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

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

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

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND RESERVOIR COMMUNITY PARTNERS, LLC

FOR THE BALBOA RESERVOIR PROJECT

Block _____ Lots ____

TABLE OF CONTENTS

Page

EXHIBITS AND SCHEDULES

Exhibits

Schedules

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND RESERVOIR COMMUNITY PARTNERS, LLC

THIS DEVELOPMENT AGREEMENT dated for reference purposes only as of this ____ day of _____, 2020, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and RESERVOIR COMMUNITY 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 have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. The City, through the San Francisco Public Utilities Commission ("**SFPUC**"), is the owner of an approximately 17 acre site located generally north of the Ocean Avenue commercial district, west of the City College of San Francisco Ocean Campus, east of the Westwood Park neighborhood, and south of Archbishop Riordan High School, in San Francisco, California, as described in greater detail in Exhibit A (the "**Project Site**").

B. The Developer proposes a mixed income housing development of up to approximately 1,100 housing units, including approximately 550 units affordable to low and moderate income households, approximately 4 acres of publicly accessible open spaces (including property immediately adjacent to the south of the Project Site that contains an SFPUC underground pipeline and will remain under the ownership of the City and the jurisdiction and control of SFPUC (the "**SFPUC Retained Fee Area**")), a childcare center serving approximately 100 children, a community room, approximately ____ square feet of commercial space, 550 parking spaces for use by residents and up to 450 parking spaces for use by the general public, in addition to new streets, sidewalks, sewer, power and water infrastructure, including an auxiliary water supply system, and bicycle and pedestrian facilities, located on the Project Site , as described in greater detail in Exhibit B (the "**Project**").

C. The Project is anticipated to generate an annual average of approximately 460 construction jobs during construction and approximately 30 net new permanent on-site jobs upon completion, and an approximately $1.7 Million annual increase in general fund revenues to the City.

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, 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 fifty percent (50%) of the total number of housing units for the Project, of which Developer will be responsible for approximately sixty-seven percent (67%) of the gap financing for the affordable housing units, and City will be responsible for approximately thirty-three percent (33%) of the gap financing for the affordable housing units; (ii) construction and maintenance of new parks, pedestrian pathways, and landscape areas for a total of approximately 4 acres of publicly accessible open areas; (iii) street and infrastructure improvements; and (iv) an on-site childcare center serving approximately one hundred (100) children, each as further described in this Agreement.

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 Ordinance 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. The Final Environmental Impact Report ("**FEIR**") prepared for the Project and certified by the Planning Commission on _____, 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 Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. On _____, 2020, 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.

H. On or about the Effective Date of this Agreement, the Parties anticipate entering into a Purchase and Sale Agreement ("**PSA**") pursuant to which the City will convey title to the Project Site to Developer (except for the SFPUC Retained Fee Area). In addition, the Parties anticipate entering into a separate license agreement with SFPUC pursuant to which Developer may access, construct, and maintain certain open space improvements on the SFPUC Retained Fee Area (the "**SFPUC Retained Fee License Agreement**")

I. On _____, 2020, 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.

J. On _____, 2020, SFPUC held a duly noticed public hearing on this Agreement, the PSA, and the SFPUC Retained Fee License Agreement. Following the public hearing, SFPUC made the CEQA Findings required by CEQA, and adopted Resolution No. _____, consenting to this Agreement, approving the PSA, and the SFPUC Retained Fee License Agreement, and incorporating by reference the General Plan Consistency Findings.

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, approved this Agreement, the PSA, the SFPUC Retained Fee License Agreement, incorporating by reference the General Plan Consistency Findings, and adopted Resolution No. _____ in connection with the Project.

L. On _____, the Board adopted Ordinance Nos. _____, [_____], and _____, amending the Planning Code, the Zoning Map, and the General Plan to create the Balboa Reservoir Special Use District ("**Project SUD**"), approving this Agreement (File No. _____), and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance 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. "**Affordable Housing Program**" means the Affordable Housing Program attached hereto as Exhibit D.

1.3. "**Affordable Parcel(s)**" has the meaning set forth in Exhibit B, as further described and depicted in Exhibit D and Exhibit D-1, respectively.

1.4. "**Affordable Units**" has the meaning set forth in the Affordable Housing Program attached as Exhibit D.

1.5. "**Agreement**" means this Development Agreement, the Exhibits which are expressly incorporated herein and any amendments thereto.

1.6. "**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. attached as Exhibit D.

1.7. "**Annual Review Date**" has the meaning set forth in Section 8.1.

1.8. "**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).

1.9. "**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.

1.10. "**Assignment and Assumption Agreement**" has the meaning set forth in Section 12.2.

1.11. "**Associated Community Benefit**" is defined in Section 4.1.

1.12. "**Board of Supervisors**" or "**Board**" means the Board of Supervisors of the City and County of San Francisco.

1.13. "**Building**" or "**Buildings**" means each of new buildings to be constructed on the Project Site, as described in the Project description attached as Exhibit B.

1.14. "**CEQA**" has the meaning set forth in Recital F.

1.15. "**CEQA Findings**" has the meaning set forth in Recital G.

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, SFPUC, 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, and shall not include any of the City's Affordable Funding Share, as defined in the Affordable Housing Program.

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 horizontal infrastructure or, when used in reference to any Building, 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 Program**" has the meaning set forth in Section 4.1.

1.30. "**Community Room**" is described in Exhibit C.

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

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

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

1.34. "**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.

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

1.36. "**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.

1.37. "**Development Phase Application**" has the meaning set forth in Section 3.1.

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

1.39. "**Enacting Ordinance**" has the meaning set forth in Recital L.

1.40. "**Engineering Design**" has the meaning set forth in Section 5.4.2.

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

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

1.43. "**Existing Uses**" means all existing lawful uses of the existing land 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.

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

1.45. "**FEIR**" has the meaning set forth in Recital G.

1.46. "**First Construction Document**" is defined in San Francisco Building Code Section 107A.13.1(a)(8).

1.47. "**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.

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

1.49. "**General Plan Consistency Findings**" has the meaning set forth in Recital I.

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

1.51. "**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, 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 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.

1.52. "**Later Approval**" or "**Later Approvals"** means (i) 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, lot line adjustments, and re-subdivisions. 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.

1.53. "**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.

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

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

1.56. "**Litigation Extension(s)**" has the meaning set forth in Section 11.5.1.

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

1.58. "**Market Rate Parcels**" has the meaning set forth in Exhibit B.

1.59. "**Market Rate Units**" has the meaning set forth in Exhibit B.

1.60. "**Material Change(s)**" means any modification that (i) would materially alter the rights, benefits or obligations of the City or Developer under this Agreement, (ii) is not consistent with the Project SUD, (iii) extends the Term, (iv) changes the permitted uses of the Project Site, (v) decreases the Community Benefits, (vi) increases the maximum height, density, bulk or size of the Project, (vii) increases parking ratios, or (viii) changes the Impact Fees and Exactions.

1.61. "**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.

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

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

1.64. "**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.

1.65. "**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.

1.66. "**Municipal Code**" means the San Francisco Municipal Code. All references to any part of the Municipal Code 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.

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

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

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

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

1.71. "**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.

1.72. "**Party**" and "**Parties**" has the meaning set forth in the opening paragraph of this Agreement and also includes any party that becomes a party to this Agreement, such as a Transferee.

1.73. **"Phase"** has the meaning set forth in Section 3.1.

1.74. "**Phasing Plan and Community Benefits Linkages**" means the schedule attached to this Agreement as Schedule 1.

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

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

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

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

1.79. "**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 City practice on a City-Wide basis.

1.80. "**Project**" means the mixed-income development project as described in Recital B, Exhibit B, and the Approvals, together with Developer's rights and obligations under this Agreement.

1.81. "Dedicated **Open Space**" means the privately owned, publicly accessible open space described in Exhibits C and C-1, C-2, C-3, and C-4, including Reservoir Park, Gateway Landscape, Brighton Paseo, and San Ramon Paseo.

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

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

1.84. "**PSA**" has the meaning set forth in Recital H.

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

1.86. "**Public Improvements**" means the facilities, both on- and off-site, to be improved, constructed and dedicated by Developer and, upon completion in accordance with this Agreement, accepted by the City. Public Improvements include the streets within the Project Site shown on Exhibit M, and all infrastructure and public utilities within such streets (such as electricity, water and sewer lines but excluding any non-municipal utilities), including sidewalks, landscaping, bicycle lanes, bus boarding island, street furniture, and paths and intersection improvements (such as curbs, medians, signaling, traffic controls devices, signage, and striping) as specified in the Master Infrastructure Plan. The Public Improvements also include the SFPUC Infrastructure and the SFMTA Infrastructure, as specified in the Master Infrastructure Plan. The Public Improvements do not include Publicly Accessible Private Improvements or, if any, privately owned facilities or improvements in the public right of way. All Public Improvements will be constructed in accordance with all City standards and at Developer's sole expense.

1.87. "**Publicly Accessible Private Improvements**" has the meaning set forth in Exhibit C.

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

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

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

1.91. "**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.

1.92. "**SFPUC Retained Fee Area**" has the meaning set forth in Recital B.

1.93. "**SFPUC Retained Fee License Agreement**" has the meaning set forth in Recital H.

1.94. "**Streetscape Improvements**" means the streets, sidewalks, curbs, gutters, bicycle pathways, and associated landscaping, all as set forth in the Master Infrastructure Plan attached to this Agreement as Exhibit M.

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.

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

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

1.99. "**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.

1.100. "**Townhouse Parcels**" has the meaning set forth in Exhibit B.

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.

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

1.104. "**Workforce Agreement**" means the Workforce Agreement attached hereto as Exhibit I.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall take effect on the first date upon which both of the following have occurred: (i) the full execution and delivery of this Agreement by the Parties; and (ii) the date the Enacting Ordinance is effective and operative ("**Effective Date**"). The Parties shall execute this Agreement within thirty (30) days of the date the Enacting Ordinance is effective and operative.

2.2 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for twenty-five (25) 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 legal parcel upon completion of the Building within that parcel and the Associated Community Benefits for that Building, as set forth in Section 7.1. The term of any conditional use permit, planned unit development, any tentative subdivision map shall be for the longer of (a) the Term (as it relates to the applicable parcel) or (b) the term otherwise allowed under the Subdivision Map Act or conditional use/planned unit development approval, as applicable.

3. GENERAL RIGHTS AND OBLIGATIONS

3.1 Development of the Project. Developer shall have the vested right and obligation 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 Project will be

developed in phases (each, a "**Phase**"). Prior to Commencing any Construction on the Project Site, Developer will prepare a "**Development Phase Application**" substantially as set forth in Exhibit N, for City's review and approval. The Development Phase Application will set forth the detailed scope and work plan for each development phase, including the Associated Community Benefits required in connection with each Phase. 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, including but not limited to approval of a Development Phase Application for each Phase, 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 terms and conditions of the PSA, the SFPUC Retained Fee License Agreement, the Project SUD, and 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 both the construction and end use phases of the Project in accordance with the Workforce Agreement attached as Exhibit I.

3.3 Public Power. Within sixty (60) days after the Effective Date, Developer will provide the SFPUC with all Project information the SFPUC requires to determine the feasibility of providing electric service to the Project Site (the "Feasibility Study"). The SFPUC will complete the Feasibility Study within six (6) months after the date that Developer provides to the SFPUC all Project information needed to complete the Feasibility Study. Developer agrees that if the SFPUC determines it is feasible to provide electricity for the Project Site, then the SFPUC will be the exclusive power provider to the Project Site. The SFPUC power will be provided under the SFPUC's Rules and Regulations Governing Electric Service and at rates that are comparable to rates in San Francisco for comparable service from other providers.

3.4 Schedule of Performance. Developer shall satisfy the performance milestones by the Outside Dates set forth in Schedule 3, the Schedule of Performance, subject to Excusable Delay and Litigation Extension. Before sending a notice of default for any failure to meet a milestone in the Schedule of Performance, the Parties agree to meet and confer in good faith as set forth in Section 9.2 to determine the cause of delay and whether Developer can start and complete the required action to satisfy the milestone date in a reasonable time. Any

termination of this Agreement based on a failure to meet the Schedule of Performance shall be made, if at all, only following a hearing at the Board of Supervisors and shall be subject to the approval of the Board of Supervisors by resolution. An Excusable Delay will extend the date of the performance milestone in question by an equivalent number of days, but will not excuse or delay any other obligation of Developer in this Agreement, including the provision of any Associated Community Benefit at the times and in the manner specified in Schedule 1, the Phasing Plan and Community Benefits Linkages Schedule. In no event will an Excusable Delay extend the Term.

3.5 Community Engagement. Developer shall undertake and comply with the community engagement obligations described in **Exhibit R**.

