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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

FOCUSED DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND THE SAN FRANCISCO CONSERVATORY OF MUSIC

Block 0811; Lot 010 and Block 0811; Lot 012.

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- A-2 Legal Description
- B Project Description
- C Replacement Housing and Interim Relocation Plan
- D List of Approvals
- E SFCM On-site Public Art Program
- F. Form of Assignment and Assumption Agreement
- G. Form of NSR

**FOCUSED DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND THE SAN FRANCISCO CONSERVATORY OF MUSIC**

This Focused Development Agreement, dated for reference purposes only as of _____, 2018, is between the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and the San Francisco Conservatory of Music, a California non-profit public benefit corporation ("**SFCM**"). The City and SFCM are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. SFCM is a non-profit educational institution which has provided internationally acclaimed music education in San Francisco for 100 years. SFCM's 50 Oak Street campus was created in 2006 and included the rehabilitation and restoration of an important historic resource. Since then, SFCM has become a critical part of the City's Civic Center area cultural district, while serving over 400 students a year, both graduate and undergraduate, most of whom receive scholarship support.

B. SFCM employs over 300 faculty and staff in educating students and in providing a wide range of free and low-cost community programming, including over 400 free public performances annually ("Free Public Performances"); numerous live music programs in schools, hospitals, retirement and children's facilities; a community performance program in which

SFCM students gain experience and income while providing more than 200 free performances each year; and student instruction to over 1,600 students at public elementary, middle and high schools each year.

C. In 2014, SFCM acquired the property located at 200 and 214 Van Ness Avenue in San Francisco, California, as more particularly described on the site plan attached as Exhibit A-1 and in the legal description attached as Exhibit A-2 (together the "**Project Site**"). The Project Site is located in the C-3-G Zoning Use District and in the 96-X Height and Bulk District, immediately adjacent to a 120-X Height and Bulk District. The Project Site currently contains an approximately 30,000 square foot office and a residential building with twenty-seven (27) units.

D. SFCM proposes to demolish the two existing buildings and create a student housing focused mixed-use project on the Project Site with approximately four hundred twenty (420) student housing beds, three (3) faculty units, one-for-one replacement of the existing twenty-seven (27) residential units with modern, contemporary code complying units (the "**Replacement Units**"), educational and performance space, and ground floor retail / restaurant uses, all in an approximately 168,000 gross square foot building and as more specifically described in Exhibit B (the "**Project**"). The Project is designed to permit SFCM to continue to provide exceptional music education and strengthen San Francisco's civic center arts and cultural district by providing student housing and related facilities while insuring modern replacement housing for existing tenants and alleviating pressure on San Francisco's existing housing stock.

E. As part of its Replacement Housing and Interim Relocation Plan, SFCM will provide current tenants with a clear right to return to the Replacement Units at current rents and

voluntarily submit the Replacement Units to the ongoing jurisdiction of the San Francisco Rent Control Ordinance (the "**Rent Control Ordinance**"). In addition, existing tenants will be provided with similar interim housing and relocation and other assistance during construction of the Project, all as more specifically described on Exhibit C (the "**Replacement Housing and Interim Relocation Plan**").

F. 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.

G. In addition to the overall public benefits to the City from SFCM generally, and the Project in particular, 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 (1) providing approximately 420 student housing beds to alleviate pressure on the City's impacted housing stock; (2) the replacement of dated rental housing in a manner exceeding that required under state law; (3) building the Replacement Units on-site; (4) activating the street with retail/performance uses,

and (5) creation of new top and ground floor performance and events space available for public use at market rates.

H. 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 SFCM's obligation to comply with all applicable Laws in connection with the development of the Project.

I. The Preliminary Mitigated Negative Declaration was prepared for the Project and published on December 27, 2017 and became final without appeal on January 17, 2018 ("**MND**"). On _____, 2018, 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 by Motion No. ____ determined among other things that the MND thoroughly analyzes the Project and adopted a Mitigation Monitoring Reporting Program (**the "CEQA Findings"**) and further determined by Resolution No. ____ 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 proposed to be amended, and the policies set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). On

_____, 2018, the Board of Supervisors, in Motion No. [____], affirmed the decisions of the Planning Commission and , the CEQA Findings the General Plan Consistency Findings. The information in the CEQA Findings has been fully reviewed and considered by the City in connection with this Agreement.

J. On _____, 2018, 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 incorporated by reference the CEQA Findings, General Plan Consistency Findings and approved this Agreement.

K. On _____, 2018, the Board adopted Ordinance Nos. [____], amending the General Plan and the Planning Code, Zoning Map, and adopted Ordinance No. [____], 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 _____, 2018.

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

AGREEMENT

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

1.1 "**Administrative Code**" means the San Francisco Administrative Code.

- 1.2 **"Agreement"** means this Focused Development Agreement and its Exhibits and any amendments thereto.
- 1.3 **"Annual Review Date"** has the meaning set forth in Section 8.1.
- 1.4 **"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).
- 1.5 **"Approval(s)"** means the City approvals, entitlements, and permits listed on Exhibit D, and any Later Approval.
- 1.6 **"Assignment and Assumption Agreement"** has the meaning set forth in Section 12.2.
- 1.7 **"Board of Supervisors"** or **"Board"** means the Board of Supervisors of the City and County of San Francisco.
- 1.8 **"Building"** or **"Buildings"** means the buildings on and to be constructed on the Project Site, as generally provided in the Project Description attached as Exhibit B.
- 1.9 **"Building Parcel"** means a portion of a Building as may be subdivided into commercial condominiums or similar parcels, as applicable.
- 1.10 **"CEQA"** has the meaning set forth in Recital H.
- 1.11 **"CEQA Findings"** has the meaning set forth in Recital I.
- 1.12 **"CEQA Guidelines"** has the meaning set forth in Recital H.
- 1.13 **"Chapter 56"** has the meaning set forth in Recital F.
- 1.14 **"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.

1.15 **"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, Mayor's Office of Housing and Community Development ("**MOHCD**"), OEWD, SFMTA, DPW, 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).

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

1.17 **"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 4.5 when SFCM is the prevailing party.

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

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

1.20 "**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.

1.21 "**Commence Construction**" means groundbreaking in connection with the commencement of physical construction of the Building foundation, but specifically excluding the demolition or partial demolition of existing structures.

1.22 "**Costa-Hawkins Act**" has the meaning set forth in Section 5.12.

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

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

1.25 "**DPW**" means the San Francisco Department of Public Works.

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

1.27 "**Enacting Ordinance**" has the meaning set forth in Recital K.

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

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

1.30 "**Existing Tenant**" has the meaning set forth in the Replacement Housing and Interim Relocation Plan.

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

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

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

1.33 **"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 MND 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 MND, 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 MND and in the case of a judicial appeal the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the MND 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.

1.34 **"Foreclosed Property"** has the meaning set forth in Section 10.5.

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

1.36 **"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 Processing Fees, taxes or special assessments or school district fees, and SFPUC Capacity Charges, all of which shall be due and payable by SFCM as and when due in accordance with Applicable Laws.

1.37 "**Later Approval(s)**" 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 that are 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 and commercial condominium 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 SFCM and approved by the City in accordance with the standards set forth in this Agreement.

1.38 "**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.

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

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

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

1.42 "**MND**" has the meaning set forth in Recital I.

1.43 "**Mortgage**" means a mortgage, deed of trust or other lien (including, without limitation, requirements for any New Market Tax Credits) on all or part of the Project Site to secure an obligation made by the applicable property owner.

1.44 "**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.

1.45 "**Municipal Code**" means the San Francisco Municipal Code.

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

1.47 "**Notice of Special Restrictions**" has the meaning set forth in Section 5.13.

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

1.49 "**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.

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

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

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

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

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

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

1.56 "**Project**" means the mixed use development project as described in Recital D and Exhibit B and the Approvals, together with SFCM's rights and obligations under this Agreement.

1.57 "**Project Site**" has the meaning set forth in Recital A, and as more particularly described in Exhibits A-1 and A-2.

1.58 "**Public Benefits**" has the meaning set forth in Section 4.1.

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

1.60 "**Replacement Housing and Interim Relocation Housing Program**" is set forth in Exhibit C.

1.61 "**Replacement Units**" has the meaning set forth in Recital D.

1.62 "**Rent Control Ordinance**" has the meaning set forth in Recital E.

1.63 **"SFCM"** 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.

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

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

1.66 **"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.

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

1.68 **"Subdivision Map Act"** means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

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

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

1.71 **"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 SFCM 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.

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

2. EFFECTIVE DATE; TERM

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

2.2 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter unless extended or earlier terminated as provided herein ("**Term**"); provided, however, that the Term shall be extended for each day of a Litigation Extension and Excusable Delay. The term of any Approval, tentative Subdivision Map, and any subsequent subdivision map shall be for the longer of (x) the Term or (y) the term otherwise allowed under the Subdivision Map Act.

3. GENERAL RIGHTS AND OBLIGATIONS

3.1 Development of the Project. SFCM shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement, and the City shall consider and process all Later Approvals for development of the Project in accordance with and subject to the provisions of this Agreement. The Parties acknowledge (i) that SFCM has obtained all Approvals from the City required to Commence Construction of the Project, other than any required **Later Approvals** and (ii) that SFCM 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, only if applicable, to the attainment of any required Later Approvals.

