42.316 feet to tangency with the Northwesterly line of Euclid Avenue; thence South 73°12' West along said line of Euclid Avenue 312.934 feet; thence leaving said line of Euclid Avenue, and running Southwesterly, Westerly, and Northwesterly along the arc of a curve to the right, tangent to the preceding course, radius 20 feet, central angle 100°48' 01.51", a distance of 35.186 feet; thence Northwesterly along the arc of a reverse curve to the left, parallel to and concentric with and radially distant 6 feet Northeasterly from the Northeasterly line of Laurel Street, as shown on said map of Laurel Heights, radius 4033 feet, central angle 5°31' 20.27", a distance of 388.710 feet; thence Northwesterly along the arc of a compound curve to the left, radius 120 feet, central angle 71°12' 55.45", a distance of 149.153 feet; thence Northwesterly along the arc of a reverse curve to the right, radius 60 feet, central angle 73°38' 14.21", a distance of 77.113 feet to tangency with the Easterly line of Laurel Street; thence North 9°06' West along said line of Laurel Street 127.290 feet to the beginning of the above mentioned curve joining the Easterly line of Laurel Street with Southerly line of California Street; thence Northwesterly, Northerly, and Northeasterly along the arc of a curve to the right, radius 15 feet 90°00', a distance of 23.562 feet to tangency with the Southerly line of California Street and the point of beginning.

APN: Lot 003, Block 1032|

EXHIBIT B-1

Description of Buildings

[see attached]

EXHIBIT B-2

Depiction of Buildings and Publicly Accessible Private Improvements



EXHIBIT C

Completion Schedule

Declarant's obligation to construct a Publicly Accessible Private Improvement (as defined below) shall be as follows:

1. Description of Publicly Accessible Private Improvements. Each of the following shall be a “**Publicly Accessible Private Improvement**” and shall collectively be the “**Publicly Accessible Private Improvements**”:

a. California Plaza: An approximately 4,290 square foot plaza adjacent to California Street, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of a combination of quality hardscape, planters and seating elements that are adjacent to the abutting public sidewalk and designed to comply with the City's Better Streets policies.

b. Cypress Square: An approximately 12,052 square foot south-facing plaza that will connect to Cypress Stairs and Mayfair Walk, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of the existing mature and healthy Cypress trees identified in the Project landscape plan submitted to _____ on _____ (the “**Landscape Plan**”), hardscaped walkways, and a central, paved open plaza area with wood decking, seating and landscaping.

c. Cypress Stairs: An approximately 1,255 square foot pedestrian walkway that will connect pedestrians from California Street to Cypress Square, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of stairs with landscaped planters along the edges.

d. Euclid Green: An approximately 18,004 square foot open space with direct access to the sidewalks on Euclid Avenue and Laurel Street, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of a large, naturally sloping lawn with plantings.

e. Mayfair Walk: An approximately 30,605 square foot east-west pedestrian connector that will connect to Mayfair Drive/Laurel Street to the west and the ADA-accessible Pine Street Stairs to Presidio Avenue to the east, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of an approximately twenty foot (20') wide hardscape pathway with landscaped borders and access to ground floor residential units, seating, stairs, landscaping, and the retained mature and healthy oak trees and new trees identified in the Landscape Plan.

f. Presidio Overlook: An approximately 10,450 square foot open space atop Pine Street Stairs that will be an interconnection and scenic area between the east portion of the Mayfair Walk and the Pine Street Stairs, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of a terrace with trees, planters, and seating.

g. Pine Street Steps: An approximately 7,015 square foot pedestrian walkway that will connect the Presidio Overlook to Pine Street and Masonic Avenue, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of stairs with landscaped planters along the edges. .

h. Walnut Drive and Walnut Court: Approximately 17,825 square feet of open space that will provide direct access to California Street, Mayfair Walk and Walnut Walk, located in the general area depicted in the attached Exhibit B-2. The Walnut Drive improvements will consist of a hardscaped roadway with tree-lined hardscape pedestrian walkways on either side of the paved area, and the Walnut Court improvements will consist of a tree-lined hardscaped vehicular turnaround plaza with a tree feature at the center.

i. Walnut Walk North: Approximately 6,880 square feet of open space that will run through the center of the Project Site from Walnut Court to the southern boundary of the future legal parcels created for Plaza Building A and Plaza Building B, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of an approximately twenty foot (20') wide hardscaped pedestrian pathway with a network of landscaped open spaces and seating. Once Walnut Walk North and Walnut Walk South are completed, they will collectively create the main north-south public pedestrian connection through the Project Site between Masonic and Euclid Avenue to Walnut Court.

j. Walnut Walk South: Approximately 16,850 square feet of open space that will run through the center of the Project Site from the southern boundary of the future legal parcels created for Plaza Building A and Plaza Building B and the intersection at Masonic Avenue and Euclid Avenue, located in the general area depicted in the attached Exhibit B-2. The improvements will consist of an approximately twenty foot (20') wide hardscaped pedestrian pathway with a network of landscaped open spaces and seating. Once Walnut Walk North and Walnut Walk South are completed, they will collectively create the main north-south public pedestrian connection through the Project Site between Masonic and Euclid Avenue to Walnut Court.

k. Alternative Pedestrian Access Paths: Any path constructed under Section 4 below.

2. Installation Schedule. An “**Occupancy Certificate**” means a certificate of occupancy, including any temporary certificate of occupancy. Subject to Section 3 below, Declarant shall complete the construction of the Publicly Accessible Private Improvements as follows:

a. California Plaza. Declarant shall complete construction of California Plaza before the issuance of an Occupancy Certificate (as defined below) for any non-retail portion of the Plaza A Building, which is described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2. Once completed, California Plaza shall be associated with the Plaza A Building.

b. Cypress Square. Declarant shall complete construction of Cypress Square before the issuance of an Occupancy Certificate for any non-retail portion of the Plaza B Building, which is described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2. Once completed, Cypress Square shall be associated with the Plaza B Building.

c. Cypress Stairs. Declarant shall complete construction of the Cypress Stairs before the issuance of an Occupancy Certificate for any non-retail portion of the later of the Plaza A Building or the Plaza B Building. Once completed, Cypress Stairs shall be associated with the Plaza A Building and the Plaza B Building.

d. Euclid Green. Declarant shall complete construction of Euclid Green before the issuance of an Occupancy Certificate for the Project's final Building; provided, however, that if the Declarant receives an Occupancy Certificate for any Building without completing all proposed Buildings during the DA Term, then Euclid Green shall be completed by the end of the DA Term. Once completed, Euclid Green shall be associated with the Euclid Building or, if the Euclid Building has not been constructed, it shall be associated with the legal parcel of the constructed multi-unit Building (excluding the Mayfair Building and the Townhomes) that is closest to Euclid Green on the expiration of the DA Term.

e. Mayfair Walk. Declarant shall complete construction of Mayfair Walk in the following segments:

i. The segment adjacent to the Mayfair Building (described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2) and the Plaza A Building must be completed before the issuance of an Occupancy Certificate for any non-retail portion of the later of Mayfair Building or the Plaza A Building. Once completed, such segment shall be associated with the Mayfair Building and the Plaza A Building.

ii. The segment adjacent to the Mayfair Building and the Plaza A Building must be completed before the issuance of an Occupancy Certificate for any non-retail portion of the later of Mayfair Building or Plaza A Building. Once completed, such segment shall be associated with the Mayfair Building and the Plaza A Building.

iii. The segment adjacent to the Plaza B Building and the Center A Building (described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2) must be completed before the issuance of an the Occupancy Certificate for any non-retail portion of the later of the Plaza B Building or the Center A Building, and the completion of the Center B Building, as applicable. Once completed, such segment shall be associated with the Plaza B Building and the Center A Building.

f. Pine Street Steps. Declarant shall complete construction of the Pine Street Steps before the issuance of an Occupancy Certificate for any non-retail portion of the Center Building B. Once completed, the Pine Street Steps shall be associated with Center Building B.

g. Presidio Overlook. Declarant shall complete construction of the Presidio Overlook before the issuance of an Occupancy Certificate for any non-retail portion of the Center Building B. Once completed, Presidio Overlook shall be associated with Center Building B.

h. Walnut Drive and Walnut Court. Declarant shall complete construction of Walnut Drive and Walnut Court before the later to occur of the issuance of an Occupancy Certificate for any non-retail portion of the Plaza B Building or the Walnut Affordable Housing Building

(described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2). Once completed, Walnut Drive and Walnut Court shall be associated with the Plaza B Building and the Walnut Affordable Housing Building.

i. Walnut Walk North. Declarant shall complete construction of Walnut Walk North before the later to occur of the issuance of an Occupancy Certificate for any non-retail portion of the Center A Building or the Center B Building. Once completed, Walnut Walk North shall be associated with the Center A Building and the Center B Building

j. Walnut Walk South. Declarant shall complete construction of Walnut Walk South before the later to occur of the issuance of an Occupancy Certificate for any non-retail portion of the Euclid Building (described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2) or the Masonic Building (described on the attached Exhibit B-1 and depicted on the attached Exhibit B-2). Once completed, Walnut Walk South shall be associated with the Euclid Building and the Masonic Building.

3. Delayed Completion. Notwithstanding anything to the contrary in Section 2 above, if Declarant wishes to receive the first Occupancy Certificate for the non-retail portion of any of the buildings described in Section 2 above before completing its associated Publicly Accessible Private Improvement, Declarant may complete that associated Publicly Accessible Private Improvement at a later time by providing to the City, prior to issuance of the first Occupancy Certificate for any non-retail portion of that building, a surety performance bond or other security in form acceptable to the City and in an amount equal to 100% of the reasonably estimated cost to complete that Publicly Accessible Private Improvement as required in this Declaration, and shall diligently and continuously pursue that Publicly Accessible Private Improvement to completion following which such bond will be released.

4. Alternative Pedestrian Access. If Declarant receives an Occupancy Certificate for any Building without completing all proposed Buildings during the DA Term that would otherwise require the completion of Walnut Walk North, Walnut Walk South, and Mayfair Walk as described above, then Declarant, in conjunction with the Planning Department, shall design an alternative plan for pedestrian access that seeks to achieve similar pedestrian access and widths as Walnut Walk North, Walnut Walk South, and Mayfair Walk, but takes into account then then-current on-site conditions, including locations of improvements and the Project Site's topography, and the Declarant shall construct such alternative plan improvements prior to the end of the DA Term. On their substantial completion, such alternative plan improvements shall be a Publicly Accessible Private Improvement and the portion of the Project Site improved with such alternative plan improvements shall be a Publicly Accessible Private Improvement.

EXHIBIT D

Regulations Regarding Access and Maintenance of Publicly Accessible Private Improvements

These Regulations Regarding Access and Maintenance of Publicly Accessible Private Improvements (these “Regulations”) shall govern the use, maintenance, and operation of each completed Publicly Accessible Private Improvement as defined in the attached Exhibit C.

1. Permitted Uses. Upon completion of a Publicly Accessible Private Improvement in accordance with this Declaration, Declarant shall make that Publicly Accessible Private Improvement available for the use, enjoyment and benefit of the public for open space and recreational purposes in accordance with these Regulations, including, without limitation, (i) quiet contemplation and rest without the use of audible electronic devices (although headphones are permitted), (ii) pedestrian access through the Project Site from one Project Site boundary to the others (bicycles, scooters, skateboards and the like to be walked, not ridden on site for safety reasons), and (iii) short term use of designated seating areas (excluding planter walls and/or landscaped areas). These Regulations do not require Declarant to make its Publicly Accessible Private Improvement available to the public for more than open space and recreational purposes.
2. Prohibited Use. The following shall be prohibited in any Publicly Accessible Private Improvement, (i) smoking of any form, including cigarettes, cigars, pipes, e-cigarettes and smokeless cigarettes (including tobacco or other controlled substances), (ii) consumption or possession of open alcoholic beverages (unless permitted by special permit), (iii) camping or sleeping, (iv) climbing or affixing items to trees, other landscaping, furniture or infrastructure, (v) disorderly conduct, as defined in Article 4 of the City’s Park Code, as amended from time to time, (vi) building fires or cooking (unless permitted by special permit), (vii) peddling or vending merchandise (unless permitted by special permit), (viii) temporary structures or installations (unless permitted by special permit), (ix) littering or dumping of waste, (x) removal of plants, soil, furniture, or other facilities of the open space, (xi) graffiti or the damage or destruction of property, and (xii) amplified sound. Declarant may limit off-leash animals to designated areas but shall permit leashed animals, including leashed service animals, in the Publicly Accessible Private Improvements. Organized sporting events are not permitted in the Publicly Accessible Private Improvements due to their slope and limited size. However, active recreation (e.g., kicking a soccer ball or throwing a football) among groups of up to four (4) people shall be permitted on Euclid Green provided it does not endanger other users of Euclid Green. Declarant may use a completed Publicly Accessible Private Improvement for temporary construction staging related to adjacent development on the Project Site (during which time the subject Publicly Accessible Private Improvement shall not be used by the public) to the extent that such construction is contemplated under, and performed in accordance with, the Development Agreement, the Approvals (as defined in the Development Agreement), and any Later Approvals (as defined in the Development Agreement).
3. No Discrimination. Declarant shall not discriminate against or segregate any person, or group of persons, on account of the basis of fact or perception of a person’s race, color,

creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or acquired immune deficiency syndrome, HIV status, weight, height, medical condition, or association with members of any of the foregoing classes, in the use, occupancy, tenure, or enjoyment of a Publicly Accessible Private Improvement.