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 other development milestone in connection with implementation of the Project, as described in the Phasing Plan and Community Benefits Linkages 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 Schedule 1, the Phasing Plan and Community Benefits Linkages Schedule:

(a) the Project Open Space, as further described in Exhibit C;

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

(c) the transportation and other infrastructure improvements as described in Exhibit J and Exhibit M; and

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

4.2 Performance of Community Benefits. Whenever this Agreement requires completion of an Associated Community Benefit at or before the completion of or receipt of temporary or final certificate of occupancy for a Building, the City may withhold a temporary or final certificate of occupancy for that Building until the required Associated Community Benefit is completed or Developer has provided the City with adequate security for completion of such Associated Community Benefit in a commercially reasonable form (*e.g.*, a bond or letter of credit) as approved by (i) the Planning Director in the Director's reasonable discretion (following consultation with the City Attorney), and (ii) the MOHCD Director in the Director's reasonable discretion if the subject Associated Community Benefit is construction of Affordable Units. In determining the need for and reasonableness of any such security, the Planning Director and MOHCD Director (in consultation with the City Attorney) shall consider (i) any existing or proposed security, such as any bonds required under the Subdivision Map Act, and (ii) payment and performance bonds provided to a construction lender if the subject Associated Community Benefit is construction of Affordable Units and construction financing for the Affordable Units has closed.

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. 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.

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. As set forth in the Workforce Agreement (Exhibit I), Developer agrees that the Project Site is sold by the City for a Housing Development, as defined in Section 23.61(a) of the Administrative Code, and that therefore all persons performing labor in construction work on the Project Site shall be paid not less than the highest prevailing rate of wages for the labor so performed consistent with the requirements of Article VII of Chapter 23 and Section 6.22(e) of the Administrative Code (including those requirements applicable to a "Housing Development" as defined in Section 23.61 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 public 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 the Administrative Code, the stricter requirements shall apply.

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, 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 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 Ordinance includes express waivers and amendments to Chapter 56 consistent with this Agreement.

5.2.1 Code Waivers. Pursuant to the Enacting Ordinance and this Agreement, certain provisions of the San Francisco Municipal Code are waived, as set forth in Schedule 2-2 (Schedule of Code Waivers and Amendments).

5.2.2 No Implied Waiver of Codes. Except as expressly set forth in Schedule 2-2, nothing in this Agreement constitutes an implied waiver or exemption of the Subdivision Code or the Public Works Code. For any waiver or exemption other than those set forth in Schedule 2-2, 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.

5.2.3 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). The City may subject a Later Approval to any condition that 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. 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 Schedule 2-1 (Schedule of Impact Fees) and Schedule 2-2 (Schedule of Code Waivers and Amendments) and 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 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, Green Building 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 sidewalks, pathways, street widths, and general right of way configurations with respect to location and relationship of major elements, curbs, bicycle facilities, parking, loading areas, as set forth in the Approvals described in Exhibit E (including but not limited to the Master Infrastructure Plan attached to this Agreement as Exhibit M and the Project Open Space described in Exhibit C) 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 and utilities. 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. As used in this Agreement, "**Engineering Design**" means 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 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 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 by the City other than those required under the Existing Standards, except for permits or approvals that are required on a City-Wide basis, relate to the construction of improvements, and do not prevent construction of the Project as intended by this Agreement;

(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 Affordable Units, change the AMI percentage levels for the affordable housing pricing or income eligibility, change the requirements regarding unit size or unit type, or increase the amount or change the configuration of required Project Open Space; or

(k) impose new or modified Impact Fees and Exactions on the Project (as is 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 the Project Site as may be necessary or desirable in order to develop a particular part of the Project as generally described in Exhibit B and depicted 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. Developer shall cause any Mortgagee to provide its authorized signature on any final subdivision map with respect to the Project, which shall include consent and acknowledgement of the Affordable Unit requirements, for the life of the Project, in accordance with the Affordable Housing Program and 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 Schedule 2-1 (Schedule of Impact Fees), 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 the 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, (ii) the SFPUC Capacity Charges, and (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 will 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 are subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined. Accordingly, Developer will 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 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, child care, transportation, parking, or community improvements (for which this Agreement reflects the full extent of 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.

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 thirty (30) 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 and the Project SUD.

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 Phase or 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 as set forth in Section 4.1 and the Phasing Plan and Community Benefits Linkages Schedule (Schedule 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. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. 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. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that 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. Notwithstanding the foregoing, the City retains authority to reject any Developer request for temporary or interim Public

Improvements or deferral of the construction of the permanent Public Improvements and can require permanent Public Improvements with each Development Phase.

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 H 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, the status of subsequent development applications and approvals and compliance with the requirements regarding Community Benefits, payments and fees, the Affordable Housing Program, the Workforce Agreement, the Transportation Demand Management Program, and the environmental mitigation measures identified in the FEIR. 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 entire 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.

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 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. City shall provide a copy of any notice to Developer of a Default (a) under Section 9.3(ii) concurrently to any entity that has assumed any rights or obligations of this Agreement pursuant to a Transfer, provided that such entity has requested such notice from City in writing, and such assignee shall have the right, at its option, to remedy any such Default on behalf of Developer in accordance with the terms of this Agreement, and (b) under Section 9.3(i) or Section 9.3(ii) concurrently to BHC Balboa Builders LLC, a California limited liability company, and to AVB Balboa, LLC at the addresses specified in Section 14.11, and such entities shall have the right, at either of their option, to remedy any such Default on behalf of Developer in accordance with the terms of this Agreement.

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. Any termination of this Agreement by City prior to the date that Developer has Commenced Construction of the Project (as described in Section 15 of this Agreement) shall be made, if at all, only following a hearing at the City's Board of Supervisors and shall be subject to the approval of the Board of Supervisors by resolution. 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 any temporary or final certificate of occupancy for a Building until all of the Associated Community Benefits tied to that Building have been completed in accordance with Section 4.2. For a Building to be deemed completed, all of the Community Benefits described in Schedule 1, or a Later Approval, tied to that Building must be complete; provided, if the City issues a temporary or final certificate of occupancy before such items are completed, then Developer shall work diligently and use commercially reasonable efforts to complete or cause completion of 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 City Attorney's Office.

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 once Developer is the fee owner of such encumbered portion of the Project Site.

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) thirty (30) days to cure a monetary Default; and (b) sixty (60) 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, 7.1, 7.3.1, 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. The Parties agree that Developer's obligations under the Affordable Housing Program, including the contribution of Developer's Affordable Funding Share which will enable construction of 50% of the total number housing units in the Project to be Affordable Units, is of utmost importance to the City and is essential to address the current housing shortage in San Francisco. The City would not approve this Agreement without these obligations and commitments. Therefore, in the event that Developer seeks amendments to this Agreement at any time, due to financial or other reasons, the Parties agree that any proposed future amendment will address alternatives to infrastructure, parks, and other cost or revenue items relative to the Project, and under no circumstance will any future amendment reduce the percentage of Affordable Units under the Affordable Housing Program. To the extent the City is willing to consider any potential future amendment to this Agreement, the Parties agree to meet and confer on alternatives, as necessary, without considering changes that would reduce the amount of Affordable Housing.

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 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 do not amend this Agreement as set forth above when there is a direct conflict, 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 any 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~~In addition, "Excusable Delay" includes Economic Delay. "**Economic Delay**" means a significant decline in the residential real estate market, as measured by a decline of more than two percent (2%) in the Home Price Index during the preceding twelve (12) month period, or by any period in which the rolling average of the previous two annual averages of either the ENR-CCI or the ENR-BCI is above four percent (4%). Economic Delay shall commence upon Developer's notification to the City of the Economic Delay (together with appropriate backup evidence). An Economic Delay triggered by the Home Price Index shall continue prospectively on a quarterly basis and remain in effect until the the earlier of (i) the Home Price Index increases for three (3) successive quarters, or (ii) the Home Price Index returns back to the level it was at when the Economic Delay began. An Economic Delay triggered by an ENR Index shall continue until the earlier of (i) the rolling average of the previous two annual averages of the applicable ENR Index is below two percent (2.0%), or (ii) the ENR Index returns back to the level it was at when the Economic Delay began. "**Home Price Index**" means the quarterly index published by the Federal Housing Finance Agency representing home price trends for the San Francisco Metropolitan Statistical Area (comprising San Francisco, San Mateo, and Marin counties). "**ENR-CCI**" means the Engineering News Report Construction Cost Index (ENR-CCI) for San Francisco. "**ENR-BCI**" means the Engineering News Report Building Cost Index (ENR-BCI) for San Francisco. "**ENR Index**" means the ENR-CCI or ENR-BCI, as applicable. If either the Home Price Index or an ENR Index is discontinued, Developer and the City shall approve a substitute index that tracks the residential market with as close a geography to the San Francisco Metropolitan Statistical Area as possible. Excusable Delay shall not include delays resulting from 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. Notwithstanding anything to the contrary above, the following shall not be Excusable Delay: (1) the lack of credit or financing, unless such lack is the result of Economic Delay; or (2) the appointment of a receiver to take possession of the assets of Developer, an assignment by Developer for the benefit of creditors, or any other action taken or suffered by Developer under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute. 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 General Transfer Right. Except as limited by Section 12.2 and 12.3, 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**") 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), subject to the limitation and requirements set forth in the Phasing Plan and Community Benefits Linkages Schedule; 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. Developer acknowledges and agrees that a failure to complete an Associated Community Benefit may, if not completed, delay or prevent a different party's ability to obtain a temporary or final certificate of occupancy for a specific Building or improvement under this Agreement if and to the extent the completion of the Associated Community Benefit is a condition to such temporary or final certificate of occupancy pursuant to

the Phasing Plan and Community Benefits Linkages Schedule, and Developer and all Transferees assume this risk.

12.2 Transfer Prior to Closing under PSA. Prior to consummation of the purchase and sale transaction under the PSA, Developer may only Transfer the entire Project Site concurrently with the conveyance, assignment or transfer of all of its interest, rights and obligations under this Agreement with respect to the entirety of the Project Site to BHC Balboa Builders, LLC, a California limited liability company, AVB Balboa, LLC, a Delaware limited liability company, or to another entity approved by the Planning Director in the Planning Director's sole discretion; provided in all such cases that Developer shall not be released from any past or prospective liability under this Agreement (except as provided in Section 12.5 below) and that such transfer shall be pursuant to an assignment and assumption agreement in recordable form, in substantially the form attached as Exhibit G (the "**Assignment and Assumption Agreement**").

12.3 Other than in connection with a Transfer of all of Developer's interest in the Project Site pursuant to Section 12.2, Developer's initial Transfer of the portions of the Project Site identified on the Site Plan as Parcel C, Parcel D, or Parcel G (individually and collectively, the "**Market Rate Parcels**") may be made only with the Planning Director's prior written consent (the "**Initial Market Rate Parcel Transfer(s)**"). In connection with the Initial Market Rate Parcel Transfer(s), Developer must make (i) a minimum payment of $5,770,670 in connection with the Transfer of the Market Rate Parcels located within the first Phase of development of the Project, (ii) a minimum payment of $4,616,536 in connection with the Transfer of the Market Rate Parcels located within the second Phase of development of the Project, and (iii) assurances reasonably satisfactory to the Planning Director that such payments will be applied towards Project development costs. The Assignment and Assumption Agreement in connection with the Initial Market Rate Parcel Transfer(s) shall be in substantially the form attached as Exhibit G with the addition of Developer's covenant and agreement to apply the payments described in the preceding sentence to Project development costs. After the Initial Market Rate Parcel Transfers, the requirements of this Section 12.3 will no longer apply, and any subsequent Transfers of the Market Rate Parcels will be governed by the other terms and provisions of this Article 12.

12.4 Notice of Transfer. Developer shall provide not less than thirty (30) days' notice to the City before any proposed conveyance, assignment or 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 shall be in recordable form, in substantially the form attached as Exhibit G (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.

12.5 Release of Liability. Except with regard to a conveyance, assignment, or transfer of this Agreement pursuant to Section 12.2, the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property upon recordation of an Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 12.4 above), 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, and the form of Assignment and Assumption Agreement attached as Exhibit G may be modified to release the assignor from prospective liability under this Agreement without requiring the City's approval of such modification. Except with regard to a conveyance, assignment, or transfer of this Agreement pursuant to Section 12.2, 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.

12.6 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.

12.7 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.12.8 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 has 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.

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 Developer, 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 Article 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 Article 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: Rich Hillis
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,
Balboa Reservoir Project

To Developer: Reservoir Community Partners, LLC
c/o BRIDGE Housing Corporation
600 California St. #900
San Francisco, CA 94108
Attn: Brad Wiblin, Sr. Vice President

Reservoir Community Partners, LLC
c/o AvalonBay Communities
455 Market Street, Suite 1650
San Francisco, CA 94105
Attn: Joe Kirchofer, Vice President

with a copy to:

Charles J. Higley, Esq.
Farella Braun + Martel
235 Montgomery Street, 17th Floor
San Francisco, CA 94104

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.

15. OPTION TO PURCHASE

15.1 Pursuant to the PSA, the City is selling the Project Site to Developer in order to obtain the housing and other Community Benefits set forth in this Agreement. The City would not be entering into this Agreement or the PSA without Developer's commitment to build the Project. Accordingly, notwithstanding anything to the contrary in this Agreement, if Developer (i) has not Commenced Construction of the Project on or before the date that is fifteen (15) years following the Effective Date (the "**Trigger Date**") for any reason other than the City's Default, or (ii) if this Agreement terminates for any reason other than the City's Default prior to the Trigger Date, then the City shall have the exclusive and irrevocable right to purchase (the "**Purchase Option**") the Project Site on the terms set forth in this Section. For purposes of this Section, the Project Site shall include all rights and interests in the Project Site, including easements and intangibles, that the City transferred to Developer under the PSA. The Trigger Date will be extended by the period of any Litigation Extension, but not by any other Excusable Delay.