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

4.1 Public 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:

- (a) Expanding the City's supply of housing by adding approximately 420 student housing beds and three faculty units, while concurrently alleviating severe pressure on the City's existing housing stock;
- (b) The Replacement Housing and Interim Relocation Plan, including: one-for-one replacement of the existing twenty-seven (27) substandard residential units with the Replacement Units; providing current tenants with a clear right to return to the Replacement Units at current rents; voluntarily submittal of the Replacement Units to the ongoing jurisdiction of the Rent Control Ordinance; and providing existing tenants with similar interim housing and relocation and other assistance during construction of the Project, all as more specifically described in Exhibit C; and
- (c) 45,200 gross square feet of much needed state-of-the-art educational and performance space, providing added artistic and cultural resources to the City generally, and the Civic Center cultural area specifically, which includes creation of active uses on Van Ness Avenue and Hayes Street in approximately 7,200 gross square feet of ground floor retail/restaurant and performance space in the Project. The top floor performance space is approximately 5,000 gross square feet. The ground floor and top floor performance spaces will be available for public use at market rates when not committed to SFCM uses. A majority of the

events conducted in the ground floor and top floor performance spaces shall be musical and related performances which are free and open to the public.

The above Sections 4.1(a), (b) and (c) are together the "**Public Benefits**".

The City acknowledges and agrees that a number of the Public Benefits would not be otherwise achievable without the express agreement of SFCM under this Agreement. SFCM acknowledges and agrees that, as a result of the benefits to SFCM under this Agreement, SFCM has received good and valuable consideration for its provision of the Public Benefits, and that the City would not be willing to enter into this Agreement without the Public Benefits. The Public Benefits shall be provided in the time and manner set forth in the Approvals; provided, however, the Public Benefits under the Replacement Housing and Interim Relocation Plan shall commence and survive the expiration or termination of this Agreement as provided in Exhibit C.

4.2 Conditions to Performance of Public Benefits. SFCM's obligation to perform each Public Benefit is expressly conditioned upon each and all of the following conditions precedent:

- (a) All Approvals for the Project shall have been Finally Granted; and
- (b) SFCM shall have obtained all Later Approvals necessary to

commence and complete construction and the same shall have been Finally Granted.

4.3 No Additional CEQA Review Required; Reliance on MND for Future Discretionary Approvals. The Parties acknowledge that the MND prepared for the Project complies with CEQA. The Parties further acknowledge that the MND contains a thorough analysis of the Project. Accordingly, the City does not intend to conduct any further environmental review or impose any additional mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the MND, 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. The Parties expressly acknowledge that the MND is 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, SFCM agrees not to discriminate against any employee, City employee working with SFCM'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 SFCM 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 SFCM 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 SFCM 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 SFCM 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 SFCM 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 SFCM 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. SFCM's obligation to pay the City Costs shall survive the termination of this Agreement. SFCM shall have no obligation to reimburse the City for any City Cost that is not invoiced to SFCM 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 SFCM, and to the extent not confidential, shall make such records available for inspection by SFCM.

4.5.5 If SFCM in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice SFCM 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. SFCM shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following SFCM's notice to the City of the dispute, SFCM may pursue all remedies at law or in equity to recover the disputed amount.

4.6 Prevailing Wages. To the extent otherwise required by law, SFCM agrees that all persons performing labor in the construction of any public improvements on the Project Site, if any, shall be paid not less than the highest prevailing rate of wages for the labor so performed consistent with the requirements of Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California, and SFCM shall include this requirement in any construction contract entered into by SFCM for any such public improvements. Upon request and if applicable, SFCM and its contractors will provide to City any workforce payroll records as needed to confirm compliance with this section.

4.7 Indemnification of City. SFCM 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 SFCM under this Agreement, (ii) SFCM's failure to comply with any Approval or Later 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 SFCM 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 SFCM, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between SFCM 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 SFCM 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.

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. SFCM 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 student housing, replacement housing, 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 including the Planning Code. The expiration of any building permit or Approval shall not limit the Vested Elements, and SFCM 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, and (iii) this Agreement (collectively, "**Applicable Laws**"). Notwithstanding the foregoing, for the avoidance of confusion the parties acknowledge that the Planning Code section 415 *et seq.* inclusionary affordable housing program is not an Applicable Law hereunder.

5.3 Criteria for Later Approvals. SFCM shall be responsible for obtaining all required Later Approvals before the start of any construction. 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 Approval 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 Planning 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. Notwithstanding anything in this Agreement to the contrary, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the 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.

5.5 Denial of a Later Approval. If the City denies any application for a Later Approval that implements any aspect of the Project, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall

approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with Applicable Laws and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.

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

5.6.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from that permitted under the Approvals;

(b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of the Building 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 required on a City-Wide basis, that relate to the construction of improvements, and that 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; or
- (j) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 5.7.2).

5.6.2 SFCM 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, to subdivide, reconfigure or merge the parcels comprising the Project Site as may be necessary or desirable in order to create separate condominium units within the Project. The specific boundaries of parcels shall be set by SFCM and approved by the City during the subdivision process. Nothing in this Agreement shall authorize SFCM 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.

5.7 Fees and Exactions.

5.7.1 Generally. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 5.7, and the City shall not impose any new Processing Fees or new or modified 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 SFCM 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 Litigation Extension and Excusable Delay (if any), no Impact Fees and Exactions shall apply to the Project or components thereof except for (i) the SFPUC Capacity Charges, (ii) those in effect as of the Effective Date (exclusive of Planning Code Section 415, which does not apply), and (iii) as expressly set forth below in this Section 5.7.2. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated at the time payable in accordance with the City

requirements on that date. Accordingly, SFCM shall be subject to any increase or decrease in the fee amount payable, but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions (e.g., any increase in the required number or percentage of affordable housing units, any change in the minimum or maximum area median income (AMI) percentage levels for the affordable housing pricing or income eligibility, changes to unit type requirements, or any reduction in the threshold of applicability for imposition of a fee, such as square footage), or any increase in any fee in excess of the annual or other regularly scheduled increase in such fee (e.g., annual increases based on the Annual Infrastructure Construction Cost Inflation Estimate, Consumer Price Index, Cost of Living Adjustment, or other index) after the Effective Date.

5.7.2.1 Art Fee. Notwithstanding the provisions of Planning Code Section 429, *et seq.*, SFCM will satisfy the on-site public art work provisions thereof by providing on-site public art visible to the public in the manner described in Exhibit E.

5.7.3 Processing Fees. SFCM shall pay all Processing Fees in effect, on a City-wide basis, at the time that SFCM 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. SFCM 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 SFCM'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 which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the

development rights of SFCM 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 Termination of Agreement. If any of the modifications, amendments or additions described in Section 5.8.2 or this Section 5.8.3, or any changes in Federal or State Laws described above, 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 SFCM**"), then SFCM 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 Sections 5.8.2 or 5.8.3 or any changes in Federal or State Laws described thereunder would materially and adversely affect or limit the Public Benefits (a "**Law Adverse to the City**"), then the City shall notify SFCM 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 (i) SFCM shall have the right to terminate this Agreement as to the affected portions of the Project following a Law Adverse to SFCM upon not less than thirty

(30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement as to the affected portions of the Project following a Law Adverse to the City upon not less than thirty (30) days prior notice to SFCM; provided: (a) notwithstanding any such termination, SFCM shall be required to complete the Public Benefits tied to a particular Building that has Commenced Construction as set forth in Section 4.1 if SFCM proceeds with construction of such Building, and (b) in the event of a partial termination, SFCM shall be required to complete the Public Benefits tied to any Building remaining to be built if SFCM Commences Construction of the applicable Building and proceeds with such construction. Notwithstanding the foregoing, if SFCM 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 SFCM 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.

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. SFCM may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to SFCM, a

potential Transferee, or a potential lender to SFCM, 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) SFCM 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 Default; 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 forty-five (45) 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. SFCM may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Project's zoning.

5.12 Costa-Hawkins Rental Housing Act.

5.12.1 Non-Applicability. 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 section 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 or Civil 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 Replacement Units consistent with the Replacement Housing and Interim Relocation Plan and Notice of Special Restrictions. This Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because this Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65915 of Division 1 of Title 7 of the California Government Code). The City and SFCM would not be willing to enter into this Agreement without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code section 1954.52(a) do not apply to the Replacement Units as a result of the exemption set forth in California Civil Code section 1954.52(b) for the reasons set forth in this Section 5.12.

5.12.2 General Waiver. SFCM, 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 this Agreement related to the applicability of the Rent Control Ordinance to the Replacement Units as set forth in the Replacement Housing and Interim Relocation Plan 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 this Agreement and the Parties should not have the benefits of this Agreement without the burdens of this

Agreement. Accordingly, if SFCM 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 this Agreement as to the portion of the Project under the ownership or control of SFCM.

5.12.3 Inclusion in All Assignment and Assumption Agreements and Recorded Restrictions. SFCM shall include the provisions of this Section 5.12 in any and all assignment and assumption agreements, and any and all recorded restrictions, for any portion of the Project Site that includes or will include Replacement Units.