4. Maintenance Standard. Each Publicly Accessible Private Improvement shall be operated, managed, and maintained in a clean and safe condition in accordance with the anticipated and foreseeable use thereof.
5. Temporary Closure. Declarant shall have the right, without obtaining the prior consent of the City or any other person or entity, to temporarily close a Publicly Accessible Private Improvement to the public from time to time for one of the following two reasons. In each instance, such temporary closure shall continue for as long as Declarant reasonably deems necessary to address either of the circumstances below:
 - a. Emergency; Public Safety. In the event of an emergency or danger to the public health or safety created from whatever cause (including, but not limited to, flood, storm, fire, earthquake, explosion, accident, criminal activity, riot, civil disturbances, civil unrest, unlawful assembly, or loitering). Declarant may temporarily close a Publicly Accessible Private Improvement (or affected portions thereof) in any manner deemed necessary or desirable to promote public safety, security, and the protection of persons and property.
 - b. Maintenance and Repairs. Declarant may temporarily close a Publicly Accessible Private Improvement (or affected portions thereof) in order to make any repairs or perform any maintenance as Declarant, in its reasonable discretion, deems necessary or desirable to repair, maintain, or operate that Publicly Accessible Private Improvement; provided such closure may not impede emergency vehicle access.
6. Operation of the Publicly Accessible Private Improvement. Each Publicly Accessible Private Improvement shall be open and accessible to the public seven (7) days per week during the daylight hours (or 30 minutes prior to sunset) (the "Operating Hours"), unless reduced hours are (i) approved in writing by the City, (ii) otherwise expressly provided for in this Declaration (including, without limitation, Paragraphs 4 and 5(b) of these Regulations), or (iii) reasonably imposed by Declarant, with the City's reasonable consent, to address security concerns. None of the Publicly Accessible Private Improvements shall be closed to the public during Operating Hours for special events. No person shall enter, remain, stay, or loiter in a Publicly Accessible Private Improvement when it is closed to the public, except persons authorized in conjunction with a temporary closure, authorized service and maintenance personnel, or an authorized resident, guest or employee of the project.
7. Signs. Declarant shall post signs at the major public entrances to each Publicly Accessible Private Improvement, indicating that it is a privately-owned public open space in accordance with all laws and signage requirements. The signs, at a minimum, shall indicate the public right to use the space in accordance with these Regulations, setting

forth the applicable regulations imposed by these Regulations, hours of operation, and a telephone number to call regarding security, management or other inquiries.

8. Permissive Use. Declarant may post at each entrance to each Publicly Accessible Private Improvement, or at intervals of not more than 200 feet along the boundary, signs reading substantially as follows: "Right to pass by permission, and subject to control of owner: Section 1008, Civil Code." Notwithstanding the posting of any such sign, no use by the public nor any person of any portion of the Publicly Accessible Private Improvement for any purpose or period of time shall be construed, interpreted, or deemed to create any rights or interests to or in the Publicly Accessible Private Improvement other than the rights and interests expressly granted in this Declaration. The right of the public or any person to make any use whatsoever of a Publicly Accessible Private Improvement or any portion thereof is not meant to be an implied dedication for the benefit of, or to create any rights or interests in, any third parties.
9. Arrest or Removal of Persons. Declarant shall have the right (but not the obligation) to use all lawful means to effect the removal of any person or persons who creates a public nuisance or causes safety concerns for the occupants or neighbors of the Project, or who otherwise violates the applicable rules and regulations, or who commits any crime including, without limitation, infractions or misdemeanors, in or around a Publicly Accessible Private Improvements. To the extent permitted by law, Declarant may prohibit members of the public who have repeatedly broken the Regulations in any material respect from entering the Publicly Accessible Private Improvements, and if such person enters a Publicly Accessible Private Improvement, may ask such person to leave the Publicly Accessible Private Improvement. Declarant shall have the right to exercise its power and authority as owner consistent with other publicly accessible but privately-owned areas in the City, such as other privately owned public open space.
10. Project Security During Period of Non-Access. Declarant shall have the right to block entrances to install and operate security devices and to maintain security personnel in and around the Publicly Accessible Private Improvements to prevent the entry of persons or vehicles during the time periods when public access to a Publicly Accessible Private Improvement or any portion thereof is restricted or not permitted. Subject to the access requirements for City's emergency vehicles, as described in the Subdivision Map, and Declarant's obligations under Applicable Law, Declarant shall have a right to install permanent architectural features that serve as security devices such as gates, fences and bollards, and close such devices during non-operating hours or during periods of closure as identified in these Regulations. Design of such devices shall be subject to approval by the San Francisco Planning Department which shall not be unreasonably withheld and subject to any permits required under Applicable Law. Such design review by the San Francisco Planning Department shall not be construed as a change in entitlement and shall not be subject to a planning application or require a separate entitlement. It shall not be unreasonable for the Planning Department to withhold its consent if any such devices would impede emergency access that may be required under Applicable Law or in the Approvals. Nothing shall restrict Declarant's right to install security cameras and monitoring devices anywhere on the Project.

11. Removal of Obstructions. Declarant shall have the right to remove and dispose of, in any lawful manner it deems appropriate, any object or thing left or deposited on a Publicly Accessible Private Improvement deemed to be an obstruction, interference, or restriction of use of that Publicly Accessible Private Improvement for the purposes set forth in this Declaration, including, but not limited to, personal belongings or equipment in a Publicly Accessible Private Improvement during hours when public access is not allowed pursuant to these Regulations.
12. Temporary Structures. Subject to Declarant's right to use a Publicly Accessible Private Improvement for temporary construction staging related to adjacent development as set forth in Paragraph 1 of these Regulations, no trailer, tent, shack, or other outbuilding, or structure of a temporary character, shall be used on any portion of the Publicly Accessible Private Improvements at any time during Operating Hours, either temporarily or permanently.

Exhibit D

Affordable Housing Program

This Exhibit D describes the affordable housing program for the Project (the “**Housing Plan**”). All initially-capitalized, undefined terms used in this Exhibit D shall have the meanings given to them in the Development Agreement to which it is attached.

Recognizing the City’s pressing need for housing – market rate and affordable - the Developer has agreed to (1) increase the total number of residential units for the Project from the 558 residential units initially proposed to 744 residential units; (2) construct 185 studio and one-bedroom affordable residential units for Senior Households at the Project Site (the “**BMR Units**”) in order to make 25% of the Project residential units affordable, rather than the Section 415 (as defined below) requirement of providing 18% on-site affordable residential units or paying the City in-lieu affordable housing fees, together with 1 Manager Unit (as defined below); and (3) fund all predevelopment costs and gap financing required to complete the BMR Units.

The BMR Units will be deed-restricted to be affordable to qualified senior households with an average income not more than 59% of MOHCD AMI (as defined below) and will be constructed before the Developer can receive a CofO (as defined below) on more than three hundred eighty-six (386) Market Rate Units (as defined below).

1. **Definitions.**

“**Adjustment Date**” means each anniversary of the Effective Date.

“**Affordable Housing Developer**” means Mercy Housing California, a non-profit California corporation, or any other non-profit affordable housing developer with experience developing and operating affordable housing in San Francisco.

“**Affordable Rent**” means a monthly rental charge for a BMR Unit (including the Utility Allowance applicable to the Household Size of such BMR Unit but excluding parking charges if a Parking Space is allocated to such BMR Unit) that does not exceed thirty percent (30%) of the maximum MOHCD AMI permitted for such BMR Unit, based on Household Size.

“**Approved Legal Description**” means a legal description of the Walnut Land that substantially conforms to the depiction attached as Attachment D-1 and is approved by the City’s Director of Property and the MOHCD Director.

“**CofO**” means a first certificate of occupancy issued by City’s Department of Building Inspection, including any temporary certificate of occupancy.

“**CPI Increase**” means, for the first Adjustment Date, the difference between the published CPI Index in effect at the time of the first Adjustment Date and the published CPI Index in effect at the time of the Effective Date. For each following Adjustment Date, the “CPI Increase” means the difference between the published CPI Index in effect at the time of an

applicable Adjustment Date and the published CPI Index in effect at the time of the immediately-preceding Adjustment Date.

“CPI Index” means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics or, if the Consumer Price Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

“Development Agreement” shall mean the body of the Development Agreement to which this Housing Plan is attached.

“Development Fee Deferral Surcharge Rate” means an amount determined by DBI under Building Code Section 107A.13.3.2.

“First Construction Document” shall be as defined in San Francisco Building Code Section 107A.13.1(a)(8).

“Fair Market Value” shall have the meaning given such term in Attachment D-2.

“Household” means one or more related or unrelated individuals who live together or intend to live together in a Senior Unit as their primary dwelling.

“Household Size” means the number of persons in a Household as calculated under the MOHCD Manual.

“Housing Entity” means a limited partnership with the Affordable Housing Developer (or a subsidiary entity owned or controlled by Affordable Housing Developer) as the general partner.

“HUD” means the United States Department of Housing and Urban Development, or any successor agency.

“LIHTC” means the federal low income housing tax credit 4% program.

“Manager Unit” means the 2-bedroom unit for the Walnut Affordable Housing Building manager.

“Market Rate Unit” means any Project Site residential unit that is not a BMR Unit.

“MOHCD AMI” means median income as published annually by MOHCD, which is derived from the income limits determined by HUD for the San Francisco area, adjusted solely for household size but not high housing cost area. If HUD ceases to publish such data for 18 or more months, MOHCD and the Housing Entity will make good faith efforts to agree on other publicly available and credible substitute data for MOHCD AMI.

“MOHCD Director” means the Director of the Mayor’s Office of Housing and Community Development.

“MOHCD Manual” means the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual, as published by MOHCD and as updated from time to time.

“Outside Date” means the 12th anniversary of the Effective Date.

“Ownership Gap Fee” means an amount equal to (i) the Gross Floor Area (as defined in Planning Code Section 401) for an applicable ownership Market Rate Unit multiplied by (ii) an amount equal to, at the time of calculation, (A) *[insert an amount equal to MOHCD’s published under Planning Code Section 415.5(b)(2) as of the effective date of the BOS legislation approving the Development Agreement, currently \$199.50 per square foot of Gross Floor Area of residential use]*, which shall be adjusted each anniversary of the Effective Date by the CPI Increase multiplied by (B) the lower of (1) *[insert an amount equal to Planning Code Section 415.5 percentage for ownership units as of the effective date of the BOS legislation approving the Development Agreement]* and (2) the percentage of off-site affordable ownership units that would otherwise be used for the Project if calculated under Planning Code Section 415.5(b).

“Parking Space” means a parking space assigned to a Senior Unit.

“Property Covenants” is defined in Section 2.A.

“Rental Gap Fee” means an amount equal to (i) the Gross Floor Area (as defined in Planning Code Section 401) for an applicable rental Market Rate Unit multiplied by (ii) an amount equal to, at the time of calculation, (A) *[insert an amount equal to MOHCD’s published under Planning Code Section 415.5(b)(2) as of the effective date of the BOS legislation approving the Development Agreement, currently \$199.50 per square foot of Gross Floor Area of residential use]*, which shall be adjusted each anniversary of the Effective Date by the CPI Increase, multiplied by (B) the lower of (1) *[insert an amount equal to Planning Code Section 415.5 percentage for rental units as of the effective date of the BOS legislation approving the Development Agreement]* and (2) the percentage of off-site affordable rental units that would otherwise be used for the Project if calculated under Planning Code Section 415.5(b).

“Section 415” means the City’s Inclusionary Affordable Housing Program (Planning Code Sections 415 and 415.1 through 415.11), as amended from time to time.

“Senior Households” means a household that is 62 years old or older, or as otherwise defined by the requirements of any funding source used to construct or operate the Walnut Affordable Housing Building.

“Substantially Completed” means, with respect to any Senior Unit, the issuance of a CofO for that Senior Unit.

“Tax Credit Closing” means the date by which the Housing Entity has received (i) an LIHTC allocation for the Walnut Affordable Housing Building and (ii) all financing needed to commence and complete the construction of the Walnut Affordable Housing Building.

“Title Policy” is defined in Section 4.F.

“Utility Allowance” means a dollar amount determined in a manner acceptable to the California Tax Credit Allocation Committee, which may include an amount published periodically by the San Francisco Housing Authority or successor based on standards established by HUD, for the cost of basic utilities for households, adjusted for Household Size. If both the San Francisco Housing Authority and HUD cease publishing a Utility Allowance, then Developer may use another publicly available and credible dollar amount approved by MOHCD.

“Walnut Affordable Housing Building” is defined in Section 2.A.

“Walnut Child Care Parcel” is defined in Section 2.A.

“Walnut Housing Parcel” is defined in Section 2.A.

“Walnut Retail Parcel” is defined in Section 2.A.

“Walnut Land” is defined in Section 2.A.

2. Walnut Affordable Housing Building

A. Description. The 185 BMR Units and the Manager Unit will all be located in a single residential building (the **“Walnut Affordable Housing Building”**) that will be located within a condominium parcel (the **“Walnut Housing Parcel”**) on the portion of the Project Site depicted as the “Walnut Land” on Attachment D-1 (the **“Walnut Land”**). The Walnut Affordable Housing Building will be comprised only of the BMR Units, the Manager Unit (which shall only be occupied by the Walnut Affordable Housing Building manager or, to the extent permitted under law, other property management staff), and the common and parking area for the BMR Units and Manager Unit. A condominium parcel for retail uses (the **“Walnut Retail Parcel”**) and a condominium parcel for child care uses (the **“Walnut Child Care Parcel”**) will also be located on the Walnut Land. The Walnut Housing Parcel, the Walnut Retail Parcel, and the Walnut Child Care Parcel will be created through a final map prepared under the Tentative Map as required in the Subdivision Map.