15.1.1 Commenced Construction. For purposes of this Section, "**Commenced Construction of the Project**" or its corallary means: (i) Developer has received all Approvals from the City needed by Developer in order to begin the Public Improvements for the first Phase, including approval of the Development Phase Application, (ii) Developer and the City have executed a public improvement agreement for the first Phase consistent with the City's Subdivision Code and the Master Infrastructure Plan, and Developer has posted bonds or other security as required under the public improvement agreement, and (iii) Developer has started to physically construct the Public Improvements for the first Phase subject to the release of the

Purchase Option (if and to the extent required by Developer's third party lender, investor or buyer), in which case the City shall deposit the Release of Purchase Option into an escrow account to be recorded upon the release of funds to allow Developer to Commence Construction of the Project.

15.1.2 Exercise. The City may exercise the Purchase Option any time from and after the Trigger Date or, in the event of termination of this Agreement that is not due to the City's Default, the date upon which this Agreement is terminated, by sending written notice to Developer that the City intends to purchase the Project Site under the Purchase Option (the "**Exercise Notice**"). The Exercise Notice will be subject to approval by the City of such additional environmental and other investigations of the Project Site as the City may deem appropriate, and approval by the City's Board of Supervisors and Mayor, in their respective sole discretion, and due adoption of a resolution authorizing such purchase in accordance with all applicable laws (including CEQA), following City's delivery of the Exercise Notice. The City shall obtain such approvals, if at all, within one hundred twenty (120) days of City's delivery of the Exercise Notice. The City shall notify Developer when all such approvals have been obtained and all necessary funds have been appropriated for the City to complete the purchase (the "**City Commitment Date**"). If Developer Commences Construction of the Project at any time before the City Commitment Date, provided Developer is not in Default under this Agreement (following applicable notice and cure periods), the Purchase Option shall terminate and be of no further force or effect. For clarity, if Developer has received a notice of default from the City at the time Developer Commences Construction of the Project, there will be no release of the Purchase Option unless or until the default is cured.

15.1.3 Purchase Price. The purchase price for the Project Site shall be the purchase price paid by Developer to the City when Developer acquired the Project Site from the City, together with interest at the rate of 3% per annum from the date of each of Developer's payments to the City to the date of the closing of the City's acquisition under the Purchase Option (the "**Purchase Price**").

15.1.4 Repurchase Closing. The purchase and sale of the Project Site (the " **Repurchase Closing**") shall close on or before the date that is one hundred twenty (120) days from the City Commitment Date through an escrow opened by the City with a title insurance company selected by the City, or such earlier date as the conditions for the Repurchase Closing have been satisfied. Developer and the City shall each deposit in escrow with the title company

all documents and funds necessary to close the purchase and sale, together with escrow instructions consistent with the Purchase Option. Developer shall convey fee simple title to the Project Site to the City subject only to: (i) a lien for real property taxes and assessments not yet due and payable for the tax fiscal year in which the Repurchase Closing Date occurs, (ii) all title exceptions listed in Developer's title insurance policy as of the date when Developer acquired the Project Site from the City, (iii) any permits or regulatory agreements entered into by Developer in furtherance of the Project, and (iv) any other title exceptions created by the City or consented to in writing by the City. The parties understand and agree that Developer will be responsible for removing any monetary liens or other encumbrances affecting the Project Site that arose concurrent with or after Developer's acquisition of the Project Site, including any deeds of trust or mechanics liens and any leases or possessory rights granted by Developer, if any, at Developer's cost.

15.1.5 As-Is. The City will take the Project Site at the Repurchase Closing in its "as is" condition, without representation or warranties. The City will assume any risk of damage or destruction to the Project Site before the Repurchase Closing Date. The City shall have the right to not purchase the Project Site at any time and for any reason up to the date of the Repurchase Closing.

15.1.6 Costs and Expenses. The City shall pay for the cost of the premium of the title insurance policy to be issued to the City, any transfer taxes, and any escrow or recording fees for the purchase and sale. Real estate taxes and assessments and utility charges, if any, shall be prorated as of the Repurchase Closing Date.

15.1.7 Release of Purchase Option. Upon Developer's Commencement of Construction of the Project, provided Developer is not in Default under this Agreement (or there has been no notice from the City of an act or occurrence that, with the provision of time or the giving of notice, would become a Developer Default), the Purchase Option shall terminate In connection therewith, when Developer reasonably believes that Developer is within 90 days from the Commencement of Construction of the Project, Developer may provide written notice (the "**Commencement of Construction Notice**") to the City. Within thirty (30) days following the City's receipt of the Commencement of Construction Notice, and provided the conditions for release have been satisfied but for the receipt of funds needed by Developer to Commence Construction of the Project, the City shall execute and deliver into escrow a release of the Purchase Option in a form attached as Exhibit Q (the "**Release of Purchase Option**") and shall authorize

delivery and recordation of the Release of Purchase Option in connection with the close of escrow. The City shall authorize the close of escrow and the recordation of the Release of Purchase Option when Developer has Commenced Construction of the Project as defined in Section 15.1.1 above. If the Parties dispute whether Developer is entitled to the Release of Purchase Option based on whether Developer has satisfied the requirements set forth above, either Party may seek appropriate judicial remedies which include specific performance.

15.1.8 Run with the Land; Prohibit Parcelization Before Horizontal Infrastructure Begins. The provisions of this Section shall run with the land as set forth in Section 14.3, and bind all future owners of the Project Site. Upon any termination of this Agreement (other than due to the City's Default), the Purchase Option shall continue until either (i) the Repurchase Closing, or (ii) subject to any agreement of the Parties to extend the Purchase Option further, twenty-four (24) months after the Trigger Date provided that Developer first gives City written notice of the impending termination date and City fails to deliver an Exercise Notice within sixty (60) days of such termination notice. To ensure that the City can purchase the Project Site under the Purchase Option from one seller, Developer agrees that, before Developer has Commenced Construction of the Project, Developer may not sell parts of the Project Site or enter into any leases for any part of the Project Site that are not terminable at the Repurchase Closing. Any sale or transfer up to that date must be of the entirety of the Project Site unless the City consents in writing to such partial sale. Nothing in the foregoing will prevent Developer from selling shares or interests in the ownership entity at any time, or transferring the entirety of the Project Site, together with Developer's interest in this Agreement, at any time.

[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:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Rich Hillis
Director of Planning

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

RECOMMENDED:

By:

_____
Eric Shaw
Director, MOHCD

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

DEVELOPER:

_____
a _____

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, 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 C-3

Regulations Regarding Access and Maintenance of Open Space Improvements

These Regulations Regarding Access and Maintenance of Publicly Accessible Private Improvements (these "**Regulations**") 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 the Development Agreement for the Balboa Reservoir Project by and between the City and County of San Francisco, a municipal corporation, and Reservoir Community Partners LLC, a Delaware limited liability company (the "**Agreement**"). The Publicly Accessible Private Improvements are located on the Dedicated Project Open Space for the Project that is privately owned, but will remain accessible to the public, as described in this Exhibit and more particularly described in the Declaration of Public Access Covenants and Restrictions attached hereto as Exhibit C-3 and recorded against the Dedicated Public Open Space (the "**Declaration**"), and includes Reservoir Park, Gateway Landscape, Brighton Paseo, and San Ramon Paseo identified in Exhibit C. All capitalized terms used in these Regulations and not specifically defined herein will have the meanings ascribed to them in the Agreement.

A. Developer Obligation to Maintain and Operate Publicly Accessible Private Improvements and Dedicated Public Open Space

1. Management in Accordance with Regulations and Declaration. Developer will control, manage, maintain and operate the Publicly Accessible Private Improvements and Dedicated Public Open Space pursuant to the Declaration and in accordance with these Regulations and the Agreement.

2. Transfer of Obligations. Once the Publicly Accessible Private Improvements are completed, Developer's ongoing obligations under these Regulations may be transferred to a residential, commercial or other management association (the "**Manager**") on commercially reasonable terms so long as (i) the Manager has the financial capacity and ability to perform the obligations so transferred, (ii) the Planning Director reasonably approves the Manager, ~~and~~ (iii) Developer notifies the City of the transfer in accordance with the notice provisions of the Agreement, and (iv) the governance of Manager is structured with representation from all covered buildings, on an equal, pro-rata, or other equitable basis. If so transferred, the approved Manager will assume Developer's obligations and will operate, manage, and maintain the Publicly Accessible Private Improvements and the Dedicated Public Open Space in good repair and in a clean and safe condition in accordance with the anticipated and foreseeable use thereof.

3. Annual Public Meeting. Developer will host a minimum of one (1) public meeting per year and post notice online inviting neighborhood organizations and members of the public to attend. Such notice also will be provided to the Planning Department. At such meeting, Developer will provide the opportunity for the City, members of neighborhood organizations, and members of the public to comment on Developer's use, maintenance, and/or operation of the Publicly Accessible Private Improvements and the Dedicated Public Open Space.

4. Monitoring and Reporting. One year after the completion and opening of any Publicly Accessible Private Improvement, and then every three years thereafter, Developer will submit a Maintenance and Operations Report to the City's Zoning Administrator for review by the Planning Department. After the initial report relating to the first year of operations for each Publicly Accessible Private Improvement, the Maintenance and Operations Report for all of the Publicly Accessible Private Improvements may be combined into a single report, regardless of the timing of completion of the individual improvements. At a minimum the Maintenance and Operations Report will include:

(a) A description of the amenities, a list of events and programming with dates, and any changes to the programing during the reporting period;

(b) If the design of the Publicly Accessible Private Improvement was altered during the reporting period, a schematic plan of the Publicly Accessible Private Improvement, including the location of amenities, food service, landscape, furnishing, lighting, and signage;

(c) Photos of the existing Publicly Accessible Private Improvement at the time of reporting;

(d) A description and schedule of the means and hours of access to the Publicly Accessible Private Improvement and Dedicated Public Open Space, if changed during the reporting period, and all temporary closures occurring during the reporting period;

(e) A schedule of completed maintenance activities during the reporting period and an assessment of maintenance standards in accordance with the Recreation and Park Department park maintenance standards set forth in Proposition C (San Francisco Charter Section F1.102) and the Park Code;

(f) A schedule of proposed maintenance activities for the next reporting period; and

(g) Contact information for a community liaison.

B. Permitted Uses.

Upon completion of any Publicly Accessible Private Improvement in accordance with this Agreement, Developer shall make that Publicly Accessible Private Improvement and associated Dedicated Public Open Space available for the use, enjoyment and benefit of the public for circulation, open space and recreational purposes in accordance with the Declaration and these Regulations. The following Dedicated Public Open Spaces and associated Publicly Accessible Private Improvements will be available for the following specific uses:

1. Brighten Paseo and San Ramon Paseo. Brighton Paseo and San Ramon Paseo, as described in Exhibit C and depicted in Exhibit C-1 to the Agreement (collectively, the "**Paseos**"), will provide access for the use, benefit and enjoyment of the public for purposes of circulation, including walking and bicycling, seven days a week, twenty-four hours a day, in the same manner as would a public right-of-way.

2. Park Areas. Reservoir Park and Gateway Landscape (collectively, the "**Park Areas**"), as more particularly described in the Declaration, shall be open and accessible to the public from 5am to Midnight, seven days per week, unless otherwise provided in these Regulations. No person will enter or remain in the Park Areas when the Park Areas are closed to the public, except persons authorized in conjunction with a public event reservation, Special Events, or other Non-Closure Events, or authorized service and maintenance personnel. As part of the Park Areas, Developer shall build, maintain and operate at a minimum, a total of 2000 square feet of dog relief areas at one or more of the locations shown in DSG Figure 6.18–1: Potential Locations for Dog Relief Areas. Additional locations within the Park Areas may be considered. Dog relief areas shall be open and accessible to the public from 5am to Midnight, seven days per week, unless otherwise provided in these Regulations. No person will enter or remain in the dog relief areas when the dog relief areas are closed to the public, except persons authorized in conjunction with authorized service and maintenance personnel.

3. Community Room. The Project includes a Community Room that will host services and programs that are available to the public but are designed for specified programmed activities (i.e. classes). As such, the Community Room will be considered partial public access. The Community Room must be located in a Building immediately adjacent to Reservoir Park and must front the park. Public access to the community room will be provided from Reservoir Park and/or from the public street. The public area of the room will be not less than 1,000 square feet, not including support areas. The Community Room will be operated and maintained in accordance with all applicable laws. The Community Room will be used as a community clubhouse, neighborhood center, or other

community facility open for public use in which the chief activity is not carried on as a gainful business and whose chief function is the gathering of persons from the immediate neighborhood for the purposes of recreation, social interaction, and education. The Community Room will be made available at reasonable times of the day and days of the week (such as evenings and weekends) for use and rent by residents, neighborhood organizations, non-profits, public agencies, and other members of the public for non-commercial meetings, events and other gatherings. The operator of the Community Room will publicize the availability of such facility, may require a reasonable fee for such use, and set reasonable hours and terms for such use, but any fees may not exceed the administrative and maintenance costs of hosting such events. In addition, each multi-family Building, excluding the Townhouse Units, will have an adaptable indoor common area for residents of the Building. Adaptable spaces allow for many different accommodations in response to demographic shifts, instead of targeting one audience. Each Building's indoor adaptable space should be able to accommodate programming for families, such as a space to host meetings, dinners, birthday parties, or other groups.