5.13 Application of the San Francisco Rent Ordinance and Ellis Act Waiver. SFCM agrees to maintain the Replacement Units as rent controlled under the Rent Control Ordinance, which commitment shall survive the expiration of this Agreement for so long as the Rent Control Ordinance, or a similar successor ordinance, remains in effect. Such commitment does not depend upon the initial occupancy of the Replacement Unit by an existing tenant, and such commitment shall be evidenced by the Notice of Special Restrictions generally in the form attached hereto as Exhibit G and as specified in the attached Replacement Housing Plan. In furtherance of the principles of the Replacement Housing and Interim Relocation Plan, SFCM shall, as part of the Notice of Special Restrictions attached hereto as Exhibit G, waive any and all rights to evict any tenants in a Replacement Unit (including any Existing Tenants or other tenants) under the Ellis Act (California Government Code Section 7060 et seq.) and any other laws or regulations that permit owner move-in evictions for any of the Replacement Units for so long as the Replacement Units are subject to the Rent Control Ordinance.

SFCM shall include the provisions of this Section 5.13 in any and all assignment and assumption agreements, and any and all recorded restrictions, for any portion of the Project Site that includes or will include Replacement Units.

5.14 Taxes. Nothing in this Agreement alters the limitations imposed by Law on the City's ability to impose or increase taxes or special assessments, or any equivalent or substitute tax or assessment, provided on the Project Site or SFCM as its owner, 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 §§ 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 SFCM 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 or in this Agreement shall permit the City to impose any tax or assessment against the Project or the Project Site, any portion thereof or SFCM that is otherwise prohibited by Law and in any event, if permitted, must be one that applies to all similarly-situated property on a City-Wide basis.

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that SFCM initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement of the Replacement Housing and Interim Relocation Plan. The development of the Project is subject to numerous factors that are not within the control of SFCM 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 SFCM may develop the Project in such order and at such rate and times as SFCM 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, SFCM's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

7. MUTUAL OBLIGATIONS

7.1 Notice of 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 SFCM, and record such instrument in the Official Records.

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, including as may be required of the City to facilitate New Market Tax Credits. 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 SFCM 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. As such, Planning Department staff will: (i) work with SFCM to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) interface with City staff responsible for reviewing any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

7.2.1 SFCM shall assist and cooperate with the City at SFCM'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. SFCM 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, SFCM shall have the right to monthly invoices for all such costs.

7.2.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting SFCM'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, SFCM may elect to terminate this Agreement either in its entirety or only as to certain portions of the Project. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and SFCM shall jointly seek to have the Third-Party Challenge dismissed and SFCM 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 SFCM, any defense costs with respect to the remaining portions of the Project).

Notwithstanding the foregoing, if SFCM 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 SFCM 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.

7.2.3 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.

7.3 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.

7.4 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 SFCM'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 SFCM has, in good faith, complied with the Agreement. The Planning Department may, at the Director's discretion, provide notice to SFCM not less than thirty (30) days prior to the Annual Review Date that the review will commence at a specified date later in the calendar year not later than six (6) months from the Annual Review Date. The failure to commence such review in January 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 SFCM'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 SFCM. Upon request by the Planning Director, but not more than sixty (60) days nor less than forty-five (45) days after the later of the Annual Review Date or the date of the request from the Planning Director, SFCM shall provide a letter to the Planning Director explaining, with appropriate backup documentation, SFCM's compliance with this Agreement for the preceding calendar year including, but not limited to compliance with the relevant provisions of this Agreement relating to Public Benefits, and particularly the Replacement Housing and Interim Relocation Plan. The burden of proof, by substantial evidence, of compliance is upon SFCM. The Planning Director shall post a copy of SFCM's submittals on the Planning Department's website. The compliance statement shall be deemed to satisfy requirements for and be submitted in lieu of any update otherwise required pursuant to Planning Code Sections 304.5(b) and (f).

8.2.2 City Report. Within sixty (60) days after SFCM submits such letter, the Planning Director shall review the information submitted by SFCM and all other available evidence regarding SFCM'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 SFCM. The Planning Director shall notify SFCM in writing whether SFCM 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 SFCM 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 8.2 shall be included in the City Costs.

8.2.3 Effect on Transferees. If SFCM has effected a Transfer so that its interest in the Project Site has been divided between SFCM and Transferees or between or among Transferees, then the annual review hereunder shall be conducted separately with respect to SFCM and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to SFCM and each Transferee, as applicable, pursuant to Chapter 56. If 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 SFCM or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party 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 of the commission by SFCM of a Default.

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 SFCM. Except as expressly set forth in Article 12 of this Agreement, 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 SFCM 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 SFCM under this Agreement, there shall be no cross-default between the separate Parties that assumed SFCM obligations. Accordingly, a default by one Transferee shall not be a Default by any other party that owns or controls a different portion of the Project Site.

9.4 Remedies.

9.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 9.4.3, 9.4.4, 9.5, and the Replacement Housing and Interim Relocation Plan, 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. Notwithstanding the foregoing, if SFCM 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 SFCM under this Agreement, then only the Party holding the interest in such portion of the Project and who has defaulted shall be subject to termination and then only as to such portion of the Project, and no such termination of this Agreement shall effect a termination of this Agreement as to any other portion of the Project. 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. The City's right to terminate this Agreement shall be further limited by the provisions of Sections 9.3 and 12.3, regarding cross-default.

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, SFCM agrees that the City shall not be liable to SFCM for damages under this Agreement, and the City agrees that SFCM 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 SFCM's failure to make any payment due under any indemnity in this Agreement, and (3) either Party

shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 9.6. 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 SFCM are past due; provided, however, if SFCM 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 SFCM 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 party as to that portion of the Project is current on payments due the City. The City shall have the right to withhold the final certificate of occupancy for the Building until completion of construction of the Replacement Units.

9.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in

such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

9.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the Law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

10. FINANCING; RIGHTS OF MORTGAGEES

10.1 SFCM's Right to Mortgage. Nothing in this Agreement limits the right of SFCM 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. SFCM represents that, as of the date of this Agreement, there are no Mortgages on the Project Site as of the Effective Date.

10.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including, but not limited to, those which are or are intended to be covenants running with the land, a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or 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. 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 needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes SFCM'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 SFCM with respect to any breach or Default by the SFCM 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 shall have the right to record in the Official Records with respect to the Project Site a request 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.

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 SFCM 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 SFCM under this Agreement as to the applicable Foreclosed Property. 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 SFCM 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 SFCM'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 SFCM; provided, however, that following a Transfer, the City and SFCM, or any Transferee, may amend this Agreement as it affects SFCM or the Transferee and the portion of the Project Site owned by SFCM 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, 5.8.4, 7.2.2, 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 Agency, with the approval of that City Agency). 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 Agency, after consultation with that City Agency).

11.2 Early Termination Rights. SFCM 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 SFCM does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to SFCM, have the right, in its sole and absolute discretion, to terminate this Agreement if the SFCM has not Commenced Construction; provided SFCM can prevent any such termination by the City by providing to the City notice, within the above sixty

(60) day period, of SFCM's intent to start construction and the SFCM thereafter Commences Construction within one hundred twenty (120) days following delivery of SFCM'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 demolition in reliance thereon. In the event of any termination of this Agreement by SFCM resulting from a Default by the City and except to the extent prevented by such City Default, SFCM's obligation to complete the Public Benefits shall continue as to the Building that has been demolished 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 SFCM'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 Applicable Law 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 in keeping with its customary practices and Applicable Law, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

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

11.5.1 Litigation and Referendum Extension. If any litigation is filed challenging this Agreement or an Approval having the direct or indirect effect of delaying this Agreement or any Approval (including but not limited to any CEQA determinations), including any challenge to the validity of this Agreement or any of its provisions, or if this Agreement or an Approval is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, the date of the initial grant of such Approval) 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 SFCM's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon SFCM's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming

aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

12.1 Permitted Transfer of this Agreement. At any time, SFCM 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 or a Building Parcel (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 Public Benefits for such portion (the "**Transferred Property**"). Notwithstanding anything to the contrary in this Agreement, if SFCM Transfers a Building Parcel, then the obligations to perform and complete the Public Benefits as to that Building Parcel shall be the sole responsibility of the applicable Transferee (*i.e.*, the person or entity that is the Transferee of the applicable Building Parcel); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

12.2 Notice of Transfer. SFCM shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "**Assignment and Assumption Agreement**") with a legal description. The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit F (and shall include the indemnifications, covenants not to challenge the enforceability of this

Agreement and not to sue the City for disputes between SFCM and any Transferee, and the other provisions of this Agreement required to be included therein.) Any material changes to the attached form will be subject to the review and approval of the Director of Planning which shall not be unreasonably withheld or delayed.

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

12.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to SFCM'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 SFCM and the Transferee, or (ii) relates to the period before the Transfer.

12.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

12.6 Rights of SFCM. The provisions in this Section 12 shall not be deemed to prohibit or otherwise restrict SFCM 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. SFCM REPRESENTATIONS AND WARRANTIES

13.1 Interest of SFCM; Due Organization and Standing. SFCM represents that it is the legal or beneficial owner of the Project Site, with the right and authority to enter into this Agreement. SFCM is a California not-for-profit organization, duly organized and validly existing and in good standing under the Laws of the State of California. SFCM has all requisite power to own its property and authority to conduct its business as presently conducted. SFCM represents and warrants that there is no existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

13.2 No Inability to Perform; Valid Execution. SFCM represents and warrants that it is not a party to any other agreement that would conflict with SFCM'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 SFCM have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of SFCM, enforceable against SFCM in accordance with its terms.