Before obtaining a First Construction Document for any portion of the Project or transferring the Walnut Land or the Walnut Housing Parcel to the Housing Entity, the Developer shall obtain legal descriptions for the Walnut Housing Parcel and the Walnut Child Care Parcel that are reasonably acceptable to City, cause the Walnut Land to be made a separate legal parcel, and record a declaration of restrictions (in a form approved by City and using such approved legal descriptions) that limits the use of the Walnut Housing Parcel to the construction and operation of the Walnut Affordable Housing Building and the Walnut Child Care Parcel to the construction and operation of a child care facility. In connection with the development of the Project, Developer shall have the right to enter into commercially reasonable licenses, easements, covenants, conditions and restrictions, reciprocal easement agreements, and similar agreements that affect the Walnut Housing Parcel to the extent necessary for the use or operation of any portion of the Walnut Housing Parcel (each, a **“Property Covenant”**); provided, however, that (i) Developer shall deliver the final version of each proposed Property Covenant to the MOHCD Director at least thirty (30) days before it is fully executed or recorded in the

Official Records of San Francisco County and (ii) all maintenance, repair, replacement and installation costs to be paid under a Property Covenant for the common area benefitting the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel shall be proportionately allocated to the owners of the Walnut Retail Parcel, the Walnut Housing Parcel, and the Walnut Child Care Parcel based on the relative size of their respective parcel or any other commercially reasonable allocation that is approved in advance by the MOHCD Director, which approval shall not be unreasonably withheld.

B. Housing Entity. Before commencing the construction of the Project's first Market Rate Unit, the Housing Entity will be formed and the Developer will contribute the Walnut Housing Parcel (subject to the requirements of the Development Agreement) to the Housing Entity. As a non-profit affordable housing developer and operator, the Affordable Housing Developer will operate the Walnut Affordable Housing Building to only serve Senior Households with incomes below 80% of MOHCD AMI, with an overall average of not more than 59% of MOHCD AMI.

C. Financing. The Housing Entity will structure equity and debt financing for construction, and the Developer will fund all predevelopment costs and gap financing required to complete the construction, of the Walnut Affordable Housing Building. The Housing Entity will seek LIHTC and City-issued tax-exempt bond financing for construction. The Developer or the Housing Entity may apply to the following state funding programs for constructing the Walnut Affordable Housing Building without the City's prior written consent: the Multifamily Housing Program (MHP) and the Infill Infrastructure Grant Program (IIG). At the time of such application, the Developer or the Housing Entity shall provide the MOHCD Director with written notification of such application and a commitment that the award of such funding would lower the average MOHCD AMI for the Walnut Affordable Housing Building. Neither the Developer nor the Housing Entity can seek other federal or other state resources for constructing the Walnut Affordable Housing Building without the prior written consent of the MOHCD Director, which consent may be withheld if the award of such funding would not result in a lower average MOHCD AMI for the Walnut Affordable Housing Building or applying for the proposed funding would compete with the application of a MOHCD-supported project. A failure to obtain LIHTC, MHP, IIG, or non-competitive federal or state resources for constructing the Walnut Affordable Housing Building shall not decrease the Developer's affordable housing or other obligations under the Development Agreement. City has no obligation to provide any funding for the Walnut Affordable Housing Building. Developer may collaborate with other entities to obtain additional funding sources to the extent that those sources contribute to the feasibility, production speed, or increase the affordability of the Walnut Affordable Housing Building

D. Project Phasing. The Developer may not obtain CofO for more than three hundred eighty-six (386) Market Rate Units until DBI issues a CofO for the Walnut Affordable Housing Building. In addition, the Developer must obtain a CofO for the Walnut Affordable Housing Building before the expiration of the Term.

E. Equivalency. The Walnut Affordable Housing Building shall be substantially equivalent to the Project's other multi-unit residential buildings in exterior appearance and overall quality of construction. All BMR Units must be wired for telephone, cable, and internet

access and have substantially equivalent interior features and amenities (e.g. balconies, outdoor patios, number of bathrooms) as the studio and 1-bedroom rental Market Rate Units. Equivalency shall be guided by the MOHCD Manual as applicable to this Housing Plan, except that the terms set forth in the Development Agreement (including this Housing Plan) shall prevail (including the parties' agreement that all BMR Units will be studio or 1-bedroom residential units located in the Walnut Affordable Housing Building).

F. Rental; Affordability. The initial rental and re-rental of the BMR Units shall comply with the lottery preferences and other provisions utilized by MOHCD under the MOHCD's Housing Preferences and Lottery Procedures Manual, as published by MOHCD and as each may be updated from time to time, to the extent permitted by law, and the reporting and monitoring requirements of the MOHCD Manual, to the extent permitted by law. The BMR Units must be provided at Affordable Rents and in accordance with the rent requirements in the MOHCD Manual and MOHCD's Hold Harmless Policy for MOHCD's Income Limits and Maximum Rents, effective as of May 3, 2019, as may be updated from time to time. The Developer or the Housing Entity shall record affordability and leasing restrictions that are senior to any financing documents and remain in effect for the life of the Walnut Affordable Housing Building against each of the BMR Units, in a form and priority approved by MOHCD, before their occupancy. The Housing Entity shall carry appropriate insurance to allow for the reconstruction of the Walnut Affordable Housing Building if there is any damage or casualty.

G. Outreach. Given the Project's Site's location, the Parties desire that, to the greatest extent permitted by MOHCD's then-applicable policies and procedures, pre-marketing and marketing programs for BMR Units target residents of Supervisorial District 2 and/or residents residing within three-quarter (0.75) miles of the Project Site. In addition, the Parties desire that residents of District 2 and residents residing within three-quarter (0.75) miles of the Project Site be given the maximum neighborhood preference for leasing of BMR Units permitted under MOHCD's then-applicable policies and procedures.

H. Planning Code Section 415. Except for Planning Code Section 415.6(a)-(f), (h) and (i), the Parties shall implement affordable housing requirements for the Walnut Affordable Housing Building that incorporate the provisions of Planning Code Section 415 and the MOHCD Manual. The following changes shall be deemed to conflict with the Development Agreement and therefore shall not apply to the Project: (i) any increase in the required number or percentage of affordable housing units beyond what is required by the Development Agreement; and (ii) any change in the minimum or maximum AMI percentage levels for the affordable housing pricing or income eligibility. The Parties acknowledge and agree that MOHCD will monitor and enforce the requirements applicable to BMR Units under this Housing Plan in accordance with Planning Code Section 415.9, except that all references to Section 415 will be deemed to refer to the requirements under this Housing Plan. To the extent there are implementation issues that have not been addressed in this Housing Plan, then the provisions of Section 415 and the MOHCD Manual shall govern and control such issues.

3. Fees. Before obtaining a First Construction Document for any portion of the Project, the parties shall select a mutually-agreeable third-party escrow (the "**Escrow Account**") to hold and disburse the Rental Gap Fees and Ownership Gap Fees under the requirements of this Housing Plan. Subject to the last sentence of this Section, for each Market Rate Unit the Developer

commences to construct before the Tax Credit Closing, the Developer shall, at its sole election, either deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit in the Escrow Account before obtaining a First Construction Document for that unit, or deposit an amount equal to the Rental Gap Fee or Ownership Gap Fee, as applicable, for that unit and the Development Fee Deferral Surcharge for such Rental Gap Fee or Ownership Gap Fee (as calculated by DBI at the time of the Developer deposits such Rental Gap Fee or Ownership Gap Fee) in the Escrow Account between obtaining the First Construction Document and the CofO for that unit.

At any time within thirty (30) days after Developer's written request (accompanied by reasonable supporting materials), City shall authorize the release of funds from the Escrow Account to reimburse Developer for reasonable and customary Walnut Affordable Housing Building pre-development costs incurred prior to the Tax Credit Closing, such as, but not limited to, design drawings, schematic drawings, and commercially reasonable costs for financing that expedites the construction of the Walnut Affordable Housing Building. If the Tax Credit Closing occurs, all remaining funds in the Escrow Account needed to finance the construction of the Walnut Affordable Housing Building shall be disbursed to pay construction and development costs that are approved by the Walnut Affordable Housing Building construction lender at the time such costs are due and payable. If the Developer provides reasonable documentation to City that there are excess Escrow Account funds that are not required to finance the construction of the Walnut Affordable Housing Building, such excess Escrow Account funds shall be disbursed to the Developer.

If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, then City shall have the right to receive the Escrow Account funds by delivering written notice to the Escrow Account holder any time after the Outside Date for deposit in City's Citywide Affordable Housing Fund established in San Francisco Administrative Code Section 10.100-49. Within three (3) business days of receiving such written notice, the Escrow Account holder shall deliver the funds to the address specified by the MOHCD Director.

4. Transfer of Walnut Land to City.

A. Transfer Notice. If the Tax Credit Closing does not occur by the Outside Date, subject to extension for any applicable Excusable Delay, and construction of any Building occurs during the Term, then City shall have the right to acquire, and Developer agrees to transfer to the City, fee ownership of the Walnut Land pursuant to the form of grant deed (the "**Grant Deed**") attached as Attachment D-3, with the Approved Legal Description attached to it as Exhibit A. City shall have the right to exercise its right to acquire the Walnut Land by giving Developer, between the Outside Date and the last day of the Term, written notice of the City's request to acquire the Walnut Land pursuant to this Section (the "**Transfer Notice**"). If City receives the Walnut Land pursuant to this Section, and Developer later obtains all financing needed to commence and complete construction of retail improvements on the Walnut Retail Parcel (or child care improvements on the Walnut Child Care Parcel) prior to City's receipt of a First Construction Document for the Walnut Affordable Housing Building, City shall transfer fee ownership of the Walnut Retail Parcel or the Walnut Child Care Parcel, as applicable, to Developer within ten (10) business days of Developer's receipt of a First Construction Document for such improvements.

B. Developer's Representations. Developer represents that it has the full right to make the commitments set forth in this Section without the consent or approval of any third party (or, if required, Developer has obtained all necessary consents and approvals).

C. Subordination; Condition of Title. The rights of any Mortgagee secured by a Mortgage that encumbers all or part of the Walnut Land shall be subordinate to the City's rights under this Housing Plan. The City accepts the condition of the Walnut Land's title subject only to the matters described on the attached Attachment D-4, any additional matter that is approved in writing by the MOHCD Director in his or her sole and absolute discretion, and any Property Covenant that complies with the requirements of Section 2.A above. Developer further agrees to deliver the Walnut Land to the City generally in the condition that it is in on the Effective Date, provided it shall be free of all tenants and occupants. The Developer agrees that all contracts entered into by the Developer relating to the Walnut Land shall be terminated by Developer, at no cost to City, on or before the transfer unless the City agrees to assume the same.

D. Cooperation. The Developer agrees to cooperate with City and to take all such actions as may be needed to promptly transfer the Walnut Land to City as set forth in this Section. To secure the Developer's obligations under this Section, before obtaining a First Construction Document for any portion of the Project or transferring the Walnut Land or the Walnut Housing Parcel to the Housing Entity, the Developer shall deliver a duly executed and acknowledged deed of trust to the City in substantially the form attached as Attachment D-5, with the Approved Legal Description attached to it as Exhibit A. City shall have the right to record the deed of trust in the Official Records of San Francisco County. There will be no conditions or City obligations relative to the Developer's transfer of the Walnut Land to City, and the form of any other transfer documents other than the Grant Deed needed to transfer fee ownership of the Walnut Land to City in the manner contemplated in this Section (collectively, the "**Transfer Documents**") will be subject to the reasonable approval of the Director of Property and the MOHCD Director, following consultation with the City Attorney's Office. By approving the Development Agreement, the City's Board of Supervisors authorizes the City's Director of Property and the MOHCD Director to enter into the Transfer Documents, if any, without additional action by City's Board of Supervisors as long as the Transfer Documents are consistent with the terms outlined in this Section.

E. Costs and Fees. The Developer shall pay (1) all actual costs incurred by the City relating to the negotiation of Transfer Documents, if any, and all transfer taxes, recording fees, and escrow fees, and (2) the premium for the CLTA Title Policy. The Developer shall further indemnify the City for all costs and losses, including reasonable attorney's fees and costs, resulting from (i) any claim with respect to the Walnut Land relating to the period before the transfer of the Walnut Land to City, (ii) any contest to the Developer's right to transfer the Walnut Land as contemplated by this Section, and (iii) any failure by the Developer to satisfy the requirements of this Section. This indemnification shall survive the transfer of the Walnut Land to City.

F. Closing. The Developer shall have a period of 60 days after Developer's receipt of the Transfer Notice (the "**Closing Period**") to (i) provide to City a CLTA policy of title

insurance, insuring City's fee interest in the Walnut Land in an amount equal to the fair market value of the Walnut Land, as reasonably determined by City, with only the exceptions permitted under Section 4.C above (the "**Title Policy**"), and (ii) to execute and deliver the Grant Deed and the Transfer Documents, if any, to City. Within 7 days after the City's receipt of the Title Policy, the duly executed and acknowledged Grant Deed, and, if any, the Transfer Documents, duly executed and acknowledged as applicable, City shall execute and return one (1) fully executed original of any Transfer Document to the Developer.

G. City's Remedies. If the Developer fails to transfer the Walnut Land to City in accordance with this Section, then City shall have the right to specific performance to compel the transfer of the Walnut Land to City in accordance with this Section or to exercise its rights under the Deed of Trust to foreclose and take title to the Walnut Land. Following any specific performance to transfer the Walnut Land to City or any foreclosure of the Walnut Land by City under the Deed of Trust, Developer's obligations under this Section shall be satisfied; provided if the Developer is not able to transfer the Walnut Land to City in the condition required by this Section (a "**Condition Preventing Transfer**"), then City, as its sole remedy for a Condition Preventing Transfer, shall instead accept an in lieu payment in the amount of Fair Market Value. City's exercise of its remedy for a Condition Preventing Transfer shall be by delivering written notice of such exercise to Developer, with a statement explaining the basis for the determination that the Walnut Land cannot be transferred in accordance with this Section. If City delivers such notice, the Developer shall pay City an in lieu payment in the amount of Fair Market Value made within 60 days following the determination of the Fair Market Value. Any failure by Developer to make such in lieu payment when due shall accrue interest at 10% per annum from the date it is due until paid.