C. 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 and associated Dedicated Public Open Space to the public from time to time for one of the following reasons. Except in the event of a closure in excess on one week as provided in Section ___ below, such temporary closure shall continue for as long as Developer reasonably deems necessary to address either of the circumstances below, provided that Developer uses commercially reasonable efforts to limit the duration of the closure and the area subject to closure.

1. 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) and associated Dedicated Public Open Space in any manner deemed necessary or desirable to promote public safety, security, and the protection of persons and property.

2. Maintenance and Repairs. Developer may temporarily close a Publicly Accessible Private Improvement and associated Dedicated Public Open Space (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 or associated Dedicated Public Open Space; provided such closure may not impede emergency vehicle access.

3. Temporary Construction Staging. Developer may temporarily restrict access to a Publicly Accessible Private Improvement and associated Dedicated Public Open Space (or affected portions thereof) for limited duration and as reasonably necessary for temporary construction staging related to any phase of development of the Project (during which time the subject improvements and area will not be used by the public) if such temporary construction staging is in accordance with the Development Agreement, the Approvals, and any Later Approvals

4. Primary Paths of Travel Remain Open. Notwithstanding anything to the contrary in these Regulations, the portions of the Dedicated Public Open Spaces shown on Figure 1 function as primary paths of pedestrian travel through the Site or provide access to adjacent buildings and uses, and shall be open to public passage 24 hours per day every day.

5. Records; Notices; Security. Developer will keep records of all temporary closures and regularly disclose them at the annual meeting described in Section ___ and in the Maintenance and Operation Report pursuant to Section ___ of these Regulations. Developer will post notices within the Dedicated Public Open Space a minimum of 72 hours prior to a planned closure for maintenance and repairs. Developer will post signs within 24 hours of a closure for unplanned maintenance and repairs. Signs will explain the nature and duration of the closure and provide appropriate contact information. Developer will have the right to block entrances to, to install and operate security devices, and to maintain security personnel in and around the Paseos and Open Spaces to prevent the entry of persons or vehicles during the time periods when public access to any Publicly Accessible Private Improvement, Dedicated Public Open Space, or any portion thereof is restricted pursuant to this Section.

6. Extended Closure. In the event of a closure in excess of one week that is not in connection with temporary construction staging pursuant to Section ___, Developer will request the Planning Director's approval of such closure in writing. Requested extended closures will be reviewed by the Planning Department and may be approved by the Planning Director in the Director's sole discretion, in consultation with the General Manager of the Recreation and Parks Department, who will determine if the extended closure is necessary and reasonable.

D. General Use Provisions.

The following provisions are applicable to all Publicly Accessible Private Improvements and Dedicated Public Open Space, whether Paseos or Park Areas.

1. Prohibited Use. The following is prohibited in any Publicly Accessible Private Improvement and Dedicated Public Open Space, (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 up to eight leashed animals per person, including leashed service animals, in the Dedicated Public Open Space. Organized sporting events are not permitted in the Dedicated Public Open Space 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 Dedicated Public Open Space for limited duration and as reasonably necessary for temporary construction staging related to adjacent development on the Project Site (during which time the subject Dedicated Public Open Space 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.

2. 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 or Dedicated Public Open Space.

3. Maintenance Standard. Each Publicly Accessible Private Improvement and Dedicated Public Open Space shall be operated, managed, and maintained in a clean and safe condition in accordance with the anticipated and foreseeable use thereof, and in accordance with the Recreation and Park Department park maintenance standards set forth in Proposition C (San Francisco Charter Section

F1.102) and the Park Code or any successor standard that may be established by law for the maintenance of parks that are accessible to the public.

4. Operation of the Publicly Accessible Private Improvements. Operation of each Publicly Accessible Private Improvement and associated Dedicated Public Open Space 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, Sections ___ of these Regulations), or (iii) reasonably imposed by Developer, with the Planning Director's reasonable consent, to address security concerns. None of the Publicly Accessible Private Improvements or associated Dedicated Public Open Space 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 or associated Dedicated Public Open Space 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 Improvements and other key locations (such as public restrooms or structures), indicating that it is a privately-owned Dedicated Public Open Space in accordance with all laws and signage requirements. The signs, at a minimum, shall (i) 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, and (ii) meet the minimum standards for design, location, and content otherwise applicable to signage similar spaces under Planning Code Section 138, as amended.

5. 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 or associated Dedicated Public Open Space 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 or associated Dedicated Public Open Space 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, associated Dedicated Public Open Space 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.

6. 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 Improvement or Dedicated Public Open Space. 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 Dedicated Public Open Space, and if such person enters a Dedicated Public Open Space, may ask such person to leave the Dedicated Public Open Space. 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.

7. 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 and associated Dedicated Public Open Space to prevent the entry of persons or vehicles during the time periods when public access thereto 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 may 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 is subject to approval of 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.

8. Removal of Obstructions. Developer may remove and dispose of, in any lawful manner it deems appropriate, any object or thing left or deposited on a Publicly Accessible Private Improvement or Dedicated Public Open Space deemed to be an obstruction, interference, or restriction of use of that Publicly Accessible Private Improvement or Dedicated Public Open Space for the purposes set forth in these Regulations, including, but not limited to, personal belongings or equipment in or on a Publicly Accessible Private Improvement or Dedicated Public Open Space during hours when public access is not allowed pursuant to these Regulations.

9. No Temporary Structures. No trailer, tent, shack, or other outbuilding, or structure of a temporary character, shall be allowed on any portion of the Dedicated Public Open Space at

any time during Operating Hours, either temporarily or permanently, except (a) with regard to Developer's right to use Dedicated Public Open Space for temporary construction staging related to adjacent development as set forth in Sections ___ of these Regulations, and (b) Developer may approve the use of temporary tents, booths, art installations, temporary displays, and other structures in connection with public events, temporary exhibitions, or Special Events.

E. 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 and associated Dedicated Public Open Space to the public from time to time for one of the following reasons. Except in the event of a closure in excess on one week as provided in Section ___ below, such temporary closure shall continue for as long as Developer reasonably deems necessary to address either of the circumstances below, provided that Developer uses commercially reasonable efforts to limit the duration of the closure and the area subject to closure.

1. 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) and associated Dedicated Public Open Space in any manner deemed necessary or desirable to promote public safety, security, and the protection of persons and property.

2. Maintenance and Repairs. Developer may temporarily close a Publicly Accessible Private Improvement (or affected portions thereof) and associated Dedicated Public Open Space 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 or associated Dedicated Public Open Space; provided such closure may not impede emergency vehicle access.

3. Primary Paths of Travel Remain Open. Notwithstanding anything to the contrary in these Regulations, the portions of the Dedicated Public Open Spaces shown on Figure 1 function as primary paths of pedestrian travel through the Site or provide access to adjacent buildings and uses, and shall be open to public passage 24 hours per day every day.

4. Records; Notices; Security. Developer will keep records of all temporary closures and regularly disclose them at the annual meeting described in Section ___ and in the Maintenance and Operation Report pursuant to Section ___ of these Regulations. Developer will post notices within the Dedicated Public Open Space a minimum of 72 hours prior to a planned closure for

maintenance and repairs. Developer will post signs within 24 hours of a closure for unplanned maintenance and repairs. Signs will explain the nature and duration of the closure and provide appropriate contact information. Developer will have the right to block entrances to, to install and operate security devices, and to maintain security personnel in and around the Paseos and Open Spaces to prevent the entry of persons or vehicles during the time periods when public access to any Publicly Accessible Private Improvement, Dedicated Public Open Space, or any portion thereof is restricted pursuant to this Section.

5. Extended Closure. In the event of a closure in excess of one week, the manager will request the Planning Director's approval of such closure in writing. Requested extended closures will be reviewed by the Planning Department and may be approved by the Planning Director as his or her sole discretion, in consultation with the General Manager of the Recreation and Parks Department, who will determine if the extended closure is warranted or would constitute a violation of required public access.

F. Special Events and Open Events

1. Special Events. Developer may temporarily close to the public all or any portion of Reservoir Park for private or public special events such as fundraisers, picnics, concerts, and weddings (each, a "**Special Event**" and collectively, "**Special Events**") in accordance with this Section. All Special Events must comply with applicable laws and will be subject to any required approvals or permits. Developer will post a notice of closure at all major entrances to Reservoir Park for a period of seventy-two (72) hours prior to closing Reservoir Park for a Special Event. Closures of Reservoir Park will be limited as follows: a total of six (6) events per year, but no more than one (1) per month, for up to 48 hours for each event. Events on Saturdays and Sundays between the hours of 7am and 6pm are permitted up to a maximum of two times per year. The portions of Reservoir Park that function as primary pedestrian paths through the Site or provide access to adjacent buildings and uses must always remain open to public passage in accordance with Section ___ and may not be closed for a Special Event. Developer will have the right to block entrances to, and to install and operate security devices, and to maintain security personnel in and around the Park Areas to prevent the entry of persons or vehicles during the time periods when public access to the Park Areas or any portion thereof is restricted or not permitted for a Special Event.

2. Open Events. Members of the public or other event sponsors ("**Event Sponsors**") may request the use of the Park Areas for privately- or publicly-sponsored events, including meetings, festivals, gatherings, assemblies, celebrations, receptions, seminars, lectures, fitness classes, concerts, art displays, exhibits, booths for charitable, patriotic or welfare purposes, conventions, farmers markets, and open air sale of agriculturally produced seasonal decorations, such as Christmas trees and

Halloween pumpkins, that do not require the closure of any portion of the Open Space to the public (collectively, "**Open Events**").

(a) All Open Events must be approved in advance by Developer and are subject to any required approvals or permits from applicable City Agencies with jurisdiction over the Open Event. It will be the sole responsibility of the requesting member of the public to obtain any such required permits or approvals.

(b) Developer may require payment in the form of a permit fee or other charge for use of the Park Area for Open Events, so long as the permit fee or use charge does not exceed the reasonable costs for administration, maintenance, security, liability, and repairs associated with such event, and such fees will be commensurate with fees charged by City's Recreation and Parks Department for similar permits of similar facilities in San Francisco. Developer will post on the internet a clear explanation of the application process and criteria for review and approval of such Open Events, including related fees, and make available such criteria and application forms to the Planning Director and General Manager of the Recreation and Parks Department for the purpose of the Department or other City entity or Agency publishing such criteria and application forms if they so choose.

(c) Good Neighbor Policies. Event Sponsors will manage the Park Areas in accordance with the following good neighbor policies during the Open Event:

i. The quiet, safety, and cleanliness of the space and its adjacent area will be maintained in accordance with these Regulations;

ii. Proper and adequate storage and disposal of debris and garbage will be provided;

iii. Noise and odors, unless otherwise permitted, will be contained within the immediate area of the Park Areas so as not to be a nuisance to neighbors;

iv. Notices will be prominently displayed during Open Events urging patrons to: (i) leave the Park Areas and neighborhood in a quiet, peaceful, and orderly fashion; (ii) remove all litter; and (iii) avoid blocking driveways in the neighborhood. Such notices will be removed promptly after each Open Event.

v. The Event Sponsor or its employees or volunteers will walk a 100-foot radius from the edge of the Park Areas within thirty (30) minutes after the Open Event has ended and will pick up and dispose of any discarded beverage containers and other trash left by patrons.

G. Amendment of Regulations.

Developer and City anticipate that, as time progresses, these Regulations may benefit from modification and amendment. Publicly Accessible Private Improvements and Dedicated Public Open Space may be more appropriately operated using an amended set of Regulations. Amendments may include limited operating hours and limitations on Special Events in order to maintain safety and to be considerate of neighboring residences, but in no event may an amendment materially alter the Publicly Accessible Private Improvements or materially impact the public's ability to access or use any of the Publicly Accessible Private Improvements or Dedicated Public Open Space without first undergoing a design review process pursuant to the Project SUD, together with any other required approvals. If Developer desires to amend any of these Regulations, Developer will request such amendments in writing to the Planning Director. Requested amendments will be reviewed by the Planning Department and may be approved by the Planning Director in the Director's sole discretion after undergoing a design review process pursuant to the Project SUD if such amendments would not materially alter the Publicly Accessible Private Improvements or affect the public's ability to access or use the Publicly Accessible Private Improvements or the Dedicated Public Open Space. The Planning Director will make its determination in consultation with the General Manager of the Recreation and Parks Department and the City Attorney.

H. Code of Conduct for Public Use of Publicly Accessible Private Improvements

1. Applicability. The following Code of Conduct for Public Use of Publicly Accessible Private Improvements ("**Code of Conduct**") applies to members of the public during use of the Publicly Accessible Private Improvements. The Code of Conduct is intended to address normal operating conditions; emergency or unusual circumstances may necessitate deviations from the Code of Conduct. The Code of Conduct is subject to update and change.

2. Arrest or Removal of Persons. Manager will have the right (but not the obligation) to use lawful means to effect the removal of any person who creates a public nuisance, who otherwise violates the applicable Regulations of any Publicly Accessible Private Improvements, or who commits any crime, including infractions or misdemeanors in or around any Publicly Accessible Private Improvement.