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

13.5 Other Documents. To the current, actual knowledge of _____, after reasonable inquiry, no document furnished by SFCM 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. SFCM represents and warrants to the City that SFCM 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 SFCM's knowledge, no such filing is threatened.

14. MISCELLANEOUS PROVISIONS

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

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

14.3 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 12, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation Section 12, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

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

14.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and SFCM. 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 SFCM 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. SFCM shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of SFCM 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 SFCM. Neither Party is acting as the agent of the other Party in any respect hereunder. SFCM is not a state or governmental actor with respect to any activity conducted by SFCM 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, at no cost to SFCM.

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

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

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

14.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other person or address in

substitution of the person and address to which such notice or communication shall be given.

Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

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

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance, SFCM Project

To SFCM:

Kathryn Wittenmyer
Vice President, Finance and Administration
San Francisco Conservatory of Music
50 Oak Street
San Francisco, CA 94102-6011

with a copy to:

Provost and Dean
San Francisco Conservatory of Music
50 Oak Street
San Francisco, CA 94102-6011

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. SFCM 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. SFCM 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 SFCM 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, SFCM 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 SFCM. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify SFCM of that conclusion and that the information will be released by a specified date in order to provide SFCM 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 SFCM, its successors and assigns, in the event of any Default by City, or for any amount which may become due to SFCM, its successors and assigns, under this Agreement.

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

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

[signatures follow on next page]

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

CITY:

Approved as to form:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

DENNIS J. HERRERA, City Attorney

By: _____
John Rahaim
Director of Planning

By: _____
Heidi J. Gewertz, Deputy City Attorney

Approved on _____, 2018
Board of Supervisors Ordinance No. _____

SAN FRANCISCO CONSERVATORY OF MUSIC,
A California public benefit not-for-profit corporation

By: _____
Name: David Stull
Its: President

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)

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County of San Francisco)

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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.

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Signature _____

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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.

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Signature _____

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State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A-1

Site Plan

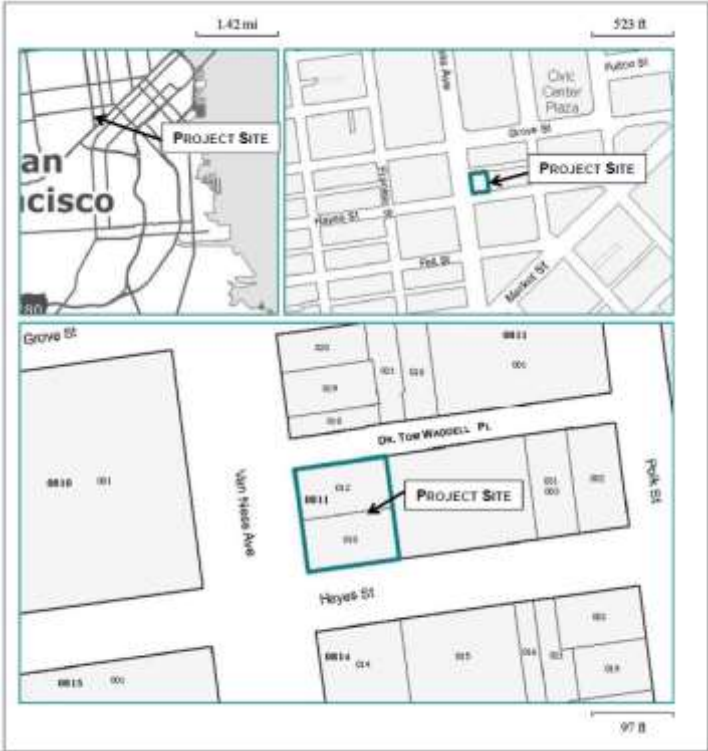


Exhibit A-2

Legal Description

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

PARCEL ONE:

BEGINNING AT THE POINT OF THE INTERSECTION OF THE EASTERLY LINE OF VAN NESS AVENUE WITH THE SOUTHERLY LINE OF IVY STREET; RUNNING THENCE ALONG SAID LINE OF VAN NESS AVENUE SOUTHERLY 59 FEET 11-1/8 INCHES; THENCE AT A RIGHT ANGLE EASTERLY 109 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 59 FEET 11-1/8 INCHES TO THE SAID SOUTHERLY LINE OF IVY STREET; THENCE ALONG THE LAST MENTIONED LINE WESTERLY 109 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF WESTERN ADDITION BLOCK NO. 68.

PARCEL TWO:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF HAYES STREET AND THE EASTERLY LINE OF VAN NESS AVENUE; RUNNING THENCE NORTHERLY AND ALONG SAID LINE OF VAN NESS AVENUE 60 FEET, 0-7/8 INCHES; THENCE AT A RIGHT ANGLE EASTERLY 109 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 60 FEET, 0-7/8 INCHES TO THE NORTHERLY LINE OF HAYES STREET; THENCE AT A RIGHT ANGLE WESTERLY AND ALONG SAID LINE OF HAYES STREET 109 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF WESTERN ADDITION BLOCK NO. 68.

APN: Lot 012; Block 0811 (Affects Parcel One)
Lot 010; Block 0811 (Affects Parcel Two)

Exhibit B

Project Description

SFCM proposes to construct a mixed-use building containing student housing with approximately 420 student beds in 113 separate units. The student housing component will include two-and three-bedroom units, and the bedrooms will be a mix of single and double occupancy. The building will also include 3 faculty dwelling units in approximately 2,800 gross square feet, approximately 45,200 gross square feet of education / classrooms / rehearsal space, approximately 3,000 gross square feet of ground floor retail/restaurant uses, approximately 7,200 gross square feet of performance space located on the ground (2,000 gross square feet) and eleventh floors (5,000 gross square feet), and could include approximately 4,320 gross square feet of broadcasting studio space, approximately 2,720 gross square feet of open space, and 27 replacement housing units, all within an approximately 168,200 gross square foot (about 153,200 gsf of floor area under the Planning Code), twelve-story, 120 foot building at 200-214 Van Ness Avenue. The Project contains approximately 164 Class 1 bicycle spaces, 20 Class 2 bicycle spaces, two on-street loading spaces. It has no off-street parking.

The Project will include demolition of two existing structures on the site totaling approximately 30,000 square feet: one previously used as office space and one a 27-unit apartment building. The Project includes a specific program for existing tenants to return to a new similar rent controlled unit with interim relocation and assistance during construction as more particularly described in Exhibit C to the Development Agreement to which this Exhibit B is attached.

Together the foregoing constitutes the "**Project**".

Exhibit C

Replacement Housing and Interim Relocation Plan

This Replacement Housing and Interim Relocation Plan (the "Plan") has been prepared as part of the Development Agreement (the "Development Agreement") between the San Francisco Conservatory of Music ("SFCM") and the City and County of San Francisco relative to the redevelopment of 200 and 214 Van Ness. SFCM will demolish the current structures located at 200 and 214 Van Ness and construct a new 165,000 square foot building. The new building will provide new housing for SFCM students and faculty as well as performance space, educational spaces and 27 replacement housing units ("Replacement Housing Element") for the 27 housing units currently located at 200 Van Ness (as more specifically defined in the Development Agreement, the "Project"). The 27 replacement housing units will be modern apartments consisting of six studio apartments and 21 one-bedroom apartments with a separate secure entrance and elevator.

The purpose of this document is to inform the tenants of 200 Van Ness of the plan for their proposed relocation and their rights under this Plan, including the right to relocate to one of the new replacement units at their current rent controlled rents as well as rights to temporary replacement housing while the Project is under construction. A list of the units and the size of the units is attached to this Exhibit as Attachment 1.

Objectives of Plan.

1. Minimize the disruption to the Existing Tenants (as defined below) of 200 Van Ness during the construction of the Project and ensure that all Existing Tenants receive relocation benefits to prevent displacement.
2. Provide permanent replacement housing for Existing Tenants in the Replacement Housing Element of the Project, including Existing Tenants with Section 8 Certificates. The permanent replacement housing will be comparable or better than existing units and of similar size to existing units, both in the number of bedrooms and square footage.
3. Initial rent for Existing Tenants of 200 Van Ness for the permanent replacement housing in the Replacement Housing Element of the Project will be set at the Existing Tenant's rent at their unit at 200 Van Ness immediately prior to relocation increased only by the San Francisco Rent Board annual general rent increases during construction.
4. Existing Tenants returning to the Project will be entitled to all of the protections of the San Francisco Rent Ordinance and the units in the Replacement Housing Element of the Project will be subject to rent control pursuant to the San Francisco Rent Ordinance.
5. Prior to and as a condition to commencement of construction of the Project, SFCM will provide the Existing Tenants with temporary comparable replacement housing, with Existing Tenants paying the same rent the Existing Tenant is paying for their current unit at 200 Van Ness.
6. The SFCM will pay Existing Tenants' moving costs to move to the temporary replacement housing and the subsequent move to the newly constructed permanent replacement unit in the Project, as further described below.