H. Fulfillment of Developer's Obligations. On City's receipt of (i) fee ownership of the Walnut Land through an action for specific performance or foreclosure under the Deed of Trust or a payment of an in lieu payment due to a Condition Preventing Transfer, and (ii) the funds deposited in the Escrow Account as required in Section 3 above, City shall have no further rights or remedies under the Development Agreement resulting from Developer's failure to timely commence or complete construction of the Walnut Affordable Housing Building. If the Developer obtains a First Construction Document for any Market Rate Unit after the Outside Date, nothing in the foregoing sentence shall limit the Developer's obligation to pay the fee calculated under Section 415.5 for such Market Rate Unit.

5. Costa-Hawkins Rental Housing Act

A. 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 Rental Housing Act, California Civil Code Sections 1954.50 et seq. (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)). The Parties agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental

charges for the BMR Units. The Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because the Development 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 and Developer would not be willing to enter into the Development 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 BMR Units as a result of the exemption set forth in California Civil Code Section 1954.52(b) for the reasons specified above.

B. General Waiver. Developer, on behalf of itself and all of its successors and assigns of all or any portion of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of the Development Agreement related to the establishment of the BMR Units under the Costa-Hawkins Act (as the Costa-Hawkins Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under Law, the Parties acknowledge and that they are important elements of the consideration for the Development Agreement and the Parties should not have the benefits of the Development Agreement without the burdens of the Development Agreement. Accordingly, if Developer challenges the application of this covenant and waiver, then such breach will be an Event of Default and City shall have the right to terminate the Development Agreement in its entirety.

C. Notification. Developer shall notify any potential buyer of all or part of the Project Site of the provisions of this Housing Plan. By acquiring any interest in the Project Site, a buyer agrees to these provisions, and agrees to the specific waiver, releases and indemnifications set forth herein. If Developer fails to notify a buyer of these provisions and a buyer alleges that it is not subject to the requirements of this Housing Plan because it was not made aware of these provisions before it acquired an interest in the Project Site, the Developer shall indemnify and defend the City against any and all claims or losses resulting from such allegation.

6. Nondiscrimination Based on Section 8, Household Size, or Source of Income

For all housing units within the Project Site, Developer shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act (42 U.S.C. §1437 et. seq.), or any successor program or similar federal, state or local governmental assistance program. Developer shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants. Developer shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 program. Developer shall not discriminate against tenant applicants on the basis of legal source of income (e.g., TANF, Section 8 or SSI), and Developer shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (i.e., ability to pay shall be demonstrated if such a tenant can show that the same percentage or more of the tenant's income has been consistently paid on time for rent in the past as will be required to be paid for the rent applicable to the unit to be occupied, provided that such tenant's expenses have not increased materially).

Exhibit D-1

Depiction of Walnut Land

Exhibit D-2

Appraisal Process

1. Arbitration for Fair Market Value.

1.1 **Appointment.** Each Party shall appoint one (1) Appraiser (as defined below) within thirty (30) days after City delivers written notice to Developer that the arbitration provisions of this Exhibit have been invoked (the “Initial Selection Period”). Upon selecting its Appraiser, a Party shall promptly notify the other Party in writing of the name of that Appraiser. Each Appraiser selected by a Party under this Section shall be an “Initial Appraiser”.

An “Appraiser” shall mean a competent and licensed appraiser who is qualified by training and experience in the City and County of San Francisco and a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. An Appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, an Appraiser shall have at least ten (10) years’ experience valuing multi-family residential real estate that is in the City and County of San Francisco and substantially similar product-type to the Walnut Affordable Housing Building (i.e., affordable senior housing and condominium airspace interests or similar property interests such as ground leases) required for the Walnut Affordable Housing Building. If a Party fails to appoint its Appraiser within the Initial Selection Period, the Initial Appraiser appointed by the other Party shall individually determine the Fair Market Value in accordance with the provisions hereof.

1.2 **Instruction and Completion.** The term “Fair Market Value” shall mean the then current fair market value of the Walnut Land, as determined pursuant to this Exhibit. Each Initial Appraiser will make an independent determination of the Fair Market Value. The following instructions shall govern the preparation and delivery of each appraisal report giving the respective Initial Appraiser’s opinion of the Fair Market Value. The Parties may supplement or modify these instructions upon mutual agreement. Each final opinion of value will be stated in a self-contained¹ appraisal report based on a comprehensive study and analysis and setting forth, in detail, all data, analysis, and conclusions necessary and typical of a complete, self-contained appraisal report in compliance with the current version of the Uniform Standards of Professional Appraisal Practice (“USPAP”). The appraisal report will include the Initial Appraiser’s final opinion of the Fair Market Value stated as a specific dollar figure. The Walnut Land shall be appraised based on the actual residential project that it is entitled for at the time of Appraisal consistent with the zoning and all conditions on the Walnut Land and assuming that the following apply to the Walnut Land: (i) the Approvals (as such term is defined in the Development Agreement), including, without

¹ As of 2014, USPAP replaced the terminology of “Restricted Use, Summary and Self Contained”, and replaced the report content types with two types, “Appraisal Report” and “Restricted Appraisal Report.” The reference to “Self Contained” in V, Appraisal Standards, refers to the meaning it had prior to 2014. Also, the reference to “Complete” appraisal has the meaning that it did prior this term being removed officially from USPAP, i.e. essentially that no relevant and applicable valuation approaches or methodologies may be excluded (and the rationale for any approach excluded be provided).

limitation, the applicable conditions of approval and any notices of special restrictions, (ii) the Development Agreement (subject to the eventual expiration thereof), (iii) permitted exceptions to title, (iv) the final subdivision map, (v) covenants, conditions and restrictions, reciprocal easement agreements and similar agreements regarding operation and use of condominium airspace parcels on the Walnut Land, regardless of whether such agreements are then in effect, it being agreed that the Walnut Land will be subject to such agreements in a commercially reasonable form, (v) applicable zoning, (vi) applicable development impact fees, (vii) its then-current "as-is", "where-is" condition, provided the only exceptions to title will be those described in Section 4.C of Exhibit D to the Development Agreement and (viii) such other documents and restrictions that the Parties mutually agree to present to the Initial Appraisers (or the Initial Appraiser if there is only one) during the appraisal process. The Fair Market Value will be determined as if the Walnut Land were served by streets and utilities but otherwise vacant and unimproved by any structures, buildings, improvements, fixtures, additions, alterations, and betterments of whatsoever nature or description. For clarity, it is understood that the Walnut Land valuation shall take into consideration the actual costs and expenses necessary for the improvements to specifically serve the Walnut Land. Each Initial Appraiser will use sales comparisons to estimate value, presented in individual write-up sheets. Each Initial Appraiser shall adhere to USPAP direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. If there is more than one Initial Appraiser, the Initial Appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Fair Market Value, and neither of the Initial Appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither Party shall communicate with the Initial Appraiser selected by the other Party regarding the instructions contained in this Section before the Initial Appraisers complete their appraisals. If an Initial Appraiser has questions regarding the instructions in this Section, such Initial Appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the Party appointing such Initial Appraiser. There shall not be any arbitration or adjudication of the instructions to the Initial Appraisers contained in this Section. Each Initial Appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Value to the Parties within sixty (60) days after the appointment of the last of the Initial Appraisers (or if only one Initial Appraiser is selected, within sixty (60) days after the expiration of the Initial Selection Period).

If only one Initial Appraiser is selected during the Initial Selection Period, then the Fair Market Value shall be the figure in such Initial Appraiser's appraisal. If two Initial Appraisers are selected during the Initial Selection Period, and the higher appraised Fair Market Value is not more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Fair Market Value shall be the average of such two (2) Fair Market Value figures.

1.3 Potential Third Appraiser. If two Initial Appraisers are selected during the Initial Selection Period, and the higher appraised Fair Market Value is more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Initial Appraisers shall agree upon and appoint an independent third Appraiser meeting the requirements for an Appraiser specified in Section 1.2 within thirty (30) days after the appraisals of both of the Initial Appraisers have been

submitted to the Parties in accordance with the following procedure. The Initial Appraisers shall inform the Parties of their appointment of the proposed third Appraiser at or before the end of such thirty (30)-day appointment period. Each Party shall have the opportunity to question the proposed third Appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the Parties, and any other matters relevant to the appraisal. Either Party may, by written notice (given within three (3) business days after receiving notice of the selection of the third proposed Appraiser) to the other Party and the Initial Appraisers, raise a good faith objection to the selection of the third proposed Appraiser based on his or her failure to meet the requirements for an Appraiser specified in Section 1.2. In such event, if the Initial Appraisers determine that the objection was made in good faith, the Initial Appraisers shall promptly select another third proposed Appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third proposed Appraiser within three (3) business days after receiving notice of his or her appointment, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third Appraiser or any other matter relating to the selection of the third Appraiser under this Exhibit. If for any reason the Initial Appraisers do not appoint a third proposed Appraiser within such thirty (30)-day appointment period (or within a ten (10) business days thereafter), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third Appraiser meeting the requirements for an Appraiser specified in Section 1.2. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the Party first applies to the Court for appointment of the third Appraiser, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third Appraiser meeting the foregoing qualifications. An Appraiser appointed pursuant to this Section shall be the "Third Appraiser".

1.4 Baseball Appraisal. The Third Appraiser, if any, shall consider the appraisals submitted by the Initial Appraisers, as well as any other relevant written evidence the Third Appraiser may request of either or both of the Initial Appraisers. If either of the Initial Appraisers submits any such evidence to the Third Appraiser, it shall do so only at the request of the Third Appraiser and shall deliver a complete and accurate copy to the other Party and the Initial Appraiser such Party selected, at the same time it submits the same to the Third Appraiser. Neither Party, nor the Initial Appraisers they appoint, shall conduct any ex parte communications with the Third Appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the Third Appraiser shall select the Fair Market Value determined by one or the other of the Initial Appraisers that is the closer, in the opinion of the Third Appraiser, to the actual Fair Market Value. The determination of the Third Appraiser shall be limited solely to the issue of deciding which of the determinations of the two Initial Appraisers is closest to the actual Fair Market Value. The Third Appraiser shall have no right to propose a middle ground or to modify either of the two appraisals or any provision of this Exhibit.

1.5 Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Fair Market Value by the accepted appraisal shall be conclusive, final and binding on the Parties. No Appraiser selected or appointed pursuant to this Exhibit shall have any power to

modify any of the provisions of this Exhibit and must base his or her decision on the definitions, standards, assumptions, instructions and other provisions contained in this Exhibit. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to each Appraiser selected or appointed under this Exhibit. The Appraisers selected or appointed under the provisions of this Exhibit will each produce their determination in writing, supported by the reasons for the determination.

1.6 Fees and Costs; Waiver. Each Party shall bear the fees, costs and expenses of the Initial Appraiser it selects. The fees, costs and expenses of the Third Appraiser, including the fees, costs and expenses in his or her appointment pursuant to this Exhibit, shall be shared equally by the City and Developer.

Exhibit D-3

Form of Grant Deed

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102

The undersigned hereby declares this instrument to be
exempt from Recording Fees (CA Govt. Code § 27383)
and Documentary Transfer Tax (CA Rev. & Tax Code
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

(Space above this line reserved for Recorder's use only)

GRANT DEED

(Lot No. ____ Block No. ____)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company ("Grantor"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "Property"), together with any and all rights, privileges and easements incidental or appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the land and all of Grantor's right, title and interest in and to any and all roads and alleys adjoining or servicing the Property, and subject to the exceptions set forth on Exhibit B attached hereto and made a part hereof.

Executed as of this _____ day of _____, 20____.

LAUREL HEIGHTS PARTNERS, LLC
a Delaware limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

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

State of California)
)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Grant Deed to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Ordinance No. _____, approved September ____, 2019, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

Director of Property

EXHIBIT A

Legal Description of Property

EXHIBIT B

List of Exceptions

1. The lien of real property taxes not yet due or payable at the time City acquires fee title to the Walnut Land
2. The lien of any taxes for Mello Roos Community Facilities District No. 90-1 not yet due or payable at the time City acquires fee title to the Walnut Land
3. Water rights, claims or title to water, whether or not disclosed by the public records
4. The declaration of public access covenants and restrictions attached as Exhibit C-3 to the Development Agreement
5. The notice of special restrictions for a child care facility to be recorded under Exhibit L to the Development Agreement

Exhibit D-4

Accepted Conditions of Title

1. The lien of real property taxes not yet due or payable at the time City acquires fee title to the Walnut Land
2. The lien of any taxes for Mello Roos Community Facilities District No. 90-1 not yet due or payable at the time City acquires fee title to the Walnut Land
3. Water rights, claims or title to water, whether or not disclosed by the public records
4. The declaration of public access covenants and restrictions attached as Exhibit C-3 to the Development Agreement
5. The notice of special restrictions for a child care facility to be recorded under Exhibit L to the Development Agreement

Exhibit D-5

Deed of Trust

RECORDING REQUESTED BY CLERK OF THE
BOARD OF SUPERVISORS OF THE CITY AND
COUNTY OF SAN FRANCISCO AND WHEN
RECORDED MAIL TO:

Office of the City Attorney
City Hall Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Land Use Team

Exempt from Recording Fees (CA Govt. Code §27383) and
Documentary Transfer Tax (CA Rev. & Tax Code §11922
and S.F. Bus. & Tax Reg. Code §1105)

APN: Block ____ Lot ____
Street Address:

DEED OF TRUST

This DEED OF TRUST (this “Deed of Trust”) is made as of _____, 2019, among LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company (“Trustor”), whose address is _____, [_____, (“Trustee”), whose address is _____, and THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“Beneficiary”), whose address is _____, Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, all of Trustor’s right, title and interest in and to that certain property located in the City and County of San Francisco, California, more particularly described in Exhibit A attached hereto and incorporated by reference herein (the “Land”), including, without limitation, all improvements located on the Land (“Improvements”), subject, however, to the termination, reconveyance and subordination provisions of Section E.6 below. The Land and the Improvements shall be collectively referred to in this Deed of Trust as the “Property”. Capitalized terms that are used but not defined herein shall have the meanings given such terms in that certain Development Agreement by and between the City and County of San Francisco and Laurel Heights Partners, LLC, dated _____, 2019, and recorded in the Official Records of San Francisco County as Document No. _____ on _____, 20__ (the “DA”).