3. Limits on Public Use.

(a) No Loitering. No person will enter, remain, stay, or loiter in the Publicly Accessible Private Improvements outside of the hours of operation, or when the

Publicly Accessible Private Improvements are closed to the public as set forth in this Exhibit, except persons authorized in conjunction with a Special Event or other temporary closure, or authorized service and maintenance personnel.

(b) Intoxication as Cause for Exclusion. Manager is authorized to order any person to stay out of or to leave a Publicly Accessible Private Improvement or any building, structure, equipment, apparatus, or appliance therein when it has reasonable cause to conclude that the person so ordered: (i) Is under the influence of intoxicating liquor, any drug, or any "controlled substance" as that term is defined and described in the California Health and Safety Code, or any combination of any intoxicating liquor, drug, or controlled substance, and is in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others or interferes with or obstructs or prevents the free use of a Publicly Accessible Private Improvement. (ii) Is consuming alcoholic beverages in violation of this Code of Conduct. (iii) Is using any drug or controlled substance or any combination of any intoxicating liquor, drug, or controlled substance; (iv) Is doing any act injurious to the Publicly Accessible Private Improvements or any building, structure, equipment, apparatus, or appliance therein; (v) Is taking any action in violation of SF Park Code Section 4.01 and this Code of Conduct.

(c) Permits, Reservations, and Rentals. No person will, without a permit, as applicable, perform any of the following acts in the Publicly Accessible Private Improvements:

i. Conduct or sponsor a parade involving fifty (50) or more persons.

ii. Conduct or sponsor or engage in petitioning, leafletting, demonstrating, or soliciting when the number of petitioners, leafletters, demonstrators, or solicitors engaging in one or more of these activities involves fifty (50) or more such persons at the same time within an area circumscribed by a five hundred foot (500-foot) radius.

iii. Sell or offer for sale books, newspapers, periodicals or other printed material.

iv. Conduct or sponsor any exhibit, promotion, dramatic performance, theatrics, pantomime, dance, fair, circus, festival, juggling or other acrobatics or show of any kind or nature which has been publicized four (4) hours or more in advance.

v. Perform any feat of skill or produce any amusement show, movie or entertainment which has been publicized four (4) hours or more in advance.

vi. Make a speech which has been publicized (4) four hours or more in advance.

vii. Conduct or sponsor a religious event involving fifty (50) or more persons.

viii. Conduct or sponsor a concert or musical performance which (1) has been publicized four (4) hours or more in advance, or (2) utilizes sound amplification equipment, or (3) involves a band or orchestra.

ix. Participate in a picnic, dance, or other social gathering involving forty-five (45) or more persons.

x. Sell or provide food to persons, except that no permit is required when a person participating in a picnic or social gathering of forty-five (45) or fewer persons provides food to others who are also participating in the picnic or social gathering.

xi. Conduct or sponsor a race or marathon which involves twenty (25) or more persons as participants or which obstructs or interferes with the normal flow of pedestrian traffic.

xii. Conduct or sponsor any event which utilizes sound amplification equipment, as defined in Part II, Chapter VIII (Police Code) of the San Francisco Municipal Code.

xiii. Conduct or sponsor an exhibition.

xiv. Conduct or sponsor an animal show.

xv. Conduct a wedding ceremony.

xvi. Conduct or sponsor an art show.

xvii. Operate any amusement park device.

xviii. Conduct or sponsor an organized kite-flying event of any club or organization.

xix. Station or erect any scaffold, stage, platform, rostrum, tower, stand, bandstand, building, fence, wall, monument, dome or other structure.

xx. Launch or land any drone, airplane, helicopter, parachute, hang glider, hot air balloon, or other machine or apparatus of aviation, or bring any balloon with a diameter of more than six (6) feet or a gas capacity of more than one hundred fifteen (115) cubic feet.

xxi. Bring or cause to be brought, for the purposes of sale or barter, or have for sale, or sell or exchange, or offer for sale or exchange any goods, wares, or merchandise.

xxii. Construct or maintain or inhabit any structure, tent, or any other thing in the Publicly Accessible Private Improvements that may be used for housing accommodations or camping, and construct or maintain any device that can be used for cooking, nor will any person construct or maintain any device that can be used for cooking, except with permission from the Manager. No person will modify the landscape in any way in order to create a shelter or accumulate household furniture or appliances or construction debris in a Publicly Accessible Private Improvements.

xxiii. Engage in commercial photography, filming, or recording in the Publicly Accessible Private Improvements.

xxiv. Conduct a farmers' market.

xxv. Bring any animal into the Publicly Accessible Private Improvements, other than a dog or other domesticated animal, or guide, signal, or support animal.

xxvi. Provide instruction in any athletic activity for compensation.

xxvii. Additional Activities Requiring a Permit. Manager will have the authority to require a permit or written permission for additional activities in the Publicly Accessible Private Improvements when such a requirement furthers the purposes set forth in the Code of Conduct or the Municipal Code. A list of the additional activities for which permits are required will be posted in the Publicly Accessible Private Improvements and made available to the public upon request.

4. Rules Regarding Conduct.

(a) Rules to Be Obeyed. No person will willfully disobey or violate any of the Regulations governing the use and enjoyment by the public of the Publicly Accessible Private Improvements, or of any building, structure, equipment, apparatus or appliance in the Publicly Accessible Private Improvements, which Regulations, at the time, are posted in some conspicuous place in that area or at an entrance to the Publicly Accessible Private Improvements, or in or near the building, structure, equipment, apparatus, or appliance to which the Regulation applies.

(b) Signs to Be Obeyed. No person will willfully disobey the notices, prohibitions, or directions on any sign posted by the Manager.

(c) Interference with Manager Employees. No person will, with malice, interfere with or in any manner hinder any employee or agent of the Manager, or a duly authorized contractor while that person is engaged in constructing, repairing, or caring for any portion of the Publicly Accessible Private Improvements or is otherwise engaged in the discharge of such employee's, agent's, or contractor's duties.

(d) Refusal to Obey Lawful Order. It will be unlawful for any person to refuse to obey the lawful order of law enforcement or an employee of Manager made pursuant to the Code of Conduct.

5. Prohibited Activities or Conduct.

(a) Smoking. No person will smoke in a Publicly Accessible Private Improvement, either in enclosed or unenclosed areas.

(b) Intoxication by Alcohol or Drugs. State law provides that any person in a public place who is under the influence of intoxicating liquor, drugs, or certain specified substances and endangers themselves or others or interferes with the free use of a public right of way is guilty of disorderly conduct.

(c) Fighting, Disturbing Peace, Offensive Words. State law prohibits unlawful fighting in a public place, the malicious and willful disturbance of others by loud and unreasonable noise in a public place, and the use of offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

(d) Malicious Destruction of Property. State law prohibits the malicious defacement, damage, or destruction of real or personal property.

(e) Human Body Substances. No person will emit, eject, or cause to be deposited any excreta of the human body, except in a proper receptacle designated for such purpose.

(f) Entrance to Controlled Areas. No person will enter a Publicly Accessible Private Improvements or its facilities by means other than at designated public entrances. No person will enter Publicly Accessible Private Improvements facilities where a "No Admittance" or "Employees Only" sign is posted. No person will gain or attempt admittance to a Publicly Accessible Private Improvement or its facilities where a charge is made, without paying that charge.

(g) Polluting Waters. No person will throw or place, or cause to be thrown or placed, any garbage, trash, refuse, paper, container, or noxious or offensive matter into any fountain.

(h) Littering and Dumping of Waste Matter. No personal will litter, dump, or dispose of garbage, bottles, cans, paper, or other waste matter anywhere other than in designated trash receptacles.

(i) Soliciting. (a) It will be unlawful for any person to engage in petitioning, leafletting, demonstrating, or soliciting in such a manner as to substantially obstruct any traffic of pedestrians or vehicles after being warned by a law enforcement officer, or the Manager not to do so. (b) No person will solicit in an aggressive manner.

(j) Obstructing Any Sidewalk, Passageway, or Other Public Way. No person will willfully and substantially obstruct the free passage of any person or persons on any sidewalk, passageway, or other public places in a Publicly Accessible Private Improvement. Notwithstanding the foregoing, (1) it is not intended that this Section will apply where its application would result in an interference with or inhibition of any exercise of the constitutionally protected right of freedom of speech or assembly, and (2) nothing contained herein will be deemed to prohibit persons from sitting on public benches or other public structures, equipment, apparatus, appliances, or facilities provided for such purpose.

(k) Consumption of Alcohol. No person will consume alcoholic beverages of any kind in a Publicly Accessible Private Improvement, except during a Special Event in which sale and consumption of alcohol is specifically allowed and regulated by permit..

(l) Weapons and Fireworks. (a) No person will fire or carry firearms of any size or description or possess any instrument, appliance, or substance designed, made, or adopted for use primarily as a weapon, including but not limited to slingshots, clubs, swords, razors, billies, explosives, dirk knives, bowie knives, or similar knives, without the permission of the Manager, with the exception that this Section will not apply to sworn law enforcement officers. (b) No person will fire or carry any firecracker, rocket, torpedo, or any other fireworks of any description, except with permission of the Manager.

(m) No person will drive or propel any vehicle on any planted area or on any access road or unpaved service road or firetrail in any Publicly Accessible Private Improvement.

(n) No person will park any vehicle on any lawn, or planted area, or unimproved area or on any pedestrian or equestrian lane, or on any access road or unpaved service road or firetrail or in any manner so as to block access to or exit from any service road or

access road or firetrail, or in any other place in a Publicly Accessible Private Improvement where parking is prohibited, unless allowed otherwise by permit.

(o) No person will allow any automobile or other vehicle to remain parked in any parking lot in a Publicly Accessible Private Improvement which is open for public use and for which a fee is charged for parking, for a period of more than 24 hours after the expiration of the period for which a fee is charged, unless otherwise allowed by permit.

(p) No person will park any "oversized vehicle," defined herein as any vehicle longer than 19 feet and/or wider than seven feet, eight inches, in any parking lot in a Publicly Accessible Private Improvements, unless allowed otherwise by permit.

(q) No person will allow any automobile or any other vehicle that is disabled to remain parked in any parking lot in a Publicly Accessible Private Improvements, unless otherwise allowed by permit.

(r) Swimming and Bathing. No person will enter, wade, bathe, or swim in the waters of any fountain in a Publicly Accessible Private Improvement.

(s) Children. (a) No parent, guardian, or custodian of a minor will permit or allow such minor to do any act or thing in a Publicly Accessible Private Improvement prohibited by provisions of the SF Park Code and these Code of Conduct. (b) No adults are allowed in the children's play area of a Publicly Accessible Private Improvement except when accompanying a child.

(t) Percussion Instruments. No person will play any percussion instrument, including drums, at any time or location prohibited by Developer when a sign has been posted in the area affected to give notice of this prohibition, provided that such prohibition does not unreasonably curtail the playing of such instruments.

(u) Graffiti. No person will possess, carry, use or keep graffiti or etching tools, etching cream, or slap tags. For purposes of this subsection: (a) "Graffiti or etching tools" means a masonry or glass drill bit, a glass cutter, a grinding stone, an awl, a chisel, a carbide scribe, an aerosol paint container, or any permanent marker with a nib (marking tip) one-half inch or more at its largest dimension and that is capable of defacing property with permanent, indelible, or waterproof ink, paint or other liquid. (b) "Etching cream" means any caustic cream, gel, liquid, or solution capable, by means of chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid. (c) "Slap tag" means any material including but not limited to decals, stickers, posters, or labels which contain a substance commonly known as adhesive glue which may be affixed upon any structural component of any building, structure, equipment, apparatus, appliance, post, pole, or other facility.

I. Wildlife and Environmental Protection.

1. Disturbing Animals, Exceptions. Except as provided in the Article 7, Chapter VIII (Police Code) of the San Francisco Municipal Code, it will be unlawful for any person to hunt, chase, shoot, trap, discharge or throw missiles at, harass, disturb, taunt, endanger, capture, injure, or destroy any animal in a Publicly Accessible Private Improvement, or to permit any animal in such person's custody or control to do so; provided, however, that any mole or any gopher, mouse, rat, or other rodent which is determined by the Manager to be a nuisance may be destroyed by the Manager; and provided, further, that any animal other than a mole or a gopher, mouse, rat, or other rodent which is determined by the Manager to be a nuisance or a hazard to persons using a Publicly Accessible Private Improvement or to be a hazard to plants or other horticulture, may, in a humane manner, be live trapped by the Manager and delivered as appropriate. The provisions of this Section will not be applicable to the destruction of any animal in any park where such animal poses an immediate and serious threat to persons or property or is suffering excessively.

(a) Feeding Animals. It will be unlawful for any person to feed or offer to feed to any animal in a Publicly Accessible Private Improvement any substance which would be likely to be harmful to it. It will be unlawful for any person to feed or offer food or any substance to any animal in a Publicly Accessible Private Improvement which is wild in nature and not customarily domesticated in the City and County of San Francisco, except with permission of the Manager.

2. Introduction or Removal of Trees, Wood, Etc. No person will introduce, or remove or take away any tree, wood, bush, turf, shrub, flower, plant, grass, soil, rock, water, wildlife, or anything or like kind natural resource, except with permission of the Manager.