Existing Tenants.

Existing Tenants of 200 Van Ness will have relocation rights as specified in this Plan. For purposes of this Plan, Existing Tenants are defined as the following:

- Any tenant residing at 200 Van Ness as of the effective date of the Development Agreement listed on a lease or rental agreement with SFCM, including tenants listed on leases or rental agreements with the former owner who continue to reside at 200 Van Ness.
- Any minor residing with a tenant listed on a lease or rental agreement with the Owner.
- Any person residing in a unit at 200 Van Ness as of the effective date of the Development Agreement with the consent of the SFCM including roommates of Existing Tenants consented to by SFCM.

The following will not be considered Existing Tenants for purposes of relocation and eligibility for a Permanent Replacement Unit under this Plan

- Any temporary guests or occupants of units occupied by Existing Tenants, including any Airbnb or similar type of guests
- Any unauthorized subtenants of Existing Tenants.
- Any unlawful occupant as determined by a court of law.
- An Existing Tenant who, prior to receipt of the Initial Notice to Move, voluntarily vacates his or her unit at 200 Van Ness or is evicted for good cause. Eviction for good cause shall be evidenced by a final non-appealable court order or the tenant's vacation of the unit after receipt of a validly issued eviction notice.

No later than 30 days after the effective date of the Development Agreement each occupant of 200 Van Ness will be notified in writing by SFCM whether he or she has been determined to qualify as an Existing Tenant. If the resident disagrees with the determination, then the resident may file a grievance in accordance with the grievance procedures set forth in this Plan.

Relocation During Construction.

During construction of the Project, Existing Tenants may select from the following options. Each household will be allowed to elect a single option, regardless of how many Existing Tenants reside in the household. If the Existing Tenants cannot agree upon the option, the entire household will be offered the Rent Differential Payment.

1. Temporary Replacement Unit Option.

- a. SFCM will master lease comparable replacement units for all Existing Tenants selecting the Temporary Replacement Unit Option ("Temporary Replacement Units"). Temporary Replacement Units will be considered comparable if they are of similar size to the Existing Tenant's unit at 200 Van Ness with the same number of bedrooms and include similar housing services as currently provided at 200 Van Ness. SFCM will make every

effort to provide Temporary Replacement Units in the same neighborhood as 200 Van Ness but Temporary Replacement Units may be located elsewhere in the City depending upon availability of units.

- b. Prior to offering Temporary Replacement Units to the Existing Tenants, SFCM will conduct interviews with the Existing Tenants to determine location preferences for the Temporary Replacement Units as well as any special needs of the Existing Tenants such as accessibility features, need to be in a particular location because of schools, employment or medical needs, etc. SFCM will use every effort to accommodate Existing Tenant's particular needs with regards to location of the Temporary Replacement Units.
- c. SFCM will pay Existing Tenants' Moving Expenses, as defined below, to move to the Temporary Replacement Unit as set forth below in this Plan.
- d. Existing Tenants electing to move to the Temporary Replacement Unit provided by SFCM will enter into a lease or rental agreement with SFCM for the Temporary Replacement Unit on substantially the same terms and conditions, including rental rate, as their existing lease at 200 Van Ness subject to inclusion of any particular rules and regulations associated with the Temporary Replacement Unit.
- e. SFCM will pay for any utility reconnection fees or charges incurred by the Existing Tenant moving to the Temporary Replacement Units, including P.G.&E., telephone, cable TV and Internet services (if the Existing Tenant currently has cable TV and Internet services at 200 Van Ness).
- f. Existing Tenants will be required to comply with the terms of their lease or rental agreement with SFCM during the construction period while living in the Temporary Replacement Unit, along with the rules and regulations that may exist at the temporary location. Existing Tenants who fail to comply with the terms of their rental agreement and/or the rules and regulations for the Temporary Replacement Unit may be subject to eviction and jeopardize their opportunity for permanent relocation at the Replacement Housing Element of the Project.
- g. SFCM will work with the San Francisco Housing Authority to ensure that Existing Tenants with Section 8 vouchers who elect to move to a Temporary Replacement Unit continue to be eligible for their voucher during the temporary displacement period.

2. Rent Differential Payment.

- a. As an alternative to moving to the Temporary Replacement Units, Existing Tenants may elect to either move in with friends and family during the construction period or find their own temporary housing. If an Existing Tenant makes such an election, SFCM will pay to the Existing Tenant a monthly rent differential payment equal to the difference between the Existing Tenant's rent at 200 Van Ness immediately prior to the commencement of construction and the rent at a comparable Temporary Replacement Unit secured by SFCM during the construction period ("Rent Differential Payment"). SFCM shall make the Rent Differential Payment to the Existing Tenant on a monthly basis unless otherwise approved by the City. Existing Tenants electing the Rent Differential Payment will also receive Moving Expenses as defined below. Existing Tenants electing to receive the Rent Differential Payment rather than moving to Temporary Replacement Units are responsible for keeping SFCM informed of their contact information for purposes of receiving the Rent Differential Payments and providing notices of availability of the Replacement Housing in the Project. SFCM cannot guaranty that Existing Tenants who elect the Rent Differential Payment at the commencement of construction will have the option during construction to change their election and move to a Temporary Replacement Unit.

Permanent Replacement Units.

All Existing Tenants who remain in good standing pursuant to their rental agreement or lease with SFCM until completion of construction of the new Project and Existing Tenants who elect to receive the Rent Differential Payment will be offered a new permanent replacement unit in the Replacement Housing Element of the Project ("Permanent Replacement Units").

1. The new Permanent Replacement Units will be of similar size as the Existing Tenant's current unit with the same number of bedrooms and the same or better amenities as the current units.
2. Existing Tenants moving to a Permanent Replacement Unit in the Project will be offered a lease on substantially the same terms as the existing rental agreement or lease, subject to such changes as are necessary to address the upgraded features of the Permanent Replacement Units.
3. Rents for the Permanent Replacement Units will be the rent the Existing Tenant was paying at 200 Van Ness prior to commencement of construction increased only by the annual rent increases approved by the San Francisco Rent Board during construction of the Project.

4. All of the units in the Replacement Housing Element of the Project will be permanently rent controlled for so long as the San Francisco Rent Ordinance is effective. For so long as the units in the Replacement Housing Element of the Project are subject to the San Francisco Rent Ordinance, SFCM shall not exercise its rights to remove any Permanent Replacement Unit from the rental housing market in accordance with the California Government Code Section 7060 et seq. and San Francisco Rent Ordinance Section 37(a)(13).
5. SFCM will pay Existing Tenants Moving Expenses, as defined below, to move to the Permanent Replacement Unit in accordance with the section on Moving Expenses of this Plan.
6. SFCM will pay for any utility connection fees or charges incurred by the Existing Tenant moving to a Permanent Replacement Units, including P.G.&E., Telephone, cable TV and Internet services (if the Existing Tenant currently has cable TV and Internet services).
7. SFCM will enter into any necessary contracts with the San Francisco Housing Authority and participate in any required inspections to allow Existing Tenants with Section 8 vouchers to continue to use those vouchers in the Permanent Replacement Units.

Existing Tenants Electing Not to Accept a Permanent Replacement Unit.

All Existing Tenants will be offered the opportunity to move to a Permanent Replacement Unit. Existing Tenants who elect to accept a Temporary Replacement Unit or the Monthly Rent Differential but who elect not to accept a Permanent Replacement Unit in the new Project will be paid Moving Expenses as set forth in this Plan, if the Existing Tenant moves from the Temporary Replacement Unit, plus the relocation payment benefits consistent with Section 37.9C of the San Francisco Rent Ordinance.

In lieu of receiving (i) a Temporary Replacement Unit or a Rent Differential Payment and (ii) a Permanent Replacement Unit in the Project, Existing Tenants may elect a buy out on terms and conditions to be negotiated with SFCM. As a condition of any buyout agreement, the Existing Tenant will be required to waive any rights to any relocation benefits provided in this Plan or pursuant to law and the Existing Tenant's right to return to a Permanent Replacement Unit. All of the Existing Tenants residing in a single unit must agree to the buyout. SFCM shall comply with the provisions of Section 37.9E of the San Francisco Rent Ordinance when negotiating any buy out with an Existing Tenant. SFCM shall provide an Existing Tenant with the written disclosure required by Section 37.9E (d) of the San Francisco Rent Ordinance within ten (10) days of SFCM receiving notice from the Existing Tenant of its election to negotiate a buy out in response to the Initial Notice to Move.

Moving Expenses.

1. Moving expenses for both the Existing Tenant's move from 200 Van Ness prior to construction and the Existing Tenant's move to a Permanent Replacement Unit will be paid based on the actual cost of a professional mover or a fixed payment based on the number of rooms in the Existing Tenant's apartment ("Moving Expenses") as follows:
 - a. The Existing Tenant may elect to retain the services of a licensed professional mover, in which case SFCM will pay the actual cost of moving services including packing expenses based on the lower of at least two bids, subject to approval by SFCM.
 - b. The Existing Tenant may elect to receive a fixed payment for Moving Expenses based on a room count in the existing apartment and take responsibility for his or her own move. The fixed payment will be based on the then current schedule published by the California Department of Transportation for moving costs.
 - c. As an alternative, the Existing Tenant may allow SFCM to conduct the move using professional movers.