For the purpose of securing only (1) Trustor’s obligation to transfer the Property in accordance with Section 4 of Exhibit D to the DA (the “Transfer Section”) as and when required under the Transfer Section, and (2) the performance of each agreement of Trustor incorporated by reference or contained herein or reciting it is so secured (items (1) and (2) above are referred to herein as the “Secured Obligations”). Other than such transfer obligation under the Transfer Section, no other provision of the DA is secured by this Deed of Trust.

A. To protect and maintain the security of this Deed of Trust, Trustor agrees:

1. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney’s fees in a reasonable sum, in any suit brought by Beneficiary to foreclose this Deed of Trust.

2. To pay all costs, fees and expenses of this Deed of Trust.

3. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at the maximum rate allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed that:

1. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his or her right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

2. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust, and without affecting the personal liability, if any, of any person for payment of the indebtedness secured hereby, Trustee has the right to reconvey any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

3. Upon written request of Beneficiary stating that all actions required under the Transfer Section have been performed, all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

C. The occurrence of any of the following events shall constitute an event of default (a "Default") under this Deed of Trust:

1. Trustor (i) transfers its interest in the Property, or any part of thereof, or any interest in the Property, in any manner other than (a) a transfer to the Housing Entity (as defined in the DA), (b) the grant of a deed of trust or mortgage to any Mortgagee (as defined in the DA) that is subordinate to this Deed of Trust and encumbers all or part of Trustor's interest in the Property, (c) leases entered into in the ordinary course, or (d) Property Covenants (as defined in Section 2.A of Exhibit D of the DA) in accordance with Section 2.A of Exhibit D of the DA or (ii) is divested of its title or any interest in the Property in any manner or way, whether voluntarily or involuntarily, in each case without the Beneficiary's prior written consent (which consent shall not be unreasonably withheld).

2. Trustor's failure to perform any covenant or obligation of Trustor contained herein, as and when performance is due, and the continuance of such failure for a period of thirty (30) days following written notice thereof from Beneficiary to Trustor; provided, however, that if such failure is not reasonably susceptible of cure within such thirty (30) day period, then, so long as Trustor commences to cure such failure within such thirty (30) day period and continually and

diligently pursues such cure and completes such cure within a reasonable period, such failure shall not be a Default.

3. Trustor's becomes insolvent, makes an assignment for the benefit of creditors, or commences or becomes subject to any proceeding under the federal Bankruptcy Code or any other insolvency, receivership, reorganization, arrangement of debt, liquidation or debtor's relief law wherein the Trustor is the debtor.

5. Trustor's fails to transfer the Property in accordance with the Transfer Section, as and when required under the Transfer Section.

D. If any Default occurs, and as long any such Default exists, Beneficiary shall have the right to declare all indebtedness secured hereby to be immediately due and payable, and all such indebtedness shall thereupon become immediately due and payable, without any presentment, demand, protest or notice of any kind, all of which are expressly waived by Trustor, and Beneficiary shall have the following remedies:

1. Beneficiary shall have the right, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of the security, to enter upon and take possession of the Property, or any part thereof, in its own name or in the name of Trustee, and do any acts which Beneficiary deems necessary or desirable to preserve the value, marketability or rentability of the Property or increase the income therefrom or protect the security hereof, and, with or without taking possession of the Property, to sue for or otherwise collect the rents and profits of the Property, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine.

2. Beneficiary shall have the right to commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof.

3. Beneficiary shall have the right to deliver to Trustee a written declaration of default and demand for sale pursuant to the power of sale in this Deed of Trust. If Beneficiary elects to foreclose this Deed of Trust by exercise of the power of sale in this Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee such written notice of default and election to sell and such receipts or evidence of expenditures made and secured hereby as Trustee may require. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by Trustee in said notice of sale, as a whole, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall have the right to postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter shall have the right to postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the

truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

4. After deducting all costs, fees and expenses of Trustee and of the trust created under this Deed of Trust ("Trust"), including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

5. Every right, power and remedy granted to Trustee or Beneficiary in this Deed of Trust shall be cumulative and not exclusive, and in addition to all rights, powers and remedies granted at law or in equity or by statute, and each such right, power and remedy may be exercised from time to time and as often and in such order as may be deemed expedient by Trustee or Beneficiary, and the exercise of any such right, power or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power or remedy.

6. Trustor hereby requests that a copy of any notice of default and of any notice of sale under this Deed of Trust be mailed to Trustor at the address of Trustor set forth in this Deed of Trust as required by applicable law.

E. It is further mutually agreed that:

1. Beneficiary, or any successor in its rights under the Transfer Section or ownership of any indebtedness secured hereby, has the right to, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

2. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine or the neuter, and the singular number includes the plural.

3. The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

4. A copy of any notice of default and any notice of sale hereunder shall be mailed to Trustor at his address hereinbefore set forth.

5. Trustor shall have no personal liability under this Deed of Trust, and Beneficiary's only recourse against Trustor for the satisfaction of the Secured Obligations shall be Beneficiary's exercise of its rights and remedies with respect to the Property.

6. Immediately prior to the earlier to occur of (i) the Tax Credit Closing (as defined in Exhibit D to the DA) or (ii) the payment of the amounts under subsection G of the Transfer Section following City's election to take such payment, this Deed of Trust automatically shall become null and void without the need for further action by Trustor, Trustee or Beneficiary, and Beneficiary shall cause to be recorded, in the Official Records of the City and County of San Francisco, with respect to the Property a standard form of re-conveyance of deed of trust with respect to this Deed of Trust.

7. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

[Remainder of Page Intentionally Blank. Signature on Following Page.]

IN WITNESS WHEREOF, the undersigned has caused this Deed of Trust to be executed and delivered under seal as of the day and year first above written.

LAUREL HEIGHTS PARTNERS, LLC, a
Delaware limited liability company

By: _____

Name: _____

Title: _____

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A

Legal Description of Land

Exhibit E

List of Approvals

Final approval actions by the City and County of San Francisco Board of Supervisors

1. Ordinance [_____] (File No. [_____]): (1) Approving a Development Agreement between the City and County of San Francisco and Laurel Heights Partners LLC; (2) waiving or modifying certain provisions of the Administrative Code and Planning Code, and approving specific development impact fees; and (3) adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies.
2. Ordinance [_____] (File No. [_____]): Amending the Planning Code, the Zoning Map, and the Height Map to add the 3333 California Project Special Use District and adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies.
3. Ordinance [_____] (File No. [_____]): Approving Major Encroachment Permit to Laurel Heights Partners LLC for improvements on _____.

Final and Related Approval Actions of City and County of San Francisco Planning Commission (referenced by Motion Number “M No.” or Resolution Number “R No.”)

1. M No. [_____]: Certifying the Final Environmental Impact Report for the 3333 California Mixed-Use District Project.
2. M No. [_____]: Adopting Findings and Statement of Overriding Considerations under the California Environmental Quality Act.
3. M No. [_____]: Approving a Conditional Use Authorization/Planned Unit Development for the 3333 California Project.
4. R No. [_____]: Recommending to the Board of Supervisors approval of amendments to the Planning Code to establish the 3333 California Project Special Use District and approval of amendments to Sectional Maps SU03 to refer to the 3333 California Project Special Use District and HT03 of the Zoning Map.
5. R No. [_____]: Recommending to the Board of Supervisors approval of a Development Agreement between the City and Laurel Heights Partners LLC.

Final and Related Approval Actions of City and County of San Francisco Municipal Transportation Agency Board of Directors

1. Resolution Number [_____] consenting to a Development Agreement between the City and Laurel Heights Partners LLC, including the Transportation Exhibit.

Final and Related Approval Actions of City and County of San Francisco Public Utilities Commission

1. Resolution Number [_____] consenting to the AWSS Schedule in the Development Agreement between the City and Laurel Heights Partners LLC.

Final and Related Approval Actions by San Francisco Public Works

1. Approval of Tentative Map

Exhibit F

MMRP

[see attached]

Exhibit G

Notice of Completion and Termination

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

[address]_____

Attn: _____

(Space above this line reserved for Recorder's use only)

THIS NOTICE OF COMPLETION OF BUILDING AND COMMUNITY BENEFITS (this "Notice") dated for reference purposes only as of this ____ day of _____, 20__, is made 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 _____, a _____] ("Developer") [*substitute party, if needed*].

1. The City and Developer entered into that certain Development Agreement dated as of _____, 20__ and recorded in the Official Records of the City and County of San Francisco on _____, as Document Number _____ (Book No. ____, Reel No. _____) (the "Development Agreement"). Capitalized terms used in this Notice that are not defined shall have meaning given to such terms in the Development Agreement.

2. Under Section 7.1 of the Development Agreement, when one or more Buildings have been completed and all of the Associated Community Benefits tied to those specific Buildings have also been completed, the City agreed, upon Developer's request, to execute and record a notice of completion as it relates to the applicable Building.

3. The City confirms that the Building known as _____, located on the property described in the attached Exhibit A (the "Affected Property"), together with all of the Associated Community Benefits tied to that Building, have been completed in accordance with the Development Agreement. All parties with an interest in the Affected Property have the right to rely on this Notice.

CITY:

Approved as to form:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

[DENNIS J. HERRERA], City Attorney

By: _____
Director of Planning

By: _____
Deputy City Attorney

Exhibit A

[attach legal description of Affected Property]

Exhibit H

Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
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

ASSIGNMENT AND ASSUMPTION AGREEMENT

RELATIVE TO DEVELOPMENT AGREEMENT FOR [_____]

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "**Assignment**") is entered into this ____ day of _____, 20__, by and between _____, a _____ ("**Assignor**") and _____, a _____ ("**Assignee**").

RECITALS

A. _____, a _____ and the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "**City**"), entered into that certain Development Agreement (the "**Development Agreement**") dated as of _____, 20__ for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Project Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco on _____ as Document No. _____.

[add recital to document any previous transfer of the Transferred Property, with recording information]

B. The Development Agreement provides that Developer (Assignor) has the right to: (i) Transfer all or a portion of the Project Site, (ii) assign all of its rights, title, interest and obligations under the Development Agreement to a Transferee with respect to the portions of the Project Site transferred to the Transferee, and (iii) upon the recordation of an approved Assignment and Assumption Agreement, to be released from any prospective liability or obligation under the

Development Agreement related to the Transferred Property as set forth in Section ____ of the Development Agreement.

C. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Transferred Property**") to Assignee. The Transferred Property is subject to the Development Agreement.

D. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Transferred Property, as more particularly described below.

ASSIGNMENT AND ASSUMPTION

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

1. Defined Terms. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.

2. Assignment of Development Agreement. Assignor hereby assigns to Assignee, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including any Community Benefits that are tied to Buildings on the Transferred Property. Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the Project Site owned by Assignor.

3. Assumption of Development Agreement. Assignee hereby assumes, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including its associated Community Benefits, and agrees to observe and fully perform all the duties and obligations of Assignor under the Development Agreement with respect to the Transferred Property, and to be subject to all the terms and conditions thereof with respect to the Transferred Property. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall become the "Developer" under the Development Agreement with respect to the Transferred Property.

4. Reaffirmation of Indemnifications. Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including without limitation Section ____ of the Development Agreement.

5. Housing Obligations. Assignee has read and understands the obligations set forth in Exhibit ____ of the Development Agreement as they relate to the Transferred Property. Without limiting the foregoing, Assignee agrees (1) to the terms and provisions of such Exhibit ____, including the indemnities, waivers and releases set forth therein, and (2) that the Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because it 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). Assignee understands that the City would not have been willing to enter into the Development Agreement without the provisions of such Exhibit D.

6. Assignee's Covenants. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement; (b) Assignee shall not sue the City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, including any failure to complete all or any part of the Project by any party; and (c) Assignee shall indemnify the City and its officers, agents and employees from, and if requested, shall defend them against any and all Losses resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement.

7. Binding on Successors. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

8. Notices. The notice address for Assignee under Section ____ of the Development Agreement shall be:

Attn: _____

With copy to:

Attn: _____

8. Counterparts. This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

9. Governing Law. This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

IN WITNESS HEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

Exhibit I

Workforce Agreement

Developer shall make contributions and require Project Sponsors, Contractors, Consultants, Subcontractors and Subconsultants, as applicable, to undertake activities to support workforce development in the construction of the Project, as set forth in this Exhibit I.¹

A. First Source Hiring Program.

1. Each Project Sponsor shall, with respect to any building that is included as a Workforce Building², (i) include in each Contract for construction work a provision requiring each Contractor to enter into a FSHA Construction Agreement in the form attached hereto as Attachment A before beginning any construction work, and (ii) provide a signed copy thereof to the First Source Hiring Administration ("FSHA") and CityBuild within 10 business days of execution. The FSHA Construction Agreement shall be required for the initial construction of each Workforce Building, and (ii) any improvements or alterations that require a Permit, as defined in San Francisco Administrative Code Chapter 83 ("**Chapter 83**"), during the 10 year period following issuance of the first temporary certificate of occupancy for the Workforce Building, except as noted below (the "**Workforce Period**").