3. Performance of Labor. No person, other than authorized personnel, will perform any labor on or upon a Publicly Accessible Private Improvement, including but not limited to taking up or replacing soil, turf, ground, pavement, structure, tree, shrub, plant, grass, flower, and the like, except with permission of the Manager.

4. Climbing. No person will climb or lie upon any tree, shrub, monument, wall, fence, railing, shelter, fountain, statue, building, structure, equipment, apparatus, appliance, or construction, except with permission of the Manager. Notwithstanding the foregoing, this

provision does not apply to any structure, equipment, apparatus, or appliance that is a play structure for children and designed for climbing play.

5. Posting of Signs. No person will post or affix to any tree, shrub, plant, fence, building, structure, equipment, apparatus, appliance, monument, wall, post, vehicle, bench, or other physical object within a Publicly Accessible Private Improvement any written or printed material, including but not limited to signs, notices, handbills, circulars, and pamphlets, except with permission of the Manager.

6. Throwing or Propelling Objects. No person will throw or propel objects of a potentially dangerous nature, including but not limited to stones, bottles, glass, cans, or crockery, within or over the edges of a Publicly Accessible Private Improvement, except with permission of the Manager.

7 Fire. No person will make, kindle, maintain, or in any way use a fire, including but not limited to recreational fires other than in designating cooking/grilling areas, fire twirling, and fire dancing, except with permission of the Manager.

J. Authorization of San Francisco Police Department to Enforce Code of Conduct

1. Law enforcement officers of the San Francisco Police Department are authorized to order any person to stay out or leave any Publicly Accessible Private Improvement, when such officers have reasonable cause to conclude that the person (1) is doing any act injurious to any Publicly Accessible Improvement or any building, structure or facility therein; (2) while using any facility or area, disobeys any rule or regulation governing such area or facility after being warned not to do so by a Manager employee or designee, or (3) when the employee or designee has reasonable cause to conclude that such behavior damages or risks damage to Publicly Accessible Private Improvement property or interferes with the use and enjoyment of such area or facility by other persons.

K. Notices, Default and Remedies

1. Default. If Developer fails to perform or fulfill any material term, provision, or obligation of these Regulations and the continues such failure for a period of sixty (60) days following notice and demand for compliance, then Developer shall be in "**Default**" under these Regulations. 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).

2. Remedies.

(a) Specific Performance. In the event of a Default, the remedies available to a party shall include specific performance of these Regulations in addition to any other remedy available at law or in equity.

(b) Tax to Support Publicly Accessible Private Improvements and Dedicated Public Open Space. In the event of a Default, in addition to specific performance and other remedies available at law or in equity, City may elect to commence the levy and collection of the [tax under the CFD] in order to fund the operation, maintenance and /or management of the Publicly Accessible Private Improvements and Dedicated Public Open Space.

3. Notices. Any notice or communication required or authorized by these Regulations 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. City and Developer 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: Rich Hillis
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,
Balboa Reservoir Project

To Developer:_____
_____
_____
_____
_____

FIGURE 1 to EXHIBIT C-3
PRIMARY PEDESTRIAN PATHWAYS

EXHIBIT D
AFFORDABLE HOUSING PROGRAM

This Exhibit D describes the affordable housing program for the Project (the "**Affordable Housing Program**"). All capitalized terms used in this Affordable Housing Program and not specifically defined herein will have the meanings ascribed to them in the Development Agreement by and between the City and County of San Francisco, a municipal corporation, and Reservoir Community Partners LLC, a California Delaware limited liability company (the "**Agreement**") to which it is attached. Developer anticipates developing 1,100 total dwelling units on the Project Site, of which 50% will be Affordable Units (as defined in Section A (Definitions), below). The Project Site includes five parcels to be developed with 100% Affordable Units (the "**Affordable Parcels**"), in accordance with the Agreement and this Affordable Housing Program, as generally depicted on the Site Plan attached to this Exhibit D as Exhibit D-1. The Affordable Parcels are anticipated to be Parcels A, B, F, E, and H, as depicted in the Site Plan. As described in Section 5 (Funding Plan), Developer will fund and construct 66.7% of the Affordable Units (the "**Developer's Affordable Funding Share**"). The gap financing necessary to build the remaining 33.3% of the Affordable Units will be provided by the City (the "**City's Affordable Funding Share**") in accordance with this Exhibit D.

A. **Definitions**

1. **"Affordable Developer"** means a non-profit affordable housing developer selected by Developer based on criteria from MOHCD's policies and procedures for developer selection, which may be updated from time to time. The following are pre-approved Affordable Developers based on their selection by the City during the competitive solicitation for the Project: [BRIDGE entity, Mission Housing entity, Habitat for Humanity entity], and [Affiliates] of each of them. If Developer selects or partners with an affordable housing developer which is not pre-approved, then such selection first must be approved by MOHCD in its reasonable discretion.

2. **"Affordable Housing Program"** means the affordable housing program for the Project, as set forth in this Exhibit D.

3. **"Affordable Parcels"** means Parcels A, B, F, E, and H, depicted on the Site Plan attached as Exhibit D-1. The Affordable Parcels are to be developed with 100% Affordable Units in accordable with this Exhibit D.

4. **"Affordable Units"** means residential dwelling units constructed on the Affordable Parcels in accordance with this Exhibit D. The Affordable Units include Low-Income Units and Moderate-Income Units, as described in Section B.2, below.

5. **"Agreement"** means the Development Agreement between the City and County of San Francisco and Reservoir Community Partners to which this Affordable Housing Program is attached.

6. **"AMI"** 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.

7. **"AMR"** has the meaning set forth in Section C.5, below.

8. **"City's Affordable Funding Share"** has the meaning set forth in the opening paragraph of this Exhibit D.

9. **"College"** means the San Francisco Community College District.

10. "**Costa-Hawkins Act**" means the Costa-Hawkins Rental Housing Act, California Civil Code Sections 1954.50 et seq.

11. **"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.

12. **"Developer's Affordable Funding Share"** has the meaning set forth in the opening paragraph of this Exhibit D.

13. "**Educator Units**" has the meaning set forth in Section D.1, below.

14. **"Low Income"** has the meaning set forth in Section B.2(a), below.

15. **"Low Income Units"** has the meaning set forth in Section B.2(a), below.

16. "**Moderate Income**" has the meaning set forth in Section B.2(b), below.

17. "**Moderate-Income Units**" has the meaning set forth in Section B.2(b), below.

18. **"Self-Help Units"** means homeownership affordable housing units constructed using volunteer labor or a "self-help" model of construction, such as those anticipated to be developed by Habitat for Humanity.

19. **"SFUSD"** means the San Francisco Unified School District.

20. **"TCAC"** means the California Tax Credit Allocation Committee.

B. **Affordable Housing Program**

1. **50% Affordable Obligation.** Developer will cause at least 50% of the total number of dwelling units constructed on the Project Site to be Affordable Units. Developer will be responsible for the pre-development, planning, permitting, construction, and management of

all Affordable Units. The Parties agree that the Project's ability to achieve an overall affordability level of 50% is predicated on Developer's receipt of City's Affordable Funding Share. Developer's compliance with the Agreement, including this Affordable Housing Program, will satisfy Developer's entire affordable housing obligation for the Project. Neither the requirements of Section 415 of the San Francisco Planning Code nor any similar future affordable housing fees or other requirements will apply to the Project.

2. **Income Mix.**

(a) At least ~~36~~50% of the Affordable Units will be Low-Income Units. For purposes of this Affordable Housing Program, "**Low-Income Units**" will have rents set between 30% to 80% of AMI, with an average rental rate per building of no more than 60% of AMI, or an average purchase price of no more than 80% of AMI. "**Low Income**" will refer to the AMI levels described in this paragraph. ~~.~~Of the Low-Income Units, at least 20% shall be affordable to Very Low-Income. For the purposes of this Affordable Housing Program, "Very Low-Income Units" will have rents set between 30% to 55% of AMI.

(b) At least 30% of the Affordable Units will be Moderate-Income Units. For purposes of this Affordable Housing Program, "**Moderate-Income Units**" will have rents set between 80% to 120% of AMI, with an average rental rate per building of no more than 100% of AMI, or an average purchase price of no more than 120% of AMI. "**Moderate Income**" will refer to the AMI levels described in this paragraph. Moderate-Income Units will include Educator Units. Any Moderate Income homeownership units will make best efforts to serve a diverse range of households between 90% and 110% of AMI.

(c) The remaining ~~34~~20% of affordable housing units may~~, in Developer's sole discretion,~~ be a combination of Low- or Moderate-Income Units~~.~~, depending upon the specifications of state and other affordable housing funding awarded to the Project. Developer will make best efforts to ~~provide these affordable housing units as~~serve a diverse range of households, ensuring the Project provides equitable housing options for Very Low-Income ~~Units,~~ Low-Income, and Moderate-Income households with a focus on housing for very low-income seniors and for Moderate-Income families ~~at between 60% and 80% of AMI~~.

(d) The project sponsor may elect but is not required to serve any special populations in the affordable housing units, except for educator households as described in Section D below.

(e) Initial allowable rents, sales prices and eligibility for the Affordable Units will be consistent with MOHCD's published schedules as of the date of underwriting for the applicable Affordable Parcel. The maximum affordable rent or sales price for an Affordable Unit may be no higher than 20% below median market rents or sales prices of the market-rate units in or immediately adjacent to the Project Site.

(f) The Affordable Parcels may, in Developer's sole discretion, contain any combination of Low- and Moderate-Income Units to accommodate affordable funding source requirements, provided that, upon full build-out of the residential units in the Project, the

Project's Affordable Units comply in the aggregate with the overall income mix requirements for the Project, as set forth in Sections B.2(a)-(c), above.

3. **Unit Mix and Unit Size.**

(a) Developer will comply with the minimum dwelling unit mix requirements of the SUD, but will use reasonable efforts to achieve the goal of providing 50% of the Affordable Units as two- or more bedroom units on the Affordable Parcels.

(b) All units must meet minimum sizes required by the California Tax Credit Allocation Committee ("**TCAC**").

4. **Affordability Restrictions.**

(a) Each Affordable Parcel will be subject to a recorded regulatory agreement approved by MOHCD to maintain affordability levels for the life of the Project or fifty-seven (57) years, whichever is longer, and regulatory requirements regarding term duration contained in any tax credit agreement. ~~The MOHCD~~ Any Affordable Parcel developed with Educator Units will have a recorded regulatory agreement or notice of special restrictions to maintain affordability levels for the life of the Project or ninety-nine (99) years, whichever is longer. For all Affordable Parcels, including any with Educator Units, the regulatory agreement or notice of special restriction will be recorded against the subject Affordable Parcel upon ~~site acquisition~~creation of such Affordable Parcel as a legal parcel.

(b) Each Affordable Parcel will be subject to long-term restrictions pursuant to a Notice of Special Restrictions approved by City's Planning Department and disclosing the limitations on development set forth in the Agreement and this Affordable Housing Program, and recorded against the subject Affordable Parcel upon site acquisition.

(c) In recognition of the City's long-term investment in affordable housing at the Project Site, the fee interest in all Affordable Parcels with MOHCD permanent funding will be conveyed to the City for nominal consideration under the jurisdiction of MOHCD and immediately ground leased back to the Affordable Developer of such Affordable Parcel prior to or concurrently with the closing of the construction loan for the Building on the applicable Affordable Parcel, unless such requirement is waived by the Director of MOHCD in the Director's sole discretion; except that the foregoing requirement will not apply to any Affordable Parcel developed with Educator Units or Self-Help Units if such Educator Units or Self-Help Units are on a separate legal Parcel from the other Affordable Units.

C. **Tenant Preferences, Marketing, and Monitoring.**

1. Chapter 47 of the ~~SF~~ Administrative Code~~, including Section 47.3~~ regarding ~~Neighborhood~~ Preference~~, will apply to all~~ in City Affordable ~~Units~~Housing Programs, including the ~~Affordable Units dedicated to~~ Educator ~~Housing as described in~~ Section 4. Units, applies to the Project. For purposes of the Project, the definition of "Neighborhood" in Administrative Code Section 47.2 will mean the Supervisorial District in which the Project is located, plus a 1.15 mile buffer around the Project Site.

2. Developer will comply with all applicable state and federal laws, regulations, and guidelines regarding tenant preferences and Fair Housing Laws.

3. Marketing of Affordable Housing Units, except for educator housing.

(a) Developer will perform marketing and outreach for all Affordable Units in accordance with the Marketing, Lottery and Housing Preference Manual published by MOHCD and as may be updated from time to time.

(b) Targeted marketing will be provided for seniors, early child care educators, and neighborhood residents, as applicable to the specific type of housing and funding sources of each Affordable Parcel.

(c) Developer's marketing materials will be provided to MOHCD in accordance with the timeline outlined in the MOHCD Inclusionary Manual, as may be updated from time to time, and will include resident selection criteria for the City-wide lottery list. For example, current MOHCD policy requires marketing materials to be provided to MOHCD at least 7 months prior to Temporary Certificate of Occupancy for each Affordable Parcel.

4. Tenant waitlists and lottery selections will be managed by MOHCD and administered using the MOHCD Marketing, Lottery and Housing Preference Manual, as updated from time to time.