Relocation Process.

SFCM will take the following steps to notify and relocate the Existing Tenants.

1. Initial Move to Temporary Replacement Housing.
 - a. Prior to commencement of construction of the Project SFCM will provide Existing Tenants with regular written notices of the Project status and projected timing for construction.
 - b. No later than ninety (90) days prior to the date on which any building occupant is required to move out of their current unit, SFCM will provide a written notice to all Existing Tenants and the Rent Board ("Initial Notice to Move") substantially in the form attached to this Exhibit as Attachment 2 that contains the following:
 - i. The name of all of the Existing Tenants occupying a particular unit qualifying for relocation benefits under this Plan;
 - ii. The Existing Tenants' unit type (studio or one bedroom);
 - iii. The address of the proposed Temporary Replacement Housing and times during which the Existing Tenants will be provided an opportunity to view the proposed Temporary Replacement Housing, if the address is available at the time of the Initial Notice to Move;
 - iv. The amount of the Rent Differential Payment that the Existing Tenant would receive if the Existing Tenant elects to accept a Rent Differential Payment rather than Temporary Replacement Housing during construction;
 - v. The anticipated move date for the Existing Tenants;

- vi. The anticipated date that the Permanent Replacement Unit will be available;
 - vii. Notification that Existing Tenant, in lieu of (i) accepting Temporary Replacement Housing or a Rent Differential Payment and (ii) the right to occupy a Permanent Replacement Unit may negotiate a buy out with SFCM;
 - viii. A copy of this Plan; and
 - ix. Contact information for who the Existing Tenant should contact to coordinate moving and for any questions.
- c. No later than sixty (60) days prior to the date on which the Existing Tenant is required to move out of their current unit, SFCM will provide the Existing Tenants with an additional notice ("Additional Notice to Move") that includes the following:
- i. The updated anticipated move date for the Existing Tenant;
 - ii. The address of the specific Temporary Replacement Unit selected for the Existing Tenant if the Existing Tenant has elected to move to the Temporary Replacement Unit;
 - iii. A copy of the lease or rental agreement to be signed by the Existing Tenant for the Temporary Replacement Unit if the Existing Tenant has elected to move to the Temporary Replacement Units;
 - iv. Information about moving expenses and moving services; and
 - v. If the Existing Tenant has elected to accept the Rent Differential Payment, the payment schedule for such payments.
- d. During construction of the Project, SFCM will provide regular updates on the construction of the Project including the projected occupancy dates for Existing Tenants returning to the Project ("Quarterly Progress Notices"). Notice shall be provided no less often than quarterly but may be provided more frequently if changes in the construction schedule warrant.

2. Move to Permanent Replacement Units.

- a. No less than one hundred twenty (120) days before the Existing Tenants are expected to relocate to a Permanent Replacement Unit in the Project, SFCM will provide each Existing Tenant (other than Existing Tenants who elected a buyout) with notice of the anticipated relocation date for the Existing Tenants to relocate to the Permanent Replacement Units and dates and time for the Existing Tenants to visit the Project to view the Permanent Replacement Units or to meet with SFCM to review floor plans for the Permanent Replacement Units ("Permanent Relocation Notice"). The notice will include a Replacement Unit Preference Form for the Existing Tenants to complete after viewing the Permanent Replacement Units ranking their preference for particular replacement units.

- b. SFCM will provide updated notices to the Existing Tenants of their move dates to move into the Permanent Replacement Units, but in all events Existing Tenants will receive a minimum of a sixty (60) day notice to move to the Permanent Replacement Unit.
- c. Each Existing Tenant will have the opportunity to deliver to SFCM the Replacement Unit Preference Notice within thirty (30) days of receipt of the Replacement Unit Preference Notice. Existing Tenants who intend to return to the Project upon completion of construction who do not return a Replacement Unit Preference Notice will be assigned a Permanent Replacement Unit in the Project selected by SFCM.
- d. SFCM will allocate the Permanent Replacement Units to the Existing Tenants based on the Existing Tenant's seniority as determined by the date the Existing Tenant commenced occupancy of 200 Van Ness. If SFCM cannot determine the commencement date for an Existing Tenant or if Existing Tenants have the same commencement date, SFCM will select the Existing Tenant's Permanent Replacement Unit by a random process.
- e. SFCM will notify the Existing Tenants of their designated Permanent Replacement Unit at least sixty (60) days prior to the projected move-in date ("Notice of Designated Permanent Relocation Unit"). At the same time that SFCM notifies the Existing Tenants of their designated Permanent Replacement Unit, SFCM will provide the Existing Tenants with an amended lease reflecting the Permanent Replacement Unit. Existing Tenants will have thirty (30) days from receipt of the notice of designated Permanent Replacement Unit and the amended lease to return the signed lease to SFCM. Failure to return the signed lease to SFCM may result in the Existing Tenant no longer being eligible to move into the Permanent Replacement Unit or the Replacement Housing Element of the Project. SFCM will also deliver to the Existing Tenants that are occupying Temporary Replacement Units secured by SFCM a sixty (60) day notice to vacate such Temporary Replacement Unit ("Notice to Vacate Temporary Replacement Unit").

3. Move from Temporary Replacement Housing.

All SFCM obligations to subsidize the rent of any Existing Tenant in the Temporary Replacement Units or make the Rent Differential Payments shall terminate as of the later of (i) expiration of the sixty (60) day notice to vacate or (ii) the move in date for the Project. Existing Tenants that continue to reside in a Temporary Replacement Unit after the expiration of the sixty (60) day notice to vacate may be subject to eviction if they fail to move.

Grievance Procedure.

Any resident of 200 Van Ness who is dissatisfied with any determination made by the SFCM related to relocation should first contact SFCM to discuss his or her concerns and attempt to

resolve the issue. If the resident remains dissatisfied, the resident shall be entitled to file a petition with the San Francisco Rent Board to challenge SFCM's determination of who is an Existing Tenant, the Existing Tenant's assignment to Temporary Replacement Units and SFCM's designation of a Permanent Replacement Unit. If a resident files a petition with the Rent Board, the Rent Board shall hear such petition in accordance with its standard hearing procedures. Any petition filed by a resident challenging a decision by SFCM related to this Plan must be filed with the San Francisco Rent Board no later than thirty (30) days after the resident receives notice from SFCM of such decision.

Eviction Policy.

Eviction will be permissible only as a last resort if residents of 200 Van Ness fail to vacate the building after receipt of all required notices or if Existing Tenants fail to vacate the Temporary Replacement Unit after a Permanent Replacement Unit in the Project has been made available to them. In addition SFCM may evict Existing Tenants from 200 Van Ness or from the Temporary Replacement Unit for nonpayment of rent, serious violations of the rental agreement, repeated violations of the rules and regulations, a dangerous or illegal act in the unit or as otherwise permitted under law.

Notices.

All notices required to be delivered in writing by SFCM pursuant to this Plan will be delivered by certified U.S. Mail and may also be personally delivered to the Tenants. All notices will be translated into the primary language of the Existing Tenants.

Compliance with Planning Code Sections 415 and 207.

This Replacement Housing and Interim Relocation Plan is in lieu of and constitutes full satisfaction of San Francisco Planning Code Sections 415 and 207, if and to the extent such provisions are otherwise applicable to the Project.

ATTACHMENT 1

UNITS BY SIZE AT 200 VAN NESS

San Francisco Conservatory of Music
 Replacement Housing and Interim Relocation Plan- 200 Van Ness Avenue
 Attachment 1
 Existing Units by Size at 200 Van Ness

EXISTING UNIT NUMBER	EXISTING UNIT TYPE	EXISTING UNIT NET AREA (SF)
101	1 BDRM	480
102	1 BDRM	483
103	1 BDRM	500
104	1 BDRM	551
105	STUDIO	328
106	STUDIO	388
107	1 BDRM	498
108	1 BDRM	500
109	1 BDRM	471
201	1 BDRM	482
202	1 BDRM	537
203	1 BDRM	501
204	1 BDRM	515
205	STUDIO	328
206	STUDIO	377
207	1 BDRM	498
208	1 BDRM	500
209	1 BDRM	471
301	1 BDRM	482
302	1 BDRM	537
303	1 BDRM	501
304	1 BDRM	515
305	STUDIO	328
306	STUDIO	377
307	1 BDRM	498
308	1 BDRM	500 522
309	1 BDRM	471

ATTACHMENT 2

DRAFT INITIAL NOTICE OF MOVE

INITIAL NOTICE TO MOVE

To: _____

The San Francisco Conservatory of Music ("SFCM") has received its entitlements for the construction of the new building that requires the demolition of 200 Van Ness and expects to commence construction no later than _____. As you are aware construction of the new building will require that you temporarily relocate during construction. Upon completion of construction of the new building you will be offered the opportunity to move to a new _____ bedroom **[fill in appropriate number of bedrooms]** apartment in the new building. The new project is expected to be completed _____. The rent for the new apartment will not exceed the rent you are currently paying plus any general rent increases that are approved by the San Francisco Rent Board during the construction period.

This notice will serve as your ninety (90) day notice to move. You must vacate your apartment at 200 Van Ness, Unit no. _____ no later than _____ **[fill in date that is at least 90 days from the date the notice is delivered]**.