2. Each Project Sponsor shall, with respect to each Workforce Building, comply with the requirements of San Francisco Administrative Code Chapter 83 ("**Chapter 83**") and upon entering into leases or other occupancy contracts for commercial space at the Premises that are subject to Chapter 83 with a tenant occupying more than 25,000 square feet in floor area ("**Commercial Tenant**"), will include in each such contract a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as Attachment B, and (ii) provide a signed copy thereof to the FSHA within 10 business days of execution. The FSHA

¹ Any capitalized term used in this Exhibit I, including its attachments, that is not defined herein shall have the meaning given to such term in the Development Agreement.

² Any capitalized term used in this Section A that is not defined in Section A or the Development Agreement will have the definition given to such term in Attachment A, including the following terms: Contract, Contractor, Entry Level Positions, Premises, Project Sponsor, Qualified Economically Disadvantaged Individuals for Entry Level Positions, and Workforce Building.

Operations Agreement shall be required for the initial Commercial Tenant and for any later Commercial Tenant that occupies all or part of a Workforce Building that is subject to Chapter 83 during the Workforce Period.

3. CityBuild shall represent the FSHA and will provide referrals of Qualified Economically Disadvantaged Individuals for Entry Level Positions on the construction work for each Workforce Building as required under Chapter 83. The FSHA will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent Entry Level Positions located within the Premises where required under Chapter 83.

4. The owners or residents of the individual residential units and any residential Homeowner's Association within the Project shall have no obligations under this Section A and no obligation to enter into a FSHA Construction Agreement or FSHA Operations Agreement.

5. FSHA shall notify any Contractor, Subcontractor and Commercial Tenant, as applicable, in writing, with a copy to Project Sponsor, of any alleged breach on the part of that entity of its obligations under Chapter 83 or its FSHA Construction Agreement or the FSHA Operations Agreement, as applicable, before seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code. FSHA's sole remedies against a Contractor, Subcontractor or Commercial Tenant shall be as set forth in Chapter 83, including the enforcement process. Upon FSHA's request, a Project Sponsor shall reasonably cooperate with FSHA in any such enforcement action against any Contractor, Subcontractor or Commercial Tenant, provided in no event shall a Project Sponsor be liable for any breach by a Contractor, Subcontractor or Commercial Tenant.

6. If a Project Sponsor fulfills its obligations as set forth in this Section A, it shall not be held responsible for the failure of a Contractor, Subcontractor, Commercial Tenant or any other person or party to comply with the requirements of Chapter 83 or this Section A. If a Project Sponsor fails to fulfill its obligations under this Section A, the applicable provisions of Chapter 83 shall apply, though the City and the Project Sponsor shall have the right to invoke the process set forth in Section 9.2 of the Development Agreement.

7. This Section A is an approved “First Source Hiring Agreement” as referenced in Section 83.11 of the Administrative Code.

B. Local Business Enterprise (LBE) Utilization Program.

Each Project Sponsor of a Workforce Building, as defined in Attachment C, and its respective Contractors and Consultants, shall comply with the Local Business Enterprise Utilization Program set forth in Attachment C hereto.

C. FSH and LBE Obligations.

The obligations set forth in this Workforce Agreement shall constitute the entirety of the First Source Hiring and LBE obligations with respect to the Project, and no additional First Source Hiring or LBE obligations, or any similar obligations, shall be imposed, directly or indirectly, on the Project.

Attachment A

Attachment B

Attachment C

Local Business Enterprise Utilization Plan

1. Purpose and Scope. This Attachment C ("LBE Utilization Plan") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement or Section 14B.20 as applicable. The purpose of the City's LBE program is to cause private developers to seek, whenever practicable, to engage contracting teams that reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.
2. Roles of Parties. In connection with the design and construction phases of each Workforce Building (as defined below), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs") in accordance with this Attachment. Each Project Sponsor shall participate in this local business enterprise program, and the City's Contract Monitoring Division ("CMD") will serve the roles as set forth below; provided, however, that, as set forth in Section 5 below, the requirements of this Attachment C may be satisfied on a project-wide basis.
3. Definitions. For purposes of this Attachment, the definitions shall be as follows:
 - a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.
 - b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Project Sponsor, Construction Contractor or professional services firm retained to work on a Workforce Building, as the case may be (each, a "Contracting Party"), as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Project Sponsor or a Contractor or professional services firm. When the Project Sponsor or a Contractor or professional services firm requires and seeks products from an LBE supplier or distributor, including, without limitation, products that are not regularly stocked or are a specially manufactured item(s), no more than 60% of the entire cost of the product shall be credited towards LBE participation goals.
 - c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design,

physical planning, and/or civil, structural or environmental engineering of a Workforce Building.

d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of a Workforce Building, subject to the exclusions set forth in Section 5 below.

e. "Contractor" shall mean a person or entity that enters into a direct Contract with a Project Sponsor to build or construct all or a portion of a Workforce Building.

f. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 7 below.

g. "Local Business Enterprise" or "LBE" means a business that is certified as a Micro or Small LBE under Chapter 14B.3.

h. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.

i. "Project Sponsor" shall mean the project sponsor of a Workforce Building.

j. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for a Workforce Building.

k. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for a Workforce Building.

l. "Workforce Building" shall mean the following: (i) the residential portions of all residential buildings, including associated residential units, residential common space and amenity space, residential parking, and back of house construction; and (iii) all construction related to the residential portions of any standalone affordable housing buildings. Workforce Buildings shall expressly exclude residential owner-contracted improvements in for-sale residential units and any non-residential tenant improvements. Developer will use good faith efforts to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) within Workforce Buildings and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such improvements. Such association will consider, in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.

4. Diversity. Developer will be seeking to, whenever practicable, engage contracting teams that reflect the diversity of the City and participation of both businesses and residents from the City's most disadvantaged communities. Developer's compliance with the good faith efforts in Section 7 shall be deemed to satisfy this objective.

5. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Program and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of twelve percent (12%) of the total cost of all Contracts for a Workforce Building awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A). Project Sponsor may satisfy the overall LBE participation goal on a project-wide basis.

Notwithstanding the foregoing, CMD's Director may, in his or her discretion, provide for a downward adjustment of the LBE participation goal, depending on LBE participation data presented by the Project Sponsor and its team in quarterly and annual reports and meetings. In addition, where, based on reasonable evidence presented to the Director by a party attempting to achieve the LBE Participation goals, there are not sufficient qualified Small and Micro-LBEs available and the applicable party has not already advertised for professional services and contracting opportunities with respect to the applicable work or solicited bids for such work, the Director may authorize the applicable party to satisfy the LBE participation goal through the use of Small, Micro or SBA-LBEs (as each such term is defined is employed in Chapter 14B of the Administrative Code), or may set separate subcontractor participation requirements for Small and Micro-LBEs, and for SBA-LBEs.

6. Project Sponsor Obligations. Each Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include in each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 17.

Each Project Sponsor shall identify an LBE Liaison. The LBE Liaison shall be an LBE Consultant and have experience in and responsibility for making recommendations on maximizing engagement of LBEs from disadvantaged communities. [*Note to CMD: please provide contact information for possible LBE Consultants.*] The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. If a Project Sponsor fulfills its obligations as set forth in this Section 6 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

7. Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 7 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor,

Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 7 as follows:

- a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at least 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.
- b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will divide the work in order to encourage maximum LBE participation or, encourage joint venturing, as long as such division will not lead to inefficiencies in the performance of the work as reasonably determined by the Contracting Party. If the Contracting Party reasonably determines that it would be efficient for Subcontractors to perform specific items, then the Contracting Party will identify those specific items of each Contract that may be performed by Subcontractors.
- c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will (i) advertise for 30 days for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's SF Supplier Portal and other local and trade publications, and (ii) allow subcontractors to attend outreach events, pre-bid meetings, and invite LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As practicable, the contractor shall convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals to all for LBEs to ask questions about the selection process and technical specifications/requirements. A Project Sponsor may request CMD's permission to award a contract without advertising if the work consists of specialty services or otherwise does not provide opportunities for LBE participation.
- d. CMD Invitation. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.
- e. Public Solicitation. The Project Sponsor or its Prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project, have sufficient experience with performing similar types of work, and are available during the desired time frame for performance of the work.
- f. Outreach and Other Assistance. The Project Sponsor or its Prime Contractor(s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; and b) notify LBE trade associations that disseminate bid and contract information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

- g. Contacts. Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.
 - h. Good Faith/Nondiscrimination. Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory), including assessment of qualifications for the scope of work, ability to obtain bonds and insurance with types and amounts of coverage typical in the general marketplace, and availability during the desired time frame for performance of the work, and whether the LBE's proposed pricing and other terms are commercially reasonable and competitive in the general marketplace.
 - i. Incorporation into contract provisions. Project Sponsor shall include in prime Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including overall LBE participation goal and any LBE percentage that may be required under such Contract.
 - j. Monitoring. Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.
 - k. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance. Contractor, Subcontractor, Consultant and Subconsultant will work with the Project Sponsor and CMD in good faith to consider any commercially reasonable insurance programs that are available at the time to provide to LBE subcontractors access to the required coverage through either the owner, Owner-Controlled Insurance Policy (OCIP), general contractor, Contractor-Controlled Insurance Policy (CCIP), or other insurance programs.
 - l. Maintain Records and Cooperation. Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 10 below to identify a strategy to meet the LBE goal;
 - m. Quarterly Reports. During construction, the LBE Liaison(s) shall prepare a quarterly report of LBE participation goal attainment and submit to CMD as required by Section 10 herein; and
 - n. Meet and Confer. Attend the meet and confer process described in Section 10.
8. Good Faith Outreach. Good faith efforts shall be deemed satisfied solely by compliance with Section 7. Notwithstanding anything to the contrary in this LBE Utilization Plan, if despite

satisfying the good faith efforts requirements by complying with Section 7, the twelve percent (12%) LBE participation goal is not met as to any Workforce Building, then (i) CMD's Director has the discretion to provide a downward adjustment for the LBE participation goal as set forth in Section 5 above, and (ii) regardless of whether such downward adjustment is provided, the amount by which the 12% goal is unmet shall not be carried over to any remaining Workforce Building(s). Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 7.b, and following CMD's notice under Section 9.a, shall undertake reasonable efforts at CMD's request to support CMD's outreach to identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

9. CMD Obligations. The following are obligations of CMD to implement this LBE Utilization Plan:

- a. During the thirty (30) day advertising period for upcoming Contracts required by Section 7.b, CMD will work with the Project Sponsor and its prime Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.
- b. Provide detailed technical assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.
- c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.
- d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.
- e. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, CMD staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance.

10. Meet and Confer Process. Commencing with the first Contract that is executed for a Workforce Building, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant each Contractor and Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this Attachment C. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation and remediate deficiencies.

11. Prohibition on Discrimination. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in

the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 7 and 10 above.

12. Collective Bargaining Agreements. Nothing in this Attachment C shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this Attachment C and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Attachment C.

13. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding good faith efforts as set forth in Section 7. Developer and/or their Contractors and Consultants shall use the City's online project reporting system (currently LCP Tracker/B2G) or other CMD approved reporting method. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):

- a. Name/Type of Contract(s) let (e.g. Civil Engineering contract, Environmental Consulting, etc.)
- b. Name of prime Contractors (including identifying which are LBEs and non-LBEs)
- c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
- d. Scope of work performed by LBEs (e.g. under an Architect, an LBE could be procured to provide renderings)
- e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
- f. Total LBE participation is defined as a percentage of total Contract dollars.

14. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected prime Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The prime Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

15. Remedies. Notwithstanding anything to the contrary in the Development Agreement, the following process and remedies shall apply with respect to any alleged violation of this Attachment C:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this Attachment C. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

Non-binding arbitration shall be the administrative procedure of second resort utilized by CMD for resolving the issue of whether a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant discriminated in the award of one or more LBE Contracts to the extent that such issue is not resolved through the mediation and conciliation procedure described above. Obtaining a final judgment through arbitration on LBE contract related disputes shall be a condition precedent to the ability of the City or the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant to file a request for judicial relief.

If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this Attachment C, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed \$25,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

For all other violations of this Attachment C, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 9.4.3-9.4.5 of the Development Agreement.

16. Duration of this Agreement. This Attachment C shall terminate (i) as to each Workforce Building, upon the issuance of the last Certificate of Occupancy for such Workforce Building (i.e., upon completion of the Workforce Building); and (ii) as to the good faith obligations under Section 3(l) above with respect to services under service contracts, ten (10) years after issuance of the last Temporary Certificate of Occupancy for the applicable Building. Upon such termination, this Attachment C shall be of no further force and effect.

17. Notice. All notices to be given under this Attachment C shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD:

Attn: _____

If to Project Sponsor: _____

Attn: _____

If to Contractor: _____

Attn: _____

If to Consultant: _____

Attn: _____

Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

Exhibit J

Transportation

This Transportation Exhibit outlines the Project's transportation commitments in two areas: (i) the Transportation Demand Management Plan and (ii) the reconfiguration of two slip lanes.

1. **Transportation Demand Management Plan**

The Developer shall implement a site-specific Transportation Demand Management Plan included as Attachment 1 to this exhibit. While the Project would be subject to Planning Code Section 169.3(e)(1) and required to implement 50% of applicable target points, the Developer commits through this Agreement, to be subject to Planning Code Section 169.3(e)(2) and to implement 75% of applicable target points. Otherwise, the Project remains subject to all of the provisions of Planning Code Section 169 et seq.

2. **Reconfiguration of Slip Lanes**

A key element of the Project's Public Improvements includes the reconfiguration of existing traffic slip lanes at the intersections of Presidio Avenue and Pine Street/Masonic Avenue and at Masonic Avenue and Euclid Avenue. These Public Improvements consist of bulb outs and other sidewalk improvements where two separate slip lanes are currently located. With the Public Improvements, the slip lane areas will remain publicly accessible, but will no longer be accessible to motorized vehicles. The parties, including the SFMTA Board of Directors through its consent to the Development Agreement, agree to the slip lane and sidewalk reconfiguration concept level plans that are included as Attachment 2 to this Exhibit. The Developer will work with DPW and SFMTA to obtain all necessary review, approvals and construction permits.