5. Developer will comply with MOHCD's policy for Annual Monitoring Reporting ("**AMR**"). Currently, the AMR is due on May 31 for projects whose business year ends on December 31 and on November 31 for projects whose business year ends on June 31, and must be submitted in electronic form only.

D. **Educator Housing**

1. Developer will designate one of the Affordable Parcels for development of approximately 150 Affordable Units for educator households (as defined by state law and otherwise in a manner that ensures Developer's receipt of a property tax exemption on the basis of the property's use exclusively for educational purposes) ("**Educator Units**"). The Educator Units will be located in a single building, currently anticipated to be located on Parcel F of the Site Plan. The Educator Units will be deed-restricted to Moderate Income educator households, with rents set between 70% to 130% of AMI and with a goal of achieving an average of no more than 100% AMI across all Educator Units. Any Educator Units with a rental rate or purchase price set above 120% of AMI will have a minimum occupancy of two persons. Households with at least one full-time employee of the San Francisco Community College District (the "**College**") or the San Francisco Unified School District ("**SFUSD**") will have preferential priority for all Educator Units. College households will have first priority and SFUSD households will have second priority.

2. Tenant waitlists and lottery selections for Educator Units will be managed by MOHCD and administered using the policies in the MOHCD Marketing, Lottery and Housing Preference Manual, as updated from time to time, but excluding the Waitlist policy. The lottery

for Educator Units will draw from a specific educator waitlist and will prioritize College educators.

3. Annual monitoring and reporting will be submitted consistent with the Inclusionary Housing Manual Requirements.

4. Developer's marketing materials will be provided to MOHCD in accordance with the timeline outlined in the MOHCD Inclusionary Manual, as may be updated from time to time. The educator building shall have an educator specific marketing program.

5. Developer's ability and obligation to provide the Educator Units is subject to all of the following:

(a) Developer obtains confirmation from the California State Board of Equalization that the building containing the Educator Units will receive a property tax exemption on the basis of the applicable property's exclusive use for educational purposes;

(b) Developer, the College, and SFUSD execute a written agreement regarding coordinated management policies for the Educator Units, including policies regarding retention of residents/tenants of the Educator Units upon the termination, resignation, or retirement of the educator employee. If either the College or SFUSD has not entered into such an agreement, then educators from that institution will lose their preferential priority for occupancy of the Educator Units.

(c) In order for College educator households to receive preferential priority for the Educator Units, the College must timely record a revised Access Easement Agreement with terms reasonably acceptable to Developer.

6. If Developer is unable to provide the Educator Units due to a failure to obtain the items described in Section D.5.(a)-(c) above, then Developer will provide Affordable Units that comply with the overall income mix requirements described in Sections B.2(a)-(c).

E. **Funding Plan**

1. Developer, or such other Affordable Developer of an Affordable Parcel, will identify and assemble funding for each Affordable Parcel. Developer may pursue funding from any and all sources, including but not limited to competitive state and federal sources, subject to the limitations set forth in Section E.4(b), below. Such funding may include, but is not limited to, LIHTC, tax-exempt bonds, conventional debt, State and/or Federal subsidies, grants, Developer's Affordable Funding Share, and the City's Affordable Funding Share.

2. The aggregate City's Affordable Funding Share (i.e., over the life of the Project) will be a maximum of $239,000 per Affordable Unit multiplied by 33.3% of the Affordable Units, which is based on the MOHCD 2019 per unit average subsidy amount. Any unallocated portion of the aggregate City's Affordable Funding Share will adjust annually based on the CPI Index, assuming a base year of 2020. City's Affordable Funding Share will be considered allocated upon MOHCD approval of the Affordable Parcel's gap loan evaluation.

(a) City's obligation to provide City's Affordable Funding Share will apply only to the extent other outside funding sources have been leveraged to the greatest extent feasible. Developer, or an alternative Affordable Developer, as applicable, will diligently pursue all such outside funding sources. Additionally, in no event will City's Affordable Funding Share on a per unit basis exceed Developer's Affordable Funding Share on a per unit basis.

(b) City will satisfy its obligation to pay City's Affordable Funding Share by disbursing a per-unit gap amount that may vary depending on the specific financing needs of each Affordable Parcel, but will not exceed the aggregate City's Affordable Funding Share except as provided for in Section E.2(e) below.

(c) The parties intend that the City's Affordable Funding Share will be applied to the three mixed-income Affordable Parcels A, B, and E, and not to the Educator Units in Parcel F.

(d) Notwithstanding anything to the contrary in this Affordable Housing Program or in the Agreement, City will not be obligated to provide City's Affordable Funding Share, including in the form of predevelopment funds and loan disbursements, (i) at any time that Developer is in default on another affordable housing project funded in whole or in part with City funds, until the default is cured, and (ii) if any material adverse change occurs in the financial condition or operation capacity of Developer or the Affordable Developer that has a material adverse impact on the Project.

(e) City's Affordable Funding Share represents the Parties' good faith estimate of the per-unit equity financing gap required to develop the Affordable Parcels, as of the date of this Agreement If, for reasons such as reduced funding opportunities available in Difficult Development Areas or Qualified Census Tracts (as those terms are defined by HUD), the actual per-unit financing gap required to develop an Affordable Parcel increases materially such that City's Affordable Funding Share, when combined with other funding sources, including but not limited to Developer's Affordable Funding Share, if applicable, is inadequate to secure viable financing for construction of the applicable Affordable Parcel, then the Parties will meet and confer in good faith to agree on an adjustment to the City's Per Unit Funding Share and/or the affordability levels to be achieved on a particular Affordable Parcel.

3. The City's Affordable Funding Share will be managed and disbursed by MOHCD. City funding allocations will be subject to MOHCD Loan Committee approval and appropriation by the Board of Supervisors.

(a) Developer's Affordable Funding Share will be applied to Affordable Parcels in amounts depending on the specific financing needs of each Affordable Parcel. Developer will work in consultation with MOHCD to determine the specific amount of City's Affordable Funding Share in each of the Affordable Parcels, in accordance with the funding plan application process set forth below.

(b) The parties intend that Developer's Affordable Funding Share and the City's Affordable Funding Share will be allocated proportionately to each Affordable Parcel A, B, and E. However, Developer may elect to increase Developer's Affordable Funding Share for a

particular Affordable Parcel to allow development to proceed and/or to satisfy the Affordable Requirement Linkage described in Schedule 1 attached to the Agreement. In such event, City's Affordable Funding Share for the remaining Affordable Parcels will increase commensurately. Conversely, Developer may request that City increase the City's Affordable Funding Share for a particular Affordable Parcel, and if approved then in such event City's Affordable Funding Share for the remaining Affordable Parcels will decrease commensurately.

4. Three (3) months prior to Developer's submittal of a Phase Application to the Planning Department for any Phase that includes an Affordable Parcel, Developer will submit a funding plan to MOHCD. The funding plan will include an analysis of potential funding sources and project competitiveness for those funding sources, including Developer's proposal for allocation of City's Affordable Funding Share for the subject Affordable Parcel.

(a) In order to promote the efficient administration of City's obligations under this Affordable Housing Program, Developer will adhere to MOHCD's then-current procedures for underwriting of affordable housing projects financed with City funds. To the extent of any conflict between the Agreement (including this Affordable Housing Program) and MOHCD's then-current underwriting procedures, the Agreement shall control.

(b) In order to encourage maximum leveraging of outside funding, MOHCD will not restrict Developer's competitive application for funds from any particular source except that in no case will Developer pursue an allocation of tax credits under the 9% program without MOHCD's consent.

5. Once Developer and MOHCD have agreed to a funding plan for a particular Affordable Parcel, Developer will pursue outside funding sources identified in such plan with diligence.

(a) MOHCD will cooperate diligently and in good faith with Developer to assist Developer in securing all approved outside funding, including by acting as the applicant or co-applicant for certain funding sources, where necessary or desirable. If a proposed funding source requires MOHCD as an applicant, the application will be subject to Citywide Loan Committee approval prior to the submission of the outside funding application.

(b) Developer must comply with all project milestones and performance deadlines as required by all funding sources in the approved funding plan, including but not limited to those established by tax credit and tax-exempt bond financing. Should Developer fail to meet such performance deadlines, City will not have any obligation to provide City's Affordable Funding Share for the subject Affordable Parcel.

6. Developer must submit a Phase Application (as described in greater detail in Exhibit N of the Agreement) for any Phase that receives a predevelopment funding commitment from MOHCD within 12 months of receiving such commitment.

F. **Costa-Hawkins Rental Housing Act**

1. **Non-Applicability of Costa-Hawkins Act**. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private

developers for the production of housing for lower income households. The Costa-Hawkins 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 Affordable Units. The Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because the 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 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 Affordable Units as a result of the exemption set forth in California Civil Code Section 1954.52(b) for the reasons specified above.

2. **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 Agreement related to the establishment of the Affordable 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 Agreement and the Parties should not have the benefits of the Agreement without the burdens of the 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 Agreement in its entirety.

3. **Notification**. Developer shall notify any potential buyer of all or part of the Project Site of the provisions of this Affordable Housing Program. 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, Developer shall indemnify and defend the City against any and all claims or losses resulting from such allegation.

EXHIBIT D-1
AFFORDABLE HOUSING SITE PLAN

Parcel	Affordability Range	Approximate Unit Count
A	Low and Moderate	182
B	Low and Moderate	70
E	Low and Moderate	124
F	Moderate	154
H	Moderate	20

EXHIBIT L
CHILD CARE PROGRAM

This Exhibit L describes the child care program for the Project (the "**Child Care Program**"). All capitalized terms used in this Child Care Program and not specifically defined herein will have the meanings ascribed to them in the Development Agreement by and between the City and County of San Francisco, a municipal corporation, and Reservoir Community Partners LLC, a Delaware limited liability company (the "**Agreement**").

1. Developer will provide approximately 7,500 gross square feet of rentable area for a child care facility intended to serve approximately 100 children, currently anticipated to be built on Parcel B 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, 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 a tenant to proceed with its improvements. The childcare provider will be a nonprofit public benefit corporation. The child care provider will specify the tenant improvements necessary for the space, which Developer will not be responsible for providing under this Agreement.

2. A State-licensed child care provider will 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 will comply with all State guidelines and applicable local guidelines for operating a child care facility.

b. Provider will operate a facility licensed to serve approximately 100 children with the final number to be determined based on state and any local licensing requirements.

c. Developer or subsequent owner of the building in which it is located will (i) lease the child care facility for nominal rent (i.e., one dollar ($1.00)) to a nonprofit public benefit child care provider, and (ii) include (and require compliance with) a provision in its lease with the child care provider requiring the provider to reserve at least fifty percent (50%) of the maximum capacity of the child care facility to be affordable to children of households of low income (as determined and defined by the license for the facility issued by the California Department of Social Services), and subject to availability of operating subsidy. 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 will serve a broad range of age groups, including infants and toddlers.

e. Openings will 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 will equal the "**life of the Project**," as such term is defined in the "**NSR**" (defined in Section 5). Subject to the provisions of this Exhibit L, the Developer will use commercially reasonable efforts to lease the space to a child care operator at all times for the life of the Project. The operating term may be fulfilled by more than one child care operator over the life of the Project. The Developer will 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 building in which the child care facility is located, 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 will notify governmental and nonprofit entities that can assist in publicizing the availability of the facility 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, [City College Childcare Program Operator] 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 building in which the facility is located, 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 will have the right to pay City an amount equal to $_____ [*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, the Developer may use the facility for any use permitted under the Project SUD after receiving required approvals and permits pursuant to 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 operated by a nonprofit public benefit corporation) 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 will have the right to pay City an amount equal to the Base Fee prorated over a twenty-five (25) year period, with a credit for any time the facility was operated by a child care provider in compliance with this Child Care Program. On paying such amount to City, the Developer may use the facility for any use permitted under the Project SUD after receiving required approvals and permits pursuant to the Project SUD.

4. Developer or subsequent owner of the building in which the child care facility is located cannot charge for items in addition to the nominal rent (including security, common building charges and utilities, etc.) to the child care operator that ~~exceeds~~exceed prevailing market rent or are not commonly charged to comparable ~~to other,~~ similarly-sized and geographically proximate licensed child care facilities.

5. Developer or subsequent owner of the building in which the child care facility is located will execute ~~the~~a Notice of Special Restrictions ~~included in the Approvals~~ to dedicate the space for child care use and to incorporate the terms of this Child Care Program in form and substance approved by Planning ("**NSR**"). The NSR will be recorded against the applicable parcel within the Project Site at the earlier to occur of the final map that includes the child care facility is recorded or the date the First Construction Document is issued for the building that will contain the child care facility.

6. In consideration of this Child Care Program community benefit and except as provided in Section 3.b,Section 3.c, and Section 7, the Project will not be subject to the residential child care fee (Planning Code Sec. 414A) and that fee ~~will be~~is waived. For the avoidance of doubt, this waiver applies to all of the buildings constructed on the Project Site pursuant to ~~this~~the Agreement.

7. Phasing/performance requirements for the child care facility ~~will be~~are detailed in Schedule 1 (Phasing Plan and Community Benefits Linkages). 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 a 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 Q

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: _____ Reservoir Community Partners, LLC [address]_____ _____ _____ Attn: _____ APN:	

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

NOTICE OF TERMINATION AND RELEASE OF PURCHASE OPTION

THIS NOTICE OF TERMINATION AND RELEASE OF PURCHASE OPTION (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, for the benefit of [Reservoir Community Partners, LLC, a _____ limited liability corporation] ("Developer") [*substitute party, if needed*].