Temporary Replacement Unit

SFCM has rented apartments at _____ **[fill in address of replacement apartment]**, San Francisco that are available to you to rent during the construction period. If you elect to move into an apartment rented by SFCM you will be responsible for continuing to pay to SFCM the rent you are paying now at 200 Van Ness during the construction period. SFCM will pay the difference between your current rent and the rent at _____.

OR

Rent Differential Payment

If you do not want to move to _____ **[fill in address of replacement apartments]**, you may elect to find your own temporary housing during the construction period in which event SFCM will pay you a monthly rent differential payment in the amount of _____ **[amount will be the difference between the tenant's current rent at 200 Van Ness and the rent being paid by SFCM at the units rented by SFCM for tenants]**. This amount represents the difference between your current rent and the rent for a comparable apartment at _____ **[fill in address of replacement apartments rented by SFCM]**. If you choose to accept the rent differential payment rather than moving into an apartment at _____, you are still eligible to rent a new unit from SFCM at the new building once construction is complete, but

you must keep SFCM informed of where you are living and how SFCM can best reach you to provide you with notices related to the completion of the project.

Moving Expense

SFCM will also pay your moving costs, including packing costs for your possessions. Alternatively, you have the right to move your own possessions and receive a moving expense allowance from SFCM. SFCM will also pay for any utility hook-up fees or charges incurred at the new unit, including cable TV and internet service initiation fees to the extent you had these utilities in your current apartment. You are responsible for arranging your own utility services, including but not limited to gas, electricity, telephone, cable TV and internet service and submitting your claim for reimbursement for any hook-up fees or charges.

Attached to this notice is a copy of the Relocation Plan approved by the City and County of San Francisco as part of the approvals for the new building that provides additional information on your options regarding temporary and permanent relocation.

If you would prefer to negotiate a buy out with SFCM in lieu of accepting (i) a Temporary Replacement Unit or the Rent Differential Payment; and (ii) the right to rent an apartment at the newly constructed project, SFCM is willing to negotiate a buy out on terms to be mutually agreed upon by you and SFCM. Please let SFCM know if you would prefer to negotiate a buyout.

SFCM will be in touch to discuss your relocation options with you. If you have questions please feel free to call _____. SFCM will provide you with additional notices regarding your move date closer to your move date, but you should begin preparing to move.

ATTACHMENT 3

REQUIRED NOTICE PURSUANT TO PLAN

Required Notice	When Given	Contents	Existing Tenant Response Required, if any
Qualification as an Existing Tenant	No later than 30 days after effective date of Development Agreement	SFCM's determination of which residents are eligible for relocation benefits and a Permanent Replacement Unit in the Project	Resident has 30 days after receipt of notice to file a grievance with the San Francisco Rent Board if resident disagrees with SFCM's determination
Initial Notice to Move	At least 90 days prior to residents being required to move from 200 Van Ness	<ol style="list-style-type: none"> 1. Address of Temporary Relocation Unit 2. Amount of Rent Differential Payment 3. Projected Date of Move from 200 Van Ness 4. Projected Date Permanent Replacement Units will be available 	Existing Tenant will be contacted by SFCM within 30 days of Initial Notice to Move to discuss options and Existing Tenant's election regarding a Temporary Relocation Unit or the Rent Differential Payment
Additional Notice to Move	At least 60 days prior to residents being required to move from 200 Van Ness	<ol style="list-style-type: none"> 1. Updated move date from 200 Van Ness 2. Address of Existing Tenants specific Temporary Relocation Unit 3. Copy of lease for Temporary Relocation Unit 4. Payment schedule for Rent Differential Payment if Existing Tenant has elected Rent Differential Payment 	N/A
Quarterly Progress Notices	At least quarterly during construction of project	Update on construction progress	N/A
Permanent Relocation Notice including Replacement Unit Preference Notice	At least 120 days prior to Permanent Replacement Unit being available	<ol style="list-style-type: none"> 1. Date that Permanent Relocation Units will be available for move-in 2. Dates when Existing Tenants can view Permanent 	Existing Tenant to return Replacement Unit Preference Notice within 30 days of receipt.

	for Existing Tenants	Relocation Units or floor plans 3. Replacement Unit Preference Notice to be completed by Existing Tenant	
Notice of Designated Permanent Replacement Unit	At least 60 days prior to Permanent Replacement Unit being available for occupancy	Designates the Permanent Replacement Unit Includes Lease for Permanent Replacement Unit	Return lease for Permanent Replacement Unit within 30 days of receipt
Notice to Vacate Temporary Relocation Units	At least 60 days prior to move-in date for Permanent Replacement Unit	Move-in Date for Permanent Replacement Unit	

Exhibit D

Approvals

1. Mitigated Negative Declaration;
2. General Plan Amendment to revise the Map of Proposed Height and Bulk Districts in the Downtown Area Plan for the San Francisco Conservatory of Music Project at 200-214 Van Ness Avenue;
3. Planning Code amendment for a) to permit height limit exemption from the quantitative standards for additional building envelope that will be used to enclose or screen specified features from view, allow increased roof height for performance and common space, and provide additional visual interest to the roof of the structure; b) amending the Zoning Map to change the height designation of Assessor's Block 811, Lots 10 and 12, from 96-X to 120-X; and c) Text Amendment to Planning Code §260(b)(1)(L) to allow a height limit exemption for additional building envelope related to SFCM and to allow additional exceptions through §309;
4. Downtown Project Authorization §309 with exceptions with exceptions to requirements for Rear Yard (§134), Usable Open Space (§135), Obstructions Over Streets and Alleys (§136), Group Housing Exposure (§140), Ground Floor Requirements (§145), Ground Level Wind Currents (§148), Off-Street Freight Loading (§152);
5. Conditional Use Authorizations under §303 and §124 exclusion of student housing from FAR and §317 dwelling unit removal;
6. Lot merger;
7. Administrative Code Chapter 56 Enacting and conforming Ordinance.

Exhibit E

On-Site Public Art Program

The San Francisco Conservatory of Music will satisfy the on-site Public Art provisions of Planning Code Section 429.4 by implementing the following SFCM Public Music Art Program:

- A. SFCM will provide permanent, rotating instrument or archival displays clearly visible to the public at the Project site, inviting all who pass by to engage with and be inspired by the physical manifestation of the creation of music. Display(s) will be visible from the street and located in one or more of the following areas (i) in or visible through the windows of the first floor of the northwest corner of the 200 Van Ness Avenue building – (visible from Van Ness Avenue); (ii) the first floor windows along Hayes Street; and (iii) within the building lobby area

- B. (1) The display will include curated information about the instrument, its history, and ways to interact with the instrument or hear it being played. For example, a website address or scannable barcode would allow the viewer to hear a recording or see a video of the instrument being played, and when possible, to learn where it will be used in a live local performance. SFCM will strive to coordinate the display with a performance featuring the instrument. The curated information will be provided through either a video screen or a projection device.

(2) Displays will explore various instruments or artifacts within SFCM's instrument collection, including rare and historical instruments that the public would be unlikely to encounter elsewhere. Displays will consist of instruments that are currently in storage and/or not available for public view. For example, SFCM houses an acclaimed guitar collection at its existing 50 Oak Street campus featuring rare instruments made by the great classical and flamenco guitar makers of the 19th and 20th centuries. SFCM is unable to display collections such as these to the public in its current facility, but the Van Ness location would give it the opportunity to show instruments to thousands of people passing through the city's "arts corridor."

(3) Instruments to be displayed may include double bass, cellos, violins, brass instruments, wind instruments, guitars, and pianos. Displays may also include scores or other archival materials, including materials illuminating the institution's 100 year history in San Francisco, which has been home to numerous world-renowned musicians including Isaac Stern, Yehudi Menuhin, John Adams, and many more.

- C. The Conservatory will exercise the same standards of artistic excellence it applies to all of its endeavors and will work with a professional consultant to determine how to make the entire display most engaging and appealing. In addition to implementing its on-site public art commitment as described above, SFCM also anticipates exploring various creative opportunities to communicate, stimulate and inspire the imagination and to demonstrate the exciting new and emerging, as well as the more traditional, interface between auditory and visual art through various medium.

- D. SFCM shall ensure that its on-site Public Art program will be of equivalent value to the Public Art Fee based on reasonable valuation methods such as insured value of the instruments utilized in its on-site Public Arts program.

- E. SFCM will provide status reports to the City periodically regarding the installation and operation of its on-site Public Arts program with the submittal of such status reports during construction and during the first year of operation following completion of construction.

Exhibit F

Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

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

AND WHEN RECORDED MAIL TO:

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

ASSIGNMENT AND ASSUMPTION AGREEMENT

RELATIVE TO FOCUSED DEVELOPMENT AGREEMENT FOR THE SAN FRANCISCO

CONSERVATORY OF MUSIC

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

RECITALS

A. The San Francisco Conservatory of Music, a California non-profit public benefit corporation ("**SFCM**"), and the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "**City**"), entered into that certain Focused Development Agreement (the "**Development Agreement**") dated as of _____, 2018, for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Project Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco on _____ as Document No. _____.

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

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

Agreement, to be released from any prospective liability or obligation under the Development Agreement related to the Transferred Property as set forth in Section 12.3 of the Development Agreement.