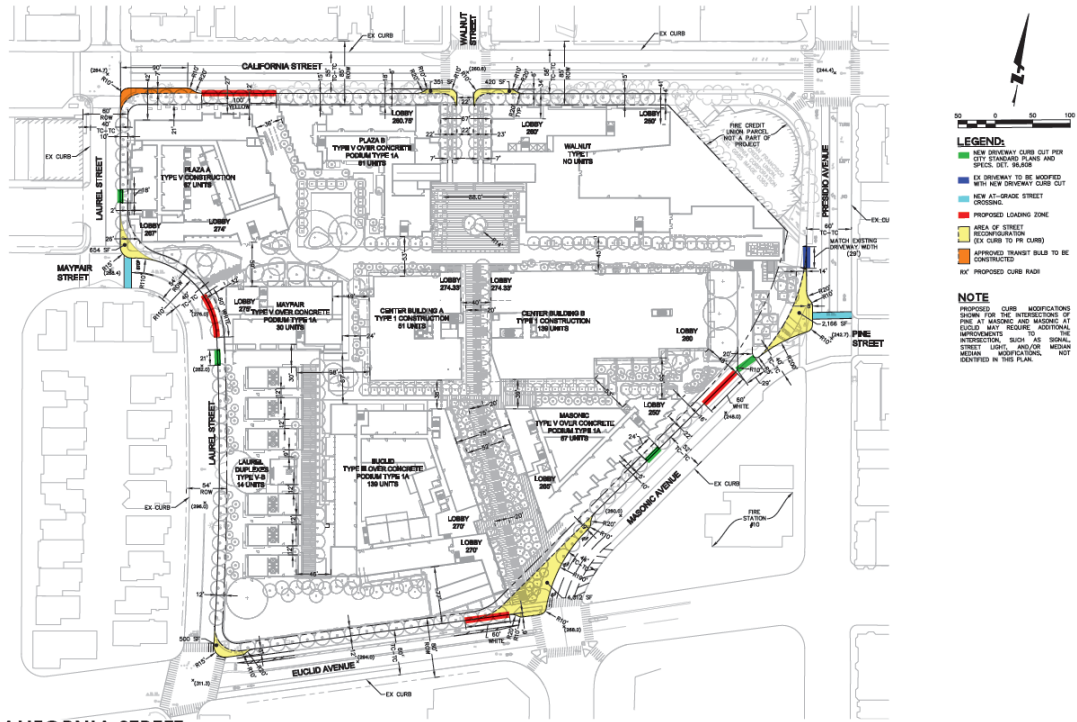
Attachment 1

Transportation Demand Management Plan

[see attached]

Attachment 2

Proposed Site Plans and Horizontal Control Plan



3333 CALIFORNIA STREET SAN FRANCISCO, CA



PROPOSED SITE PLAN AND HORIZONTAL CONTROL PLAN

02.22.2019
PLANNING APPLICATION SUBMITTAL

C2.02

Exhibit K

Schedule Template for Later Approvals

Developer will submit a project milestone schedule at the time of filing any application for the following Later Approvals: Major Encroachment Permit (if applicable), Street Improvement Permit, Final Map(s), or other pre-construction phase Later Approvals. The initial project schedule will be conceptual in nature and will be based upon the best estimate of the Developer.

Project schedules are intended to provide basic information to assist the City with its review and staff capacity planning related to the Later Approvals described above. Due to the many outside factors that affect a real estate development project's schedule and the varying workload of City staff, the Parties understand that this schedule is intended only as guidance to the City.

This schedule should include the following major milestones and be in the format described below. Public Works Infrastructure Taskforce and OEWD will review this schedule and then share this schedule with City departments for feedback. With department feedback in hand, Public Works Infrastructure Taskforce and OEWD may request a meeting with Developer for schedule confirmation.

Milestones to be included, as applicable to project:

City approvals:

- **Subdivision/mapping actions**
- **Transaction documents** (any easements, street vacations, etc.)
- **Infrastructure engineering/permit applications**
 - Example: Street Improvement Plan (SIP), storm water plan, and other major systems, like AWSS or backwater system
- **Any necessary commission approvals**
- **Start of construction** (demolition/site prep, horizontal and/or vertical)
- **Substantial completion**
- **City acceptance of infrastructure**
- **TCO**
- **Any other relevant major milestones**

Non-City approvals:

- **Any associated non-San Francisco approvals** (i.e. Navy, Caltrans, Caltrain, State lands, etc.)

Schedule format:

- The schedule should be in Gantt chart format
 - Time should be in in fiscal years via months or quarters at the top
 - Milestones should be in rows on the left

- o Start dates (day/month/year) and durations in days should be indicated for each milestone
- Project should be broken out into major Phases and sub Phases, if applicable
- The planning horizon should include: SIP, Transactional Documents, Tent./Final Map, Vertical Design, SoC, TCO
- The preferred schedule software is Microsoft Project

Schedule submission:

Developer will submit each schedule to the following address:

Office of Economic and Workforce Development
Public Works Infrastructure Taskforce
City Hall, Room 496
Attn: Housing Hub/3333 California Project
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Exhibit L

Child Care Program

1. Developer to provide approximately 14,000 gross square feet of rentable area for a child care facility built on the Walnut Child Care Parcel with an adjacent open space for child care use (as required by local/State law). Developer will deliver the child care facility in warm shell condition (for example, with the space demised to meet occupancy separation requirements (minus finishes on wall, floor and ceiling), stubs for standard utilities, path to a location for mechanical equipment, storefront and rear access as required, and other items required to obtain a temporary certificate of occupancy to allow tenant to proceed with their improvements). The child care provider would specify the tenant improvements necessary for the space, which Developer would not be responsible for providing under this Agreement.
2. A State-licensed child care provider shall operate in the space under the following terms, provided that all Later Approvals and applicable operating and licensing and other requirements as may be necessary are first obtained.
 - a. Provider shall comply with all State guidelines and applicable local guidelines for operating a child care facility.
 - b. Provider shall operate a facility licensed to serve approximately 175 children with the final number to be determined based on state and any local licensing requirements.
 - c. In accordance with Planning Code Section 414.13, Developer shall include (and require compliance with) a provision in its lease with the child care provider requiring the provider to reserve at least ten percent (10%) of the maximum capacity of the child care facility (as determined by the license for the facility issued by the California Department of Social Services) to be affordable to children of households of low income. Operators are encouraged to work with the San Francisco Office of Early Care and Education to learn about Early Learning Scholarships for low- and moderate-income families as well as other operator resources.
 - d. Programs shall serve a broad range of age groups, including infants and toddlers.
 - e. Slots shall be made available to the general public on the same terms and conditions as those for Project residents, employees and users.
3. The operating term for the child care facility shall equal the life of the Walnut Building. Subject to the provisions of this Exhibit L, the Developer shall use commercially reasonable efforts to lease the space to a child care operator at all times for the life of the Walnut Building. The operating term may be fulfilled by more than one child care operator

over the life of the Walnut Building. The Developer shall comply with the terms below during initial leasing and periods of operator turnover and/or vacancy periods.

- a. (i) On the earlier to occur of (A) applying for a First Construction Document (as defined in San Francisco Building Code Section 107A.13.1(a)(8)) for the Walnut Building and (B) 15 business days before initially offering the facility for rent and (ii) within 15 business days following the expiration or termination of a child care operator's lease for the facility, the owner of the facility shall notify governmental and nonprofit entities that can assist in publicizing the availability of the facility (the "Child Care Marketers") of the opportunity to lease it, including, at a minimum, the following entities: the San Francisco Office of Early Care and Education (or any successor agency), the Family Child Care Association of San Francisco, the Children's Council, and Wu Yee Children's Services.
- b. If the child care space remains vacant for more than three years after DBI has issued of a first certificate of occupancy (including any temporary certificate of occupancy) for the Walnut Building despite Developer's commercially reasonable efforts to lease it at prevailing child care facility market terms (comparable to other similarly-sized and geographically proximate licensed child care facilities) to an initial child care operator, and Developer wishes to be released from its obligation to lease the facility to a child care operator, then Developer shall have the right to pay City an amount equal to \$2,101,489.55 [*in lieu child care facility fee that would otherwise be due at the Effective Date if the fee was not waived*], proportionately adjusted to reflect any increase between the published CPI Index in effect as of the Effective Date and the published CPI Index in effect at the time such payment is made (as adjusted, the "Base Fee"), plus an amount equal to 10% of the Base Fee, for deposit in the Child Care Capital Fund established under Planning Code Section 414.14. On paying such amount to City under this subsection, the Developer may use the facility for any use permitted under the Project SUD.
- c. If after having leased the facility to at least one child care operator, the child care space remains vacant for more than three years after the termination or earlier expiration of the most recent child care operator's lease despite Developer's commercially reasonable efforts to lease the facility at prevailing child care facility market terms (comparable to other similarly-sized and geographically proximate licensed child care facilities) to a child care operator, and Developer wishes to be released from its obligation to lease the facility to a child care operator, then Developer shall have the right to pay City an amount equal to the Base Fee prorated over a fifteen (15) year period, with a credit for any time the facility was operated by a child care provider in compliance with this Agreement. On paying such amount to City under this subsection, the Developer may use the facility for any use permitted under the Project SUD.

4. Developer or subsequent owner of the Walnut Building cannot charge rent (including security, common building charges and utilities, etc.) to the child care operator that exceeds prevailing market rent comparable to other similarly-sized and geographically proximate licensed child care facilities.
5. Developer or subsequent owner of the Walnut Building shall execute a Notice of Special Restrictions to dedicate the space for child care use ("NSR"). The NSR shall incorporate the requirements of this Exhibit L, be in a form approved by Developer and City (which approval shall not be unreasonably withheld or conditioned), and recorded against the Walnut Child Care Parcel at the earlier to occur of the time that the final map that includes the Walnut Child Care Parcel is recorded or the First Construction Document is issued for the Building to be constructed on the Walnut Child Care Parcel.
6. In consideration of this community benefit, the Project shall not be subject to the residential child care fee (Planning Code Sec. 414A) and that fee shall be waived.
7. Phasing/performance requirements for the child care facility will be detailed in Schedule 1 (Community Benefits Linkages and Impact Fees). If DBI has not issued a certificate of occupancy (including any temporary certificate of occupancy) for the child care facility prior to the expiration of the Term but Developer has received First Construction Document for any Building, then Developer shall pay to City an amount equal to the Base Fee plus 20% of the Base Fee at the end of the Term.

Exhibit M

SUD Ordinance and Conditional Use/Planned Unit Development Exceptions

Exhibit N

Notice of Special Restrictions – AB900 Determination Compliance

FREE RECORDING PURSUANT TO
GOVERNMENT CODE SECTION 27383

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Planning Department
City and County of San Francisco
1650 Mission Street, Suite 400
San Francisco, CA 94103-2479
Attention: Director

Property Address: 3333 California Street,
San Francisco, CA 94118

(Space Above This Line for Recorder's Use)

NOTICE OF SPECIAL RESTRICTIONS UNDER PLANNING CODE

The undersigned, LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company, the owner of that certain real property situated in the City and County of San Francisco, State of California more particularly described as follows: (see 'Exhibit A' for full legal description of the property)

**BEING ASSESSOR'S BLOCK AND LOT: 1032-003
AND COMMONLY KNOWN AS 3333 CALIFORNIA STREET**

hereby give notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (Planning Code).

Said restrictions consist of the restrictions, conditions and requirements described herein below to be recorded in the Official Records of the Recorder of the City and County of San Francisco for the Property as required in the Development Agreement, by and between the City and County of San Francisco and Laurel Heights Partners, LLC, for Property located at 3333 California Street (the "Agreement"), approved by the Board of Supervisors of the City and County of San Francisco by Ordinance No. _____, on November __, 2019, in connection with the proposed redevelopment of the irregularly-shaped parcel in the City and County of San Francisco comprised of approximately 10.25 acres (approximately 446,468 square feet), generally bounded by California Street, Laurel Street, Euclid Avenue, Masonic Avenue, and Presidio Avenue, and further described in the attached Exhibit A, as a large mixed-use development that

will include residential, retail, commercial, child care, open space, parking, and related uses (the “Project”).

Developer submitted its application and initial supporting materials for certification into the Environmental Leadership Development Project Program on August 23, 2018 (the “AB900 Application”), and, on January 30, 2019, the State of California Air Resources Board (“CARB”) issued its Executive Order G-18-101 (the “CARB Executive Order”) in which it determined, based on the CARB Staff Evaluation of AB 900 Application for 3333 California Street Mixed Use Project (“CARB Staff Evaluation”), dated January 30, 2019, and the AB900 Application that, pursuant California Public Resources Code section 21183(c), the Project would not result in any net additional GHG emissions (the “CARB Executive Order”).

On June 7, 2019, the Governor’s Office, with the concurrence of the Joint Legislative Budget Committee on July 8, 2019 (the “JLBC Letter”), determined that the Project is an eligible project under the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, Public Resources Code sections 21178 et seq. (the “Determination”).

Copies of the CARB Staff Evaluation, the Carb Executive Order, the JLBC Letter, and the Determination are attached to this Notice at Exhibit B.

In connection with the Determination, Project Sponsor committed to comply with certain greenhouse gas (“GHG”) emissions reductions measures and procurement of offsets as more specifically set forth herein below.

The restrictions, conditions and requirements of which notice is hereby given are:

Compliance with GHG Emissions Reduction Measures and Procurement of Offsets.

a. GHG Emissions – Construction

Prior to issuance of the first permit (including site or building permit) for grading related to the construction of any phase of of the Project, Developer shall purchase carbon offsets issued by an accredited carbon registry in an amount sufficient to offset the net increase in construction-related GHG emissions attributable to that phase, as set forth in the CARB Staff Evaluation. Developer shall provide the Planning Department with copies of such contracts promptly following the execution of such contracts and prior to receipt of the first site permit for the applicable construction phase. Developer’s obligations under this Section 1.a shall remain in effect as to each phase until the date on which Developer has purchased the carbon offsets that are required under this Section 1.a. with respect to the applicable phase.

b. GHG Emissions – Operations

Developer shall explore feasible GHG emissions reduction measures according to the following prioritization: (1) Project design feature/on-site reduction measures; (2) off-site local reductions; (3) off-site regional reductions; and (4) purchase of voluntary carbon offsets issued by an accredited carbon registry in an amount sufficient to offset the net increase in operation-related GHG emissions, as set forth in the CARB Staff Evaluation.

Prior to issuance of the final certificate of occupancy for each first building constructed during the applicable phase of construction, Developer shall (i) identify all project design features/on-site reduction measures, off-site local reductions, or off-site regional reductions to be implemented in order to reduce or offset GHG emissions associated with the applicable phase and identify the amount of GHG emission reductions they would achieve, (ii) execute contracts to offset any remaining net new GHG emissions generated during Project operation for the applicable phase based on the thirty (30) year period for operations set forth in the CARB Staff Evaluation, and (iii) submit documentation to the Department that corroborates any equivalent operational GHG emission reductions achieved through Project design features, such as solar photovoltaic output, that was not available at the time the AB 900 Application was submitted. Developer's obligations under this Section 1.b shall remain in effect as to each building constructed as part of the Project until the date on which Developer has offset any remaining net new GHG emissions with respect to the applicable building in the manner required in this Section 1.b.

Examples of feasible GHG emissions reduction measures include the Project's compliance with San Francisco Planning Code Section 169 --Transportation Demand Management Program (added by Ordinance 34-17, approved February 2017), Leadership in Energy and Environmental Design (LEED) Gold certification or better for the Project, including energy efficiency, water conservation, and other green building practices that would contribute to achieving the LEED Gold certification.

2. Recordation.

Prior to the earlier to occur of the issuance of the first permit (including site or building permit) for grading related to the construction of any phase of of the Project and the time Developer records any other notice of special restrictions with respect to the Project, Developer shall record this Notice in the Official Records of the Recorder of the City and County of San Francisco for the Property.

3. Printing of conditions of approval on plans.

The restrictions, conditions and requirements of Section 1 above shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project.

4. Enforcement.

Violation of any of the restrictions, conditions or requirements contained in this Notice shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. Assignment.

As used in this Notice, the term Developer means the Developer originally named herein or a Transferee following a Transfer (as such terms are defined in the Development Agreement).

The use of said property contrary to these special restrictions, conditions or requirements shall constitute a violation of the Planning Code, and no release, modification or elimination of these restrictions, conditions or requirements shall be valid unless notice thereof is recorded in the Land Records by the Zoning Administrator of the City and County of San Francisco.

DEVELOPER:

LAUREL HEIGHTS PARTNERS, LLC,
a Delaware limited liability company

By: 3333 California LP,
a Delaware limited partnership,
its Manager

By: PSKS LH LLC,
a Delaware limited liability company,
its General Partner

By: Prado LH LLC,
a California limited liability company,
its Manager

By: _____
Name: Dan Safier
Title: Manager

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

LEGAL DESCRIPTION

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

EXHIBIT B

[Attach copies of CARB Staff Evaluation, the Carb Executive Order, the JLBC Letter, and the Determination]

Schedule 1

Community Benefits Linkages and Impact Fees Schedule

Pursuant to Section 4.1 of the Agreement, the Developer's Community Benefits obligations are tied to specific Buildings or number of Market Rate Units (as defined in Exhibit D) that will be developed over the course of the Project and during the Term of the Agreement. The linkages between the specific Community Benefits and the associated Buildings or Market Rate Units are detailed below, as well as within any referenced exhibits. The development impact fees that apply to the Project are detailed below.

COMMUNITY BENEFITS

1. **Publicly Accessible Private Improvements.** The Developer shall complete the Publicly Accessible Private Improvements described in Exhibit C and generally depicted in Attachment C-1 prior to obtaining a first certificate of occupancy (including any temporary certificate of occupancy) for any non-retail portion, if any, of specific Buildings as described below (or, in the case of Publicly Accessible Private Improvements to be delivered only after completion of more than one Building, then prior to obtaining the first certificate of occupancy for the later Building); provided, however, that if Developer wishes to receive a first certificate of occupancy (or the equivalent thereof) for a Building (or later Building, as applicable) before completing its associated Publicly Accessible Private Improvement, then, notwithstanding anything to the contrary in this Schedule, Developer may complete this obligation after that certificate of occupancy for the associated Building (or later Building, as applicable) by providing to the City, prior to issuance of the first certificate of occupancy for that Building (or later Building, as applicable), a surety performance bond or other security in form acceptable to the City and in an amount equal to 100% of the reasonably estimated cost to complete that Publicly Accessible Private Improvement, and shall diligently and continuously pursue that Publicly Accessible Private Improvement to completion following which such bond will be released.
 - a. California Plaza – with the completion of Plaza A Building
 - b. Cypress Square – with the completion of Plaza B Building
 - c. Cypress Stairs – with the later completion of either Plaza A Building or Plaza B Building
 - d. Mayfair Walk – the Mayfair Walk extends the entire width of the Project Site and shall be completed in segments tied to the completion of the adjacent Buildings as depicted in Attachment C-1 (the later of Mayfair Building or Plaza A Building, the later of Plaza B Building or Center A Building, and the completion of Center B Building)
 - e. Presidio Overlook – with the completion of Center Building B

- f. Pine Street Steps – with the completion of Center Building B
 - g. Walnut Walk North – with the later completion of Center A Building or Center B Building
 - h. Walnut Walk South – with the later completion of the Euclid Building or Masonic Building
 - i. Walnut Drive and Walnut Court – with the later completion of Plaza B Building or Walnut Affordable Housing Building (as defined in Exhibit D)
 - j. Euclid Green – with the completion of the Project’s final Building; provided, however, that if the Developer receives a first certificate of occupancy (including any temporary certificate of occupancy) for any Building(s) without completing all proposed Buildings during the Term, then Euclid Green shall be completed by the end of the Term.
 - k. Pedestrian Access – if Developer receives a first certificate of occupancy (including any temporary certificate of occupancy) for any Building(s) without completing all proposed Buildings during the Term that would otherwise require the completion of Walnut Walk North, Walnut Walk South, and Mayfair Walk as described above, then Developer, in conjunction with the Planning Department, shall design an alternative plan for pedestrian access that seeks to achieve similar pedestrian access and widths as Walnut Walk North, Walnut Walk South, and Mayfair Walk, but takes into account then then-current on-site conditions, including locations of improvements and the Project Site's topography, and the Developer shall construct such alternative plan improvements prior to the end of the Term.
2. **Streetscape Improvements.** The Developer shall complete each of the Streetscape Improvements described in Exhibit C and generally depicted in Attachment C-1 (and as will be more specifically set forth in the building permit application for the Streetscape Improvements associated with the applicable Building) before obtaining any first certificate of occupancy (including any temporary certificate of occupancy) for the applicable Building (or later of adjacent Buildings, if applicable) for such Streetscape Improvement as depicted in Attachment C-1; provided, however, that if Developer wishes to receive a first certificate of occupancy for a Building before completing its associated Streetscape Improvement, then, notwithstanding anything to the contrary in this Schedule, Developer may complete its associated Streetscape Improvement after that certificate of occupancy by providing a surety performance bond or other security to City, prior to issuance of the first certificate of occupancy for that Building, in form acceptable to the City and in an amount equal to 100% of the reasonably estimated cost to complete that Streetscape Improvement, and the Developer shall diligently and continuously pursue that Streetscape Improvement to completion following which the bond shall be released. Such requirement shall be in addition to any security or bonding requirements required under

the street improvement permit issued by City's Department of Public Works for the performance of such Streetscape Improvement.

3. **Maintenance and Operation.** The Developer shall cause the appropriate party (e.g., a master association) to enter into agreements for the ongoing operation, maintenance and repair of the Publicly Accessible Private Improvements to the standards described in Attachment C-2 and Attachment C-3.
4. **Housing Plan.** The Project's BMR Units shall be complete as set forth in Exhibit D, the Affordable Housing Program.
5. **AWSS Community Benefit Fee.** The Project's AWSS Community Benefit Fee shall be paid as set forth in Schedule 2.
6. **Workforce Agreement.** The workforce requirements will apply to the Project as set forth in Exhibit I, the Workforce Program.
7. **Transportation Demand Management.** The Transportation Demand Management Plan shall be implemented as set forth in Exhibit J, the Transportation Exhibit, and the Approvals described in Exhibit E.
8. **Child Care Program.** The Developer shall have constructed the child care facility to warm shell condition, as described in Exhibit L, on the Walnut Child Care Parcel (as defined in Exhibit D) by the earlier of receiving a first certificate of occupancy (including any temporary certificate of occupancy) for the Walnut Affordable Housing Building (as defined in Exhibit D) and obtaining a first certificate of occupancy (including any temporary certificate of occupancy) for more than three hundred eighty-six (386) Market Rate Units (as defined in Exhibit D). In addition, if the Developer receives a first certificate of occupancy (or a temporary certificate of occupancy) for any Building, the Developer must obtain a first certificate of occupancy (or a temporary certificate of occupancy) for the child care facility before the expiration of the Term. The child care facility shall be operated on the terms described in Exhibit L.

DEVELOPMENT IMPACT FEES

The following development impact fees apply to the Project: Transportation Sustainability Fee (Planning Code Section 411A) and Jobs Housing Linkage Fee (Section 413). The Residential Child Care Impact Fee (Planning Code Section 414A) and the Affordable Housing Fee (Planning

Code Section 415) have been waived in consideration of the on-site provision of a child care facility and affordable housing as described in Exhibit L and Exhibit D, respectively.

Schedule 2

AWSS Community Benefit Fee

1. Background and Need

The Auxiliary Water Supply System (“AWSS”) is a water distribution system used by the San Francisco Fire Department (“SFFD”) for fire suppression. The AWSS delivers water under high pressure for firefighting and is independent from the San Francisco’s domestic water system. The design elements of the AWSS, such as restrained pipeline joints and earthquake resistant ductile iron pipe make it more resistant to earthquake damage. The San Francisco Public Utilities Commission (“SFPUC”) operates and maintains the AWSS citywide.

Life safety is the paramount concern of the SFFD, followed by the protection of property. When new developments are proposed in San Francisco with high density structures, adequate and readily available water supplies for firefighting are imperative. The Project is a proposed new development within San Francisco which will have both high occupancy and a significant amount of wood frame construction. The closest AWSS main runs east to west on Sacramento Street with AWSS/High Pressure (“HP”) hydrants at each corner from Presidio Avenue to Arguello Boulevard. The closest HP hydrant to the entrance of the proposed Project is currently located at the northwest corner of Walnut and Sacramento Streets, approximately 400 feet away from the Project’s closest property line. SFFD fire engines carry a maximum of 1,000 feet of fire hose.

One new HP fire hydrant shall be installed on California Street at the southern intersection of Walnut and California Streets with a connection back to the AWSS main on Sacramento Street in order for SFFD to have backup emergency water supply for firefighting and rescue operations at the Project. This HP hydrant would allow one fire engine to obtain AWSS water supply and immediately initiate firefighting and rescue operations to any area within the development upon arrival. During a greater alarm fire when fire operations demand more water than a domestic water hydrant can supply, the AWSS HP hydrant will support the need for additional water volume and pressure. Following a major event, when additional fire engines are not available, a fire crew can use the HP hydrants and still have ample water pressure and volume for firefighting operations.

2. AWSS Requirement for 3333 California Project

The SFFD and SFPUC have analyzed the Project and determined that AWSS is not required or appropriate for installation within the Project’s property line. This is due to (1) confirmation that a standard 1,000 fire hose is able to serve the entire site from one new HP hydrant at the southern intersection of Walnut and California Streets; and (2) the fact that the Project will be

privately-owned and no public right of ways will be created within which AWSS could be installed, owned, and maintained by SFPUC.

The SFPUC and SFFD have determined that in order to provide the Project with a backup emergency water supply, the following new AWSS infrastructure (the “AWSS Scope”) will be required: a new HP hydrant on the public sidewalk at Walnut and California Streets, and a connection to be installed on Walnut Street from the new HP hydrant to the existing AWSS main running east to west on Sacramento Street. This new infrastructure will be designed and installed by the SFPUC, with contributory fair-share funding paid by the Developer.

The Developer and SFPUC will coordinate on the installation and timing of installation of this AWSS Scope in relation to the ultimate development phasing and improvements. The intent is to have the AWSS Scope coordinated with Project’s street improvements on California Street or adjacent streets to minimize or eliminate the need to demolish newly constructed improvements related to the Project.

3. AWSS Community Benefit Fee

The AWSS Community Benefit Fee will offset the cost of bringing AWSS to the Project boundary. The SFPUC has developed an initial capital cost estimate of the AWSS Scope (including contingencies) totaling approximately \$1,055,000 in 2018 dollars. In consideration of the AWSS Scope that the Project requires to be adequately served and protected by SFFD, the Developer shall pay an AWSS Community Benefit Fee of \$1,055,000.

4. Fee Payment Terms

The Developer shall pay the AWSS Community Benefit Fee as a proportion of Gross Square Feet (“GSF”) developed in the Project. Based on the Project’s total of 1,434,098 GSF, the Developer shall pay the AWSS Community Benefit Fee at a rate of \$.735 per GSF. Payment shall be made to SFPUC on a Building by Building basis and shall be determined by the total GSF of each Building. Payment shall be due prior to and as a condition to the Developer obtaining a temporary Certificate of Occupancy or Certificate of Final Completion for each Building.