1. The City and Developer entered into that certain Development Agreement dated as of _____, 2020 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 15 of the Development Agreement, the City has the right to purchase the Project Site under the Purchase Option.

3. The City confirms that the Purchase Option is terminated and released, and of no further force or effect. All parties with an interest in the Project Site 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: By:

Director of Planning Deputy City Attorney

EXHIBIT R
COMMUNITY ENGAGEMENT

This Exhibit R describes certain community obligations assumed by Developer for the Project (the "**Community Engagement Obligations**"). All capitalized terms used in this Exhibit R and not specifically defined herein will have the meanings ascribed to them in the Development Agreement by and between the City and County of San Francisco, a municipal corporation, and Reservoir Community Partners LLC, a California Delaware limited liability company (the "**Agreement**") to which it is attached. The Balboa Reservoir project is the product of a community planning process initiated by the City in 2014. The community process included an appointed Balboa Reservoir Community Advisory Committee ("**CAC**") body as well as heavy participation from the community at large. The community, in coordination with City staff, developed parameters for the site, informed the selection of the development team, and worked to refine the development proposal to best serve the surrounding community needs. Upon approval of the Agreement, the community will have continued participation in the development and ongoing operations of the Project. This Exhibit summarizes the minimum obligations for ongoing community participation, including those related to design, construction and operations.

1. STANDARDS OF COMMUNICATION

Upon the sunset of the official Balboa Reservoir Community Advisory Committee, the Developer will commit to meeting these standards of communication for all notices, meetings, and information required as part of community engagement.

The Developer will maintain a list and contact information for interested members of the public and will provide all notices and meeting invitations to members of the public who elects to join said list. Additionally, the Developer will provide specific notice to the neighborhood organizations and institutions listed below. Further, the Developer will make best efforts to coordinate meeting schedules with the neighborhood organizations and institutions listed below.

* The President of the Westwood Park Neighborhood Association or his or her designee
* A resident of the OMI (Oceanview-Merced-Ingleside) neighborhood
* The President of the Sunnyside Neighborhood Association or his or her designee
* An employee, student, or Trustee of City College of San Francisco
* An employee of Riordan High School

2. OPEN SPACE DESIGN

The Developer will engage the community on the design of any Dedicated Open Space, as follows:

- Prior to submittal of a design review application for a Dedicated Open Space, the Developer will conduct a minimum of one pre-application public meeting on design of the Dedicated Open Space.

- The Developer will conduct a minimum of one additional public meeting prior to any approval action on the application. Additional meetings may be required at the discretion of the Planning Director.
- All meetings will be conducted at, or within a one-mile radius of, the Project Site, and the pre-application meeting will be subject to the Planning Department's pre-application meeting procedures, including but not limited to, the submittal of required meeting documentation. Developer will invite a Planning Department representative to such meetings.

3. OPEN SPACE OPERATIONS AND PROGRAMMING

The Balboa Reservoir Project will create new parks and open spaces (the Dedicated Open Spaces, as defined in the Agreement), each of which will be important community benefits for the residents of the Project and the surrounding neighborhoods. Ongoing operations and programming of the Dedicated Open Spaces will benefit from ongoing community collaboration. The Developer will host an annual meeting and establish an Open Space Advisory Committee.

Open Space Advisory Committee. Developer will establish and maintain an Open Space Advisory Committee for the life of the Agreement to provide the opportunity for the members of the public to provide ongoing input on the use, maintenance, and/or operation of the new parks and opens spaces at the Project Site. Developer will establish the advisory committee prior to the first annual meeting. The Advisory Committee will include representation from the following:

* The President of the Westwood Park Neighborhood Association or his or her designee
* A resident of the OMI (Oceanview-Merced-Ingleside) neighborhood
* The President of the Sunnyside Neighborhood Association or his or her designee
* An employee, student, or Trustee of City College of San Francisco
* A person who owns a business located on Ocean Avenue
* The President of the Balboa Reservoir HOA (Affordable) or his or her designee
* Balboa Reservoir (Townhouse)
* An employee of Riordan High School
* Two at-large seats, ideally neighbor/resident from Mercy/Avalon on Ocean Avenue

Annual meeting. After the Open Space Advisory Committee is formed, the Developer will host an annual public meeting including residents of Balboa Reservoir and the surrounding community. The meeting will provide the opportunity for the City, members of neighborhood organizations, and members of the public to comment on Developer's use, maintenance, and/or operation of the Dedicated Open Spaces. Developer will host a minimum of one (1) public meeting per year and will post notice online inviting neighborhood organizations and members of the public to attend. Such notice also will be provided to the Planning Department.

4. BUILDING DESIGN

Community Input on Building Design. The Developer will engage the community on the design of residential buildings. Prior to submittal of a design review application for a Building, the Developer shall conduct a minimum of one pre-application public meeting. The meeting shall be conducted at, or within a one-mile radius of, the Project Site, but otherwise subject to the Planning Department's pre-application meeting procedures, including but not limited to the submittal of required meeting documentation. A Planning Department representative shall be invited to such meeting.

5. CONSTRUCTION MANAGEMENT

Construction Management, Communication with the Community. The Developer will provide ongoing community coordination during the construction period, which will provide information to members of the public and offer a clear point of contact for community issues and concerns.

Community Liaison. The Developer will have a dedicated community liaison prior to the start of construction. Contact information for the community liaison shall be made available to the public, consistent with the standards for communication. Neighbors can communicate concerns or questions directly to the community liaison who will be stationed on site and will respond during business hours. The Developer will also provide a 24-hour number for afterhours questions or concerns.

Timely Information. Prior to construction start, the Development team will provide an updated construction plan and timeline, and will provide information for all neighbors about where to find key information about the Project's progress. During the construction process, the team will provide regular updates to interested neighbors via email, the project website, and other identified forums.

Standard Construction Hours will be 7am – 8pm, 7 days a week. For construction activities (such as large concrete pours) that may require work beyond the standard construction hours, a special permit must be obtained from the SF Department of Building Inspections. The Developer will notify the community prior to any after-hours work as part of its regular information updates.

Annual Meetings. The Developer will host two public meetings per year during construction including residents of the Project (if applicable) and the surrounding community. The meeting will provide the opportunity for neighborhood organizations and members of the public to comment on Developer's construction management. Developer will host a minimum of two (2) public meetings per year and will post notice online inviting neighborhood organizations and members of the public to attend. Such notice also will be provided to the Planning Department.

6. SPECIFIC CONSTRUCTION MEASURES

To the extent of any conflict between the measures described in this exhibit and those required by the Mitigation Monitoring and Reporting Program attached to the Development Agreement

(MMRP) for the Project or applicable laws (e.g., construction hours), the MMRP or applicable laws will control.

Noise. The development team will prepare a Noise Control Plan, in consultation with an acoustical consultant and reviewed and approved by the Planning Department to reduce noise impacts to the surrounding neighborhood and institutions. The Noise Control Plan will include the following commitments:

- The Developer will conduct the noisiest work (the parking lot and berm demolition) at times that will cause the least disturbance to surrounding neighbors. This work will take place between the hours of 9am and 4pm, and the team will endeavor to complete all of it during times when Riordan High School is not in session.
- Whenever possible, shield stationary construction equipment in order to reduce noise levels, and on-site work that produces noise (such as grinding or sawing) will be located as far from neighbors as possible.
- Although not required by any specific plan or code, the Developer will establish a rule prohibiting the use of radios or amplified music at any time during construction.
- The Developer will create a weekly noise monitoring log which will document noise levels, any exceedances of threshold levels, and corrective actions.
- The Developer will mandate that construction equipment utilize best available noise control techniques.
- The Developer will establish locations for noise monitoring, usually at site borders.
- The Developer will make the noise monitoring log accessible to public upon request.

Air Quality. The Developer will implement all measures in the site mitigation and construction dust monitoring plan. The Site Mitigation Plan and a Construction Dust Monitoring plan was reviewed and approved by San Francisco's Department of Public Health. The two plans cover topics including odor control, dust control, and soil management during construction.

- Dust Control:
  - The dust monitors will be set up on a daily basis, for the first week of each new, potential dust-generating activity conducted at the Site (e.g., one week of dust monitoring at the start of grading, one week of dust monitoring at the start of excavation, etc.).
  - The dust monitors will be set up by dust monitoring personnel at the start of each workday prior to the start of the dust generating activity and taken down at the conclusion of each workday.
  - Additionally, dust monitoring personnel will be present on-Site to monitor field conditions and consult with contractor personnel on suitable dust suppression measures.
  - Dust Monitoring will continue to occur at:
    - The first week of each new dust-generating activity;
    - the day of and/or the day after an exceedance of required threshold levels;

        - The day of and/or the day after visual observation of fugitive dust, if any; and
        - The day of and/or the day after neighbor complaints of dust if any.
    - Two dust monitors will be placed at the Site perimeter (one upwind and one downwind location). Additional dust monitors will be placed at the western and southern boundaries near the adjacent residential buildings during all excavation and soil handling activities, if needed. Wind direction will be evaluated based on a windsock or flag located at the Site as well as a weather forecasting and reporting website. Dust monitor locations will be re-located in the case of significant changes in the wind direction. The locations of the dust monitors will be recorded in dedicated field logs The dust monitors shall be capable of continuous, real-time monitoring data-logging, and data transmission, and be able to trigger visual and/or remote alarms consisting of a flashing light, or similar, to alert on-Site monitoring and/or contractor personnel an action level has been exceeded.
    - The remote alarm, if used, will consist of a text message, email, phone message, or similar, to alert off-Site monitoring personnel an action level has been exceeded. Dust monitoring logs/data will be available to the public upon request.

Emissions Minimization Plan (EMP). An Emissions Minimization Plan will be prepared for the project and approved by the Planning Department's Environmental Review Officer prior to the start of construction. The EMP will ensure compliance with specific regulations related to construction equipment, construction-related truck emissions, and notification requirements. The EMP will include the following commitments:

- Paints used during construction will be Low-VOC coatings.
- All construction equipment will meet or exceed specific standards and will be re-certified by the City and the Bay Area Air Quality Management District each year.
- Portable diesel engines will be prohibited for on-site construction work since grid power will be available throughout the site during all phases of construction.
- Diesel engines for on- or off-road equipment will not be left idling on the site at any time.
    - Engine Requirements:
        - All off-road equipment greater than 25 horsepower shall have engines that meet Tier 4 Final off-road emission standards.
        - Renewable diesel shall be used to fuel all diesel engines unless it can be demonstrated to the Environmental Review Officer (ERO) that such fuel is not compatible with on-road or off-road engines and that emissions of ROG and NOx from the transport of fuel to the project site will offset its NOx reduction potential.

SCHEDULE 3
SCHEDULE OF PERFORMANCE

Pursuant to Article of the Agreement and subject to Excusable Delay, the Developer will meet the performance milestones by the dates indicated in the tables below. All capitalized terms used in this Linkages Schedule and not specifically defined herein will have the meanings ascribed to them in the Development Agreement by and between the City and County of San Francisco, a municipal corporation, and RCP Community Partners LLC, a Delaware limited liability company (the "**Agreement**") to which it is attached. Once it has Commenced Construction of a particular element of the Project, Developer will diligently pursue such construction to completion.

Phase 0 – Infrastructure

Target Date	Outside Date	Performance Milestone
Starting 2021 and ongoing until secured	Starting 2021 and ongoing until secured	Submit applications for all available and applicable state funding (assuming City collaboration as co-applicant)
6/30/2021	12/31/2022	Submit subdivision mapping application
6/30/2021	12/31/2022	Submit application for building permits for site demolition, sitewide grading, and construction of new utility and street improvements.
12/31/2022	12/31/2022	Close on Project Site with SFPUC pursuant to PSA

Phase 1 – Vertical

Target Date	Outside Date	Performance Milestone
12/31/2021	6/30/2023	Submit Phase Application - Phase 1 (including Design Review Application)
Starting 2021 and ongoing until secured	Starting 2021 and ongoing until secured	Submit applications for all available and applicable state funding for Phase 1 Vertical Buildings (assuming City collaboration as co-applicant)
12/31/2021	Within 6 months after the date of an award of adequate state funding	Submit MOHCD funding applications for Phase 1 Vertical Buildings
12/31/2021	Within 6 months after the date of an award of adequate state funding (subject to program application deadlines)	Submit tax credit applications for Phase 1 Vertical Buildings

Phase 2 – Vertical

Target Date	Outside Date	Performance Milestone
12/31/2023	Within two years after Phase 1 Vertical Construction Commencement	Submit Phase Application - Phase 2 (including Design Review Application)
Starting 2023 and ongoing until secured	Starting 2023 and ongoing until secured	Submit applications for all available and applicable state funding for Phase 2 Vertical Buildings (assuming City collaboration as co-applicant)
12/31/2023	Within 6 months after the date of an award of adequate state funding	Submit MOHCD funding applications for Phase 2 Vertical Buildings
12/31/2023	Within 6 months after the date of an award of adequate state funding (subject to program application deadlines)	Submit tax credit applications for Phase 2 Vertical Buildings