03.17.23

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

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND 98 FRANKLIN STREET, LLC,
RELATIVE TO THE DEVELOPMENT KNOWN AS
98 FRANKLIN STREET DEVELOPMENT PROJECT

Block 0836; Lots 008, 009, and 013

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Exhibits

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND 98 FRANKLIN STREET, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE 98 FRANKLIN STREET DEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this _____ day of _____, 2023, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and 98 Franklin Street, LLC, a California limited liability company, its permitted successors and assigns ("**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer is the owner of that certain property known as 98 Franklin Street (the "**Project Site**") which is an irregularly shaped property formed by three parcels measuring a total of approximately 23,750 square feet, located on the east side of Franklin Street, between Oak and Market Streets more particularly described in Exhibit D. The Project Site is within the C-3-G District and the Van Ness and Market Residential Special Use District under the San Francisco Planning Code (the "**Planning Code**").

B. On December 21, 2017, Developer submitted development applications for a proposal to construct on the Project Site a new 36-story mixed use building reaching a height of approximately 365 feet (approximately 397 feet including rooftop screen/mechanical equipment), and including 345 dwelling units, approximately 84,815 gross square feet of school use floor area, approximately 3,229 square feet of retail space, 306 Class 1 and 57 Class 2 bicycle parking spaces, and three below-grade levels to accommodate up to 111 vehicle parking spaces for the residential and school uses (the "**Initial Project**").

C. The Van Ness and Market Residential Special Use District in Section 249.33 of the Planning Code provides that housing developments must provide affordable housing at the higher of (i) the amount required by Section 249.33(b), or (ii) the amount required by Planning Code Section 415 *et seq.* (the "**Inclusionary Requirement**").

D. On May 21, 2020, the City's Planning Commission approved Resolutions 20707 through 20712; and on May 28, 2020, the Planning Commission approved Motions 20726 through 20728 (collectively, the "**Initial Approvals**") for the Initial Project. In accordance with Section 249.33(b)(15), the Initial Approvals restrict 20% of the Initial Project's Dwelling Units as affordable.

E. On November 21, 2022, Developer submitted to the Planning Department a letter request (the "**Request Letter**") to enter into a development agreement to (i) modify certain aspects of the Initial Project's design (as further detailed herein) such as increasing the Initial Project's height to 400 feet (excluding permitted rooftop screen/mechanical equipment), (iii) permit a land dedication to the City of the Affordable Housing Site at no cost to the City, (iv) waive all but one million dollars ($1,000,000.00) of the applicable Market and Octavia Area Plan and Upper Market Neighborhood Commercial District

Affordable Housing Fee under Planning Code Section 416, (v) waive one hundred percent (100%) of the applicable Van Ness and Market Affordable Housing Fee pursuant to Planning Code Section 424, and (vi) vest the Approvals (defined below) in accordance with this Agreement for five years following the effective date of this Agreement. The Request Letter is attached as Exhibit A.

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 related to the development of such property. Pursuant to the Development Agreement Statute, the City adopted Chapter 56 of the San Francisco Administrative Code ("**Chapter 56"**) establishing procedures and requirements for entering into a development agreement. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

G. The Parties intend that all acts referred to in this Agreement be accomplished in a way as to fully comply with CEQA, Chapters 31 and 56 of the San Francisco Administrative Code, the Development Agreement Statute, the Code Amendment Ordinance, the Enacting Ordinance (both as defined below) and all other applicable laws 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 Developer's obligation to comply with all applicable laws in connection with the development of the Project.

H. On May 28, 2020, through Motion No. 20726, the Planning Commission approved findings required by CEQA, including adoption of a Mitigation Monitoring and Reporting Program ("**MMRP**"), for approval of the Initial Project.