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

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

ASSIGNMENT AND ASSUMPTION

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

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

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

3. Assumption of Development Agreement. Assignee hereby assumes, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including its associated Public Benefits, and agrees to observe and fully perform all the duties and obligations of Assignor under the Development Agreement with respect to the Transferred Property, and to be subject to all the terms and conditions thereof with respect to the Transferred Property. If the Transferred Property includes or will include the Replacement Units, Assignee agrees to comply with the terms and conditions of the Replacement Housing and Interim Relocation Plan to the extent such terms and conditions remain applicable and with the provisions of the Notice of Special Restrictions. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall be deemed to be "SFCM" under the Development Agreement with respect to the Transferred Property.

4. Reaffirmation of Indemnifications. Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including without limitation Section 4.7 of the Development Agreement.

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

6. Costa-Hawkins Rental Housing Act. *[To be included if the Transferred Property includes or will include the Replacement Units.]* Assignee agrees that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the Replacement Units. Assignee, on behalf of itself and all of its successors and assigns of all or any portion of the Transferred Property, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of the Development Agreement related to the applicability of the Rent Control Ordinance to the Replacement Units as set forth in the Development Agreement and the Notice of Special Restrictions 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, Assignee acknowledges that the above agreement is an important element of the consideration for the Development Agreement, and Assignee should not have the benefits of the Development Agreement without the burdens of the Development Agreement. Accordingly, if Assignee challenges the application of the covenant and waiver contained in this Section 6, then such breach will be an Event of Default and the City shall have the right to terminate the Development Agreement as to the Transferred Property.

7. Application of the San Francisco Rent Ordinance and Ellis Act Waiver. *[To be included if the Transferred Property includes or will include the Replacement Units.]* Assignee agrees to maintain the Replacement Units as rent controlled under the Rent Control Ordinance, which commitment shall survive the expiration of the Development Agreement for so long as the Rent Control Ordinance, or a similar successor ordinance, remains in effect. Such commitment does not depend upon the initial occupancy of the Replacement Unit by Existing Tenants. Assignee waives any and all rights to evict any tenant of a Replacement Unit (including Existing Tenants or other tenants) under the Ellis Act (California Government Code Section 7060 et seq.) and any other laws or regulations that permit owner move-in evictions for any of the Replacement Units as to any tenant of a Replacement Unit (including Existing Tenants or other tenants) for so long as the Replacement Units are subject to the Rent Control Ordinance.

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

9. Notices. The notice address for Assignee under Section 14.11 of the Development Agreement shall be:

Attn: _____

With copy to:

Attn: _____

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

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

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

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

Exhibit A to Assignment and Assumption Agreement

Transferred Property

[To be inserted.]

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 _____)

On _____, before me, _____, 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.

Name: _____
Notary Public

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 _____)

On _____, before me, _____, 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.

Name: _____
Notary Public

Exhibit G

Notice of Special Restrictions

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City and County of San Francisco

San Francisco, California 94103-2414

NOTICE OF SPECIAL RESTRICTIONS

This Notice of Special Restrictions ("**Notice**") is made this _____ day of _____, 2018 by the San Francisco Conservatory of Music, a California non-profit public benefit corporation ("**SFCM**"), with reference to the following:

A. SFCM owns the property located at 200 and 214 Van Ness Avenue in San Francisco, California, as more particularly described in the legal description attached as Exhibit A (the "**Project Site**"). At the time SFCM acquired the Project Site, the Project Site contained a residential building with twenty-seven (27) units.

B. SFCM proposes to demolish the two existing buildings on the Project Site and create a student housing focused mixed-use project on the Project Site with approximately four hundred twenty (420) student housing beds, three (3) faculty units, one-for-one replacement of the existing twenty-seven (27) residential units with modern, contemporary, code complying units (the "**Replacement Units**"), educational and performance space, and ground floor retail / restaurant uses, all in an approximately 168,000 gross square foot building (the "**Project**"). The Project is designed to permit SFCM to continue to provide exceptional music education and strengthen San Francisco's civic center arts and cultural district by providing student housing and related facilities while insuring modern replacement housing for existing tenants and alleviating pressure on San Francisco's existing housing stock.

C. SFCM and the City and County of San Francisco ("**City**") have entered into a Development Agreement pursuant to Government Code Section 65864 et seq. and Chapter 56 of the City Administrative Code ("**Development Agreement**"). As part of its Replacement Housing and Interim Relocation Plan incorporated into the Development Agreement, SFCM will voluntarily submit the Replacement Units to the ongoing jurisdiction of the San Francisco Rent Control Ordinance.

D. On _____, 2018, the Board of Supervisors approved the Development Agreement.

E. As a condition of approving the Development Agreement the City has required, and SFCM has accepted, the execution and recording of this Notice. This Notice is being executed and recorded for the benefit of the City.

NOW, THEREFORE, THE CITY AND SFCM AGREE AND COVENANT AS FOLLOWS:

I. APPLICATION OF SAN FRANCISCO RENT ORDINANCE TO REPLACEMENT UNITS.

SFCM agrees to maintain the Replacement Units as rent controlled under Chapter 37 of the San Francisco Administrative Code, the Residential Rent Stabilization and Arbitration Ordinance ("**Rent Control Ordinance**") for so long as the Rent Control Ordinance, or a similar successor ordinance, remains in effect and to waive the provisions of the Costa-Hawkins Rental Housing Act, California Civil Code Sections 1954.50 et seq. ("**Costa-Hawkins Act**") to the extent applicable to the Replacement Units. Such commitment does not depend upon the initial occupancy of the Replacement Unit by Existing Tenants (as defined below). Notwithstanding the foregoing, SFCM shall be entitled to establish the initial rental rate for any of the Replacement Units anytime such Replacement Unit is not occupied by a tenant who resided at 200 Van Ness prior to the commencement of construction of the Project ("**Existing Tenant**"). SFCM also waives any and all rights to evict any tenant in a Replacement Unit (including Existing Tenants and other tenants) under the Ellis Act (California Government Code Section 7060 et seq.) and any other laws or regulations that permit owner move-in evictions for any of the Replacement Units for so long as the Replacement Units are subject to the Rent Control Ordinance.

SFCM agrees and acknowledges that this Notice and SFCM's agreement to subject the Replacement Units to the Rent Control Ordinance falls within the express exceptions to the Costa-Hawkins Act because the Development Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65915 of Division 1 of Title 7 of the California Government Code) and the City would not be willing to enter into the Development Agreement without the understanding and agreement that the Costa-Hawkins Act provisions set forth in California Civil Code Section 1954.52(a) do not apply to the Replacement Units as a result of the exemption set forth in California Civil Code Section 1954.52(b).

II. APPLICABILITY OF RESTRICTION

The restrictions set forth in this Notice shall only be applicable to the Replacement Units and the portion of the Project Site upon which any Replacement Units are located. In the event that the Project is subdivided at any time in the future, this Notice shall be released from all portions of the Project Site and the Project that do not include Replacement Units.

III. PARTIES BOUND

So long as this Notice has not been released pursuant to the provisions of Section II, the provisions of this Notice shall bind any person or entity which acquires an interest in the Replacement Units, or to whom any interest in the Replacement Units is transferred involuntarily or by operation of law. SFCM shall include the provisions of this Notice in any and all assignment and assumption agreements and any and all recorded restrictions for any portion of the Project Site that includes the Replacement Units.

IV. GOVERNING LAW

This Notice shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, SFCM has executed this instrument the day and year first hereinabove written.

"SFCM"

SAN FRANCISCO CONSERVATORY OF
MUSIC, a California non-profit public benefit
corporation

By: _____
David Stull
President

[SIGNATURES MUST NOTARIZED]

EXHIBIT A
Legal Description of Project Site

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

PARCEL ONE:

BEGINNING AT THE POINT OF THE INTERSECTION OF THE EASTERLY LINE OF VAN NESS AVENUE WITH THE SOUTHERLY LINE OF IVY STREET; RUNNING THENCE ALONG SAID LINE OF VAN NESS AVENUE SOUTHERLY 59 FEET 11-1/8 INCHES; THENCE AT A RIGHT ANGLE EASTERLY 109 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 59 FEET 11-1/8 INCHES TO THE SAID SOUTHERLY LINE OF IVY STREET; THENCE ALONG THE LAST MENTIONED LINE WESTERLY 109 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF WESTERN ADDITION BLOCK NO. 68.

PARCEL TWO:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF HAYES STREET AND THE EASTERLY LINE OF VAN NESS AVENUE; RUNNING THENCE NORTHERLY AND ALONG SAID LINE OF VAN NESS AVENUE 60 FEET, 0-7/8 INCHES; THENCE AT A RIGHT ANGLE EASTERLY 109 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 60 FEET, 0-7/8 INCHES TO THE NORTHERLY LINE OF HAYES STREET; THENCE AT A RIGHT ANGLE WESTERLY AND ALONG SAID LINE OF HAYES STREET 109 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF WESTERN ADDITION BLOCK NO. 68.

APN: Lot 012; Block 0811 (Affects Parcel One)
Lot 010; Block 0811 (Affects Parcel Two)

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 _____)

On _____, before me, _____, 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.

Name: _____
Notary Public

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 _____)

On _____, before me, _____, 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.

Name: _____
Notary Public