I. Under the Approvals (defined below), the Initial Project will be modified as a 38-story mixed-use building that includes approximately 84,991 square feet of school use floor area (situated on floors 1 through 5) (the "**School Parcel**") and approximately 385 dwelling units (situated on floors 6 through 38), approximately 2,978 square feet of retail use on the ground floor, and three below-grade levels to accommodate up to 110 vehicle parking spaces and 316 Class 1 bicycle parking spaces (the "**Residential Parcel**"; the School Parcel and Residential Parcel as developed pursuant to the Approvals collectively the "**Project**"). Developer intends to subdivide the Project Site into the Residential Parcel and the School Parcel (with the exact meets and bounds of the Residential Parcel and School Parcel to be refined at a later stage of Project design), and thereafter Transfer the Residential Parcel to Oak Street Housing Associates, LLC, a Delaware limited liability company, or its Affiliate (the "**Residential Developer**"). Developer and Residential Developer would develop the Project pursuant to a private development agreement.

J. On _____, the Planning Commission held a public hearing, duly noticed and conducted under the Planning Code, the Development Agreement Statute, and Chapter 56, to consider the Project and this Agreement. Following the public hearing, the Planning Commission, through Motion No. _____ approved a Downtown Project Authorization under Planning Code Section 309. In that same Motion No. _____, the Planning Commission adopted environmental findings under CEQA that the Project satisfied the requirements of CEQA and that no mitigation measures other than those contained in the MMRP are required to reduce significant impacts, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Planning Code Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). On that same date, through Motion No. ____ adopted shadow

findings under Planning Code Section 295, through Resolution No. _____, recommended to the Board of Supervisors approval of this Agreement, and, through Resolution No. _____ recommended to the Board of Supervisors the adoption of an ordinance to amend the Planning Code and Zoning Map. The above-described actions, collectively, are defined as the "**Planning Approvals**".

K. 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 because this Agreement will result in the dedication of the Affordable Housing Site that will result in the development of more affordable housing in the City than would otherwise be developed without this Agreement.

L. On _____, the Board, having received the Planning Commission recommendations, adopted Ordinance No. _____, amending the Zoning Map, Height Map, and Planning Code (File No. _____) (the "**Code Amendment Ordinance**"), 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 _____. The above-described actions, collectively with the Planning Approvals, are defined as the "**Approvals**" for the Project.

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

AGREEMENT

1. GENERAL PROVISIONS

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

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

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

1.2.2. "**Affiliate**" shall mean any entity controlling, controlled by, or under common control with Developer (and 'control' and its correlative terms 'controlling', 'controlled by' or 'under common control with' mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise).

1.2.3. **"Affordable Housing Site**" shall mean the real property at 600 Van Ness Avenue (Block 0763, Lots 006 through 009), or other real property located within the City that meets the terms and conditions as provided for in Planning Code Section 419.5(a)(2), except that: (1) in lieu of the Land Dedication Alternative requirements of Planning Code Table 419.5, such real property could accommodate a total amount of dwelling units that is equal to or greater than 35% of the units in the Project, as determined by the Planning Department; and (2) the MOHCD Director may waive application of Planning Code Section 419.5(a)(2) and/or the Procedures Manual.

1.2.4. **"Agreement"** shall have the meaning set forth in the Preamble.

1.2.5. **"Annual Review Date"** shall have the meaning set forth in Section 5.1.

1.2.6. **"Approvals"** shall have the meaning set forth in Recital L.

1.2.7. "**Assignment and Assumption Agreement**" shall have the meaning set forth in Section 8.3.

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

1.2.9. **"California Environmental Quality Act (CEQA)**" California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) and the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*).

1.2.10. **"Chapter 56"** shall have the meaning set forth in Recital F.

1.2.11. "**City**" shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or the MOHCD Director following, if required, approval by the Planning Commission or the Board of Supervisors. The City's approval of this Agreement will be evidenced by the signatures of the Planning Director.

1.2.12. "**City Agency**" or "**City Agencies**" shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over the Project or the Project Site, together with any successor to any such City department, agency, board, or commission.

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

1.2.14. **"City Costs"** shall have the meaning set forth in Section 3.11.1.

1.2.15. "**City Party**" shall have the meaning set forth in Section 5.2.2.

1.2.16. "**City Report**" shall have the meaning set forth in Section 5.2.2.

1.2.17. "**Citywide Affordable Housing Fund**" shall have the meaning set forth Administrative Code Section 10.100-49.

1.2.18. "**Code Amendment Ordinance**" shall have the meaning set forth in Recital L.

1.2.19. **"Development Agreement Statute"** shall have the meaning set forth in the Recital F.

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

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

1.2.22. **"Enacting Ordinance"** shall have the meaning set forth in Recital L.

1.2.23. **"Event of Default"** shall have the meaning set forth in Section 7.2.

1.2.24. **"Excusable Delay"** shall have the meaning set forth in Section 6.2.1.

1.2.25. "**Impact Fees and Exactions**" shall mean 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 the Project, 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 mitigation measures set forth in the MMRP, City Costs, permit application fees, taxes or special assessments or school district fees, SFPUC capacity charges pursuant to SFPUC Resolution Nos. 07-0099 and 07-0100, and any fees, taxes, assessments impositions imposed by any non-City Agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

1.2.26. **"Inclusionary Requirement"** shall have the meaning set forth in Recital C.

1.2.27. "**Indemnify**" shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.28. **"Indemnified Party"** shall mean the City as indemnified by Developer.

1.2.29. **"Initial Approvals"** shall have the meaning set forth in Recital D.

1.2.30. "**Law(s)**" means, individually or collectively as the context requires, the Constitution and laws of the United States, the Constitution and laws of the State, the laws of the City, any codes, statutes, rules, regulations, or executive mandates under any of the foregoing, and any State or Federal court decision (including any order, injunction or writ) with respect to any of the foregoing, in each case to the extent applicable to the matter presented.

1.2.31. **"Litigation Extension"** shall have the meaning set forth in Section 6.2.

1.2.32. **"Losses"** shall have the meaning set forth in Section 3.10.

1.2.33. **"MMRP"** shall have the meaning set forth in Recital H.

1.2.34. **"MOHCD"** shall mean the Mayor's Office of Housing and Community Development or successor agency.

1.2.35. "**Mortgage**" shall have the meaning set forth in Section 4.2.

1.2.36. "**Mortgagee**" shall have the meaning set forth in Section 4.2.

1.2.37. **"Notice of Default"** shall have the meaning set forth in Section 7.2.

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

1.2.39. "**Party**" means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement).

1.2.40. "**Parties**" shall have a correlative meaning.

1.2.41. "**Planning Approvals**" have the meaning set forth in Recital I.

1.2.42. "**Planning Code**" shall mean the San Francisco Planning Code.

1.2.43. "**Planning Commission**" or "**Commission**" shall mean the Planning Commission of the City and County of San Francisco.

1.2.44. "**Planning Approvals**" have the meaning set forth in Recital J.

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

1.2.46. "**Procedures Manual**" shall mean the Inclusionary Affordable Housing Program Monitoring and Procedures Manual effective October 11, 2018, as amended from time to time.

1.2.47. **"Project"** shall have the meaning set forth in Recital I.

1.2.48. **"Project Site"** shall have the meaning set forth in Recital A.

1.2.49. "**RED**" is the San Francisco Real Estate Division or successor agency.

1.2.50. "**Residential Parcel**" shall have the meaning set forth in Recital I.

1.2.51. "Request Letter" shall have the meaning set forth in Recital E.

1.2.52. "**School Parcel**" shall have the meaning set forth in Recital I.

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

1.2.54. "**Site Permit Deadline**" shall have the meaning set forth in Section 2.1.3.

1.2.55. "**Term**" shall have the meaning set forth in Section 1.4.

1.2.56. "**Termination Deadline**" shall have the meaning set forth in Section 2.1.3.

1.2.57. **"Third Party Challenge"** shall have the meaning set forth in Section 4.3.1.

1.2.58. **"Transfer"** shall have the meaning set forth in Section 8.1.

1.2.59. "**Transferee**" shall have the meaning set forth in Section 8.1.

1.2.60. "**Transferred Property**" shall have the meaning set forth in Section 8.1.

1.3. Effective Date. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Ordinance ("**Effective Date**"). The Effective Date is _____, 202_.

1.4. Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect until the earlier of (i) Project completion (as evidenced by issuance of the temporary or final certificate of occupancy) or (ii) five (5) years after the Effective Date, unless extended or earlier terminated as provided herein ("**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. PROJECT CONTROLS AND VESTING

2.1. Affordable Housing Site Dedication; Impact Fees; Planning Approvals.

2.1.1. During the Term, Developer shall have the vested right as more fully described in Section 2.2 to develop the Project in accordance with the Approvals, provided that (1) before issuance of the "first construction document" for the Project, as defined in Planning Code Section 401 and Building Code Section 107A.13.1, Developer shall have, at no cost to the City, irrevocably offered and the City, through RED and MOHCD, has accepted title to the Affordable Housing Site by either (A) an assignment of Developer's right to accept title from the owner of the Affordable Housing Site, or (B) a direct transfer from Developer to City; (2) Developer has paid to the City's Department of Building Inspection within the timeframes permitted under Section 2.1.2 (A) one million and No/100 dollars ($1,000,000.00) of the Market and Octavia Area Plan and Upper Market Neighborhood Commercial District Affordable Housing Fee (which the City shall be deposited into the Citywide Affordable Housing Fund), and (B) all other applicable Impact Fees and Exactions due under Section 2.1.2 . No provision of the San Francisco Municipal Code (including Planning Code Section 249.33(16)) that conflicts with the land dedication requirements, or fee collection and timing described in this Agreement (including Section 2.1.1 or Section 2.1.2) shall apply to the Project. If Developer elects to dedicate land other than the real property located at 600 Van Ness, the proposed Affordable Housing Site shall be acceptable to MOHCD to develop and construct affordable housing. In order for MOHCD to perform the review of a proposed Affordable Housing Site, the Developer shall provide due diligence documents to MOHCD as required under Section VI(F)(3) of the Procedures Manual. By approving this Agreement, the Board of Supervisors authorizes RED and MOHCD to enter into the assignment and assumption agreement, substantially in the form attached as Exhibit F, for the Affordable Housing Site pursuant to this Section 2.1.1, and to accept the Affordable Housing Site, without further action by the Board of Supervisors.

2.1.2. During the Term, (i) Developer shall pay only the Impact Fees and Exactions set forth in Exhibit C, with the amount calculated on the date payment is due as required under the applicable section of the Planning Code, and (ii) the City shall not impose any new Impact Fees and Exactions that are adopted after the Effective Date. With the exception of the Market and Octavia Area Plan and Upper Market Neighborhood Commercial District Affordable Housing Fee of one million and No/100 dollars ($1,000,000.00), Developer will be subject to any increase or decrease in the fee amount payable and any changes in methodology of calculation (e.g., use of a different index to calculate annual increases) but will not be subject to any new types of Impact Fees and Exactions that may arise after the Effective Date. Developer shall not be required to pay any Impact Fees and Exactions set forth in Exhibit C that are no longer applicable to the Project after the Effective Date, but if such fees are expressly replaced with a different fee (as, for example, when the City expressly replaced the Transportation Impact Development Fee (TIDF) with Transportation Sustainability Fee (TSF)), then Developer will pay the replacement fee in the amount calculated on the date the payment is due. Developer will be permitted to utilize any applicable fee deferral program if enacted by the Board of Supervisors (such as in Building Code Section 107A13.3.1.1).

2.1.3. Developer may elect to terminate this Agreement at its sole discretion prior to issuance of the first construction document for the Project (the "**Termination Deadline**") by written notice thereof to the City. Upon such termination, Developer shall have no further obligations under this Agreement (with Developer being automatically released from all obligations under this Agreement effective upon such termination) and no further rights under this Agreement, including the right to construct the Project consistent with the Approvals under Section 2.2. Upon such termination, Developer may construct the Initial Project in accordance with the Initial Approvals, subject to then-applicable Law and the conditions of such Initial Approvals, except that notwithstanding any contrary

conditions of the Initial Approvals, any deadline set forth in the Initial Approvals for issuance of a building permit or site permit to construct the Initial Project (any "**Site Permit Deadline**") shall be extended such that Developer shall have two years to obtain an issued building permit or site permit to construct the Initial Project following Developer's termination of this Agreement prior to the Termination Deadline. In the event Developer terminates this Agreement, nothing herein shall be interpreted to limit Developer's right to seek revisions to the Initial Project, additional extensions of any Site Permit Deadline, or modifications of the Initial Approvals in accordance with then-applicable Law and the conditions of such Initial Approvals.

2.1.4. Notwithstanding the requirements of Planning Code Sections 145.1, 155.1, 305, or 309, the City hereby approves (1) a residential lobby with a street fronting width of approximately 52 feet and (2) an elevator to access bicycle parking facilities for non-residential uses in the building with clear passenger cab dimensions less than 70 feet and no smaller than 45 square feet, all as generally shown on the plan set attached to the Planning Approvals.

2.2. Vested Rights. The City, by entering into this Agreement, is limiting its future discretion with respect to the Approvals during the Term. Consequently, the City shall not use its discretionary authority in considering any application to change the policy decisions reflected by the Agreement and the Approvals, or otherwise to prevent or to delay development of the Project as set forth in the Agreement or the Approvals. Instead, implementing approvals that substantially conform to or implement the Agreement and the Approvals shall be issued by the City so long as they substantially comply with and conform to this Agreement and the Approvals. Developer shall have the vested right to develop the Project as set forth in this Agreement and the Approvals, including with the following vested elements: height and bulk limits, including the maximum density, intensity, gross square footages, permitted uses, amount of parking, Impact Fees and Exactions, and affordable housing requirements. The City shall not impose any additional affordable housing fees or affordable housing production requirements on the Project other than those described in this Agreement. The City shall not use its discretionary authority to change the policy decisions reflected by this Agreement or the Approvals, or otherwise to prevent or to delay development of the Project as contemplated in this Agreement or the Approvals. The City shall take no action under this Agreement or the Approvals, nor impose any condition on the Project, that would conflict with this Agreement or the Approvals.

2.3. 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 this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, 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. If any such changes in Federal or State Laws would materially and adversely affect the construction, development, use, operation or occupancy of the Project such that the Development becomes economically infeasible, then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties, and Developer and City agree to negotiate any such amendments or solutions in good faith. Any amendment under this Section 2.3 will be subject to required City approvals, which may include the approval of the Board of Supervisors in its sole discretion.

2.4. 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 Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder, shall be applicable to this

Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

2.5. Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment.

3. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

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

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

3.5. Notification of Limitations on Contributions. Through its execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a

prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract. Developer acknowledges that (i) the prohibition on contributions applies to Developer, each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Developer, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Developer certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

3.6. Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

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

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

3.9. Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

3.10. Indemnification of City. Developer shall Indemnify the City (the "**Indemnified Party**") and the Indemnified Party's officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from any third party claim against any Indemnified Party arising from this Agreement or Developer's performance (or nonperformance) of this Agreement, regardless of negligence and 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 (i) any of the foregoing Indemnity is void or unenforceable under applicable Law, or (ii) any such Loss is the result of the negligence or willful misconduct of any Indemnified Party. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the Indemnified Party's cost of investigating any claims against the Indemnified Party. All indemnifications

set forth in this Agreement shall survive until the expiration of the applicable statute of limitation or statute of repose.

3.11. Payment of Fees and Costs.

3.11.1. Developer shall pay to the City all City Costs (defined below) during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to the Planning Department or another City Agency as designated by the Planning Department monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and the Planning Department or its designee shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then the Planning Department or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred shall not be recoverable. For purposes of this Agreement, "**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 (i) Impact Fees or Exactions, and (ii) work, hearings, costs or other activities contemplated or covered by the standard application or processing fees imposed by the City upon the submission of an application for a permit or approval in accordance with City practice on a City-wide basis.

3.11.2. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 7.4.

4. MUTUAL OBLIGATIONS

4.1. Notice of Completion or Revocation. Upon the expiration of the Term or revocation of this Agreement, a written statement acknowledging such expiration or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

4.2. Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 5.2 below, and (v) such other things as may be reasonably requested by Developer, its lenders and/or its investors. The Planning Director shall execute and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a deed of trust ("**Mortgage**") on all or part of the Project Site (and any mezzanine lender) (each, hereinafter referred to as a "**Mortgagee**"), acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

4.3. Cooperation in the Event of Third-Party Challenge.

4.3.1. In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any such "**Third-Party Challenge**" instituted against the City.

4.3.2. Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall Indemnify and reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any consultants; provided, however, Developer shall have the right to receive monthly invoices for all such costs, and in the event of any Third-Party Challenge, Developer may elect to terminate this Agreement by written notice thereof to the City, and the Parties will thereafter seek to have the Third-Party Challenge dismissed. The filing of any third-party action or proceeding shall not delay or stop the development, processing, or construction of the Project unless the third party obtains a court order preventing the activity. This Section 4.3.2 shall survive any judgment invalidating all or any part of this Agreement.

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

4.5. Agreement to Cooperate; Other Necessary Acts. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, 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.

5. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

5.1. Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. 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.

5.2. Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 5.2.

5.2.1. Required Information from Developer. Upon request by the Planning Director but not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director confirming, with appropriate backup documentation, Developer's compliance with this Agreement for the preceding calendar year. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

5.2.2. City Compliance Review. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section 5.2.2 shall be included in the City Costs.

6. AMENDMENT; TERMINATION; EXTENSION OF TERM

6.1. Amendment or Termination. Except as provided in Section 2.3 (Changes in State and Federal Rules and Regulations) and Section 7.4 (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. Except as provided in this Agreement to the contrary, the amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56.

6.2. Extension Due to Legal Action, Referendum, or Excusable Delay. If any litigation is filed challenging this Agreement or the validity of this Agreement or any of its provisions and it directly or indirectly delays this Agreement, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension (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.

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

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

7.1. Enforcement. The only Parties to this Agreement are the City and Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

7.2. Default. For purposes of this Agreement, the following shall constitute an event of default (an "**Event of Default**") under this Agreement: (i) except as otherwise specified in this Agreement, the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder, including complying with all terms of the Conditions of Approval, attached hereto as Exhibit B (as such conditions may be amended), and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a "**Notice of Default**"); provided, however, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter.

7.3. Notice of Default. Prior to the initiation of any action for relief specified in Section 7.4 below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default within thirty (30) calendar days of the delivery of the notice of non-default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section 7.4 to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section 7.4. The Parties may mutually agree in writing to extend the time periods set forth in this Section 7.3.

7.4. Remedies.

7.4.1. Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party are limited to specific performance or termination of this Agreement, and limited damages as set forth in Section 7.4.2 below. In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action if it believes the other Party's decision to terminate was not legally supportable.

7.4.2. Actual Damages. Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) after the date of termination pursuant to Section 7.4.1 (and so long as Developer has not terminated this Agreement on or before such date as permitted under Section 2.1.3 of this Agreement) City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums or dedicate the Affordable Housing Site to the City as and when due under this Agreement and (b) Developer's failure to make payment due under any Indemnity in this Agreement, and (2) either Party shall have the right to recover attorneys' fees and costs as set forth in Section 7.7, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, (a) the City may seek monetary damages only from the defaulting Party and not from any other Developer or Mortgagee (it being expressly understood

and agreed that under no circumstances shall any Mortgagee have any rights, obligations or liabilities under this Agreement unless and until (with no obligation to do so) it expressly assumes in writing Developer's obligations under this Agreement), and (b) "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums. City may terminate this Agreement, upon thirty (30) days prior written notice, if any successor owner of the Project Site elects not to assume this Agreement, and City shall have no obligation to issue any permits for the Project during such thirty (30) day period.

7.5. Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in Section 7.6 that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project the dispute shall initially be presented by Planning Department staff to the Planning Director, for resolution. If the Planning Director decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this Section 7.5 shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

7.6. Dispute Resolution Related to Changes in State and Federal Rules and Regulations. The Parties agree to the dispute resolution procedure in this Section 7.6 for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section 2.3

7.6.1. Good Faith Meet and Confer Requirement. The Parties shall make good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section 7.6.2.

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

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

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

7.9. Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section 7.4.1, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself).

7.10. Joint and Several Liability. If there is more than one Person that comprises any Person that is Developer, the obligations and liabilities under this Agreement imposed on each such Person shall be joint and several (i.e., if more than one Person executes an Assignment and Assumption Agreement as Developer of Transferred Property, then the liability of such Persons shall be joint and several with respect thereto).

8. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

8.1. Permitted Transfer of this Agreement. At any time and from time to time, Developer shall have the right to convey, assign or transfer (each, a "**Transfer**") all or any portion of its right, title and interest in the Project Site (the "**Transferred Property**") to any Person (each, a "**Transferee**") without the City's consent, provided that (1) Developer contemporaneously transfers to the Transferee all of its right, title and interest under this Agreement with respect to the Transferred Property and (2) the Planning Director reviews and confirms Developer's Assignment and Assumption Agreement as required under in Section 8.3. If Developer transfers less than the entire Project Site or a portion of its right, title and interest under this Agreement, then such Transfer shall require the City's prior written consent. Notwithstanding the foregoing sentence, Developer shall have the right to Transfer all of its right, title and interest in the Residential Parcel to the Residential Developer without the City's consent, provided that (1) Developer contemporaneously transfers to such Person (i) all of its right, title and interest under this Agreement with respect to the Residential Parcel, (ii) all obligations of this Agreement to dedicate the Affordable Housing Site to the City and pay any and all Impact Fees and Exactions due under Section 2.1.1; and (2) the Planning Director reviews and confirms Developer's Assignment and

Assumption Agreement as required under in Section 8.3. Nothing herein or in any Approval shall limit the rights of Developer to transfer to the Transferee any or all of its right, title and interest under the Approvals to the extent related to the Transferred Property. For avoidance of confusion, a "Transfer" may include a long-term ground lease of some or all of the Project Site. A Transferee shall be deemed "Developer" under this Agreement to the extent of the rights, interests and obligations assigned to and assumed by such Transferee under the applicable Assignment and Assumption Agreement. Upon execution and delivery of any Assignment and Assumption Agreement, the assignor thereunder shall be released from any future obligation under this Agreement to the extent Transferred under the applicable Assignment and Assumption Agreement. The provisions in this Article 8 shall not prohibit or otherwise restrict (a) Developer from (i) granting easements or permits to facilitate the development of the Project Site, (ii) entering into occupancy leases, subleases, licenses or permits for portions of the building on the Project Site for occupancy upon Developer's completion of the building, (iii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iv) granting an occupancy or leasehold interest in portions of the Project Site, (v) entering into agreements with third parties to fulfill Developer's obligations under this Agreement, (vi) transferring all or any portion of the Project to a Mortgagee pursuant to a conveyance in lieu of foreclosure or other remedial action in connection with a Mortgage, or (vii) selling or transferring any membership or ownership interest (direct or indirect) in the entity that is Developer, or (b) the transfer of all or a portion of any interest in the Project pursuant to a foreclosure (judicial or pursuant to the power of sale).

8.2. Multiple Developers. Notwithstanding anything to the contrary in this Agreement, if there is a Transfer of some but not all of the Project Site (i.e., there is more than one Developer at any time), then each obligation of this Agreement shall be either (i) the sole responsibility of the applicable Transferee or (ii) the sole responsibility of its predecessor. Nothing herein shall entitle any Person that is Developer to enforce this Agreement against any other Person that is Developer. Except as specified in Section 8.1, City consent to any Transfer that includes less than the entire Project Site is required.

8.3. Notice of Transfer. Developer shall provide not less than ten (10) Business Days' notice to the City before any anticipated Transfer, together with the anticipated final assignment and assumption agreement for that Transfer (the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit E. Without limiting Developer's rights for Transfers without the City's consent as set forth in Section 8.1, the final Assignment and Assumption Agreement for a Transfer shall be subject to the review of the Planning Director to confirm that such Assignment and Assumption Agreement meets the requirements of this Agreement and, if there are any material changes to the form attached as Exhibit E, that the Planning Director approves such changes and such division of rights and responsibilities. The Planning Director shall grant (through execution of the provided Assignment and Assumption Agreement in the space provided therefor and delivery of same to Developer that provided same) or withhold confirmation (or approval of any such material changes) within ten (10) Business Days after the Planning Director's receipt of the proposed Assignment and Assumption Agreement. Failure to grant or withhold such confirmation (or approval) in accordance with the foregoing within such period shall be deemed confirmation (or approval), provided that Developer shall have first provided notice of such failure and a three (3) Business Day opportunity to cure and such notice shall prominently indicate that failure to act shall be deemed to be confirmation (or approval).

8.4. Mortgagee Protections. Notwithstanding anything stated to the contrary in this Agreement, Developer shall have the right to collaterally assign its rights under this Agreement to any Mortgagee providing financing in connection with the acquisition or development of the Project Site and City shall, within 20 days following a written request by Developer, execute a consent (in a form reasonably satisfactory to the City and any such Mortgagee) pursuant to which the City shall, (a) grant its consent to such collateral assignment of this Agreement, (b) confirm the absence of any defaults

under this Agreement (or if there any defaults, stating such defaults), and (c) acknowledge and agree that if such Mortgagee (or its designee) takes title to all or a portion of the Project Site pursuant to a foreclosure (judicial or through the power of sale) or conveyance in lieu of foreclosure, that such Mortgagee (or its designee) shall have no obligations (nor shall it have any rights) under this Agreement unless, and until, it enters into (with no obligation to do so) an Assignment and Assumption Agreement with City. The parties understand and agree that upon the expiration or earlier termination of this Agreement, the City may revoke or revise any Project approvals or entitlements as permitted by Law, except as limited by Section 2.1.3.

8.5. Release of Liability. Upon execution and delivery of any Assignment and Assumption Agreement (following the City's confirmation (or approval) or deemed confirmation (or approval) pursuant to Section 8.3), the assignor thereunder shall be automatically released (and City will confirm the same in writing upon written request) from any prospective liability or obligation under this Agreement to the extent Transferred under the applicable Assignment and Assumption Agreement. The foregoing release shall not extend to events, acts or omissions that occurred prior to the date of Transfer.

9. MISCELLANEOUS PROVISIONS

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

9.2. Binding Covenants; Run With the Land. Pursuant to section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article 8 above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, 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. 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.

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

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

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

9.5.1. The Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the Project. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

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

9.6. Recordation. Pursuant to section 65868.5 of the Development Agreement Statute, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

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

9.8. 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.

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

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

To City:

Rich Hillis
Director of Planning
San Francisco Planning Department
49 South Van Ness, Suite 1400
San Francisco, California 94103
Re: 98 Franklin Street DA

with a copy to:

David Chiu, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

Attn: RE/Finance Team
Re: 98 Franklin Street DA

To Developer:

98 Franklin Street, LLC

Aaron Levine
CFO and Director of Operations
French American International School | International High School
Lycée International Franco-Américain
150 Oak Street | San Francisco, CA 94102 | USA

with a copy to:

Jim Abrams, Esq.
J. Abrams Law, P.C.
538 Hayes Street
San Francisco, California, 94102

9.11. Limitations on Actions. Pursuant to Administrative Code Section 59.19, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void, or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

9.12. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any non-City Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the foregoing, Developer and the City agree that the Agreement will terminate and be of no force or effect if Section 2.1 is found invalid, void, or unenforceable.

9.13. Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 7920 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

9.14. Approvals and Consents. As used herein, the words "approve", "consent" and words of similar import and any variations thereof refer to the prior written consent of the applicable Party or other Person, including the approval of applications by City Agencies. Whenever any approval or consent is required or permitted to be given by a Party hereunder, it shall not be unreasonably withheld, conditioned or delayed unless the approval or consent is explicitly stated in this Agreement to be within the "sole discretion" (or words of similar import) of such Party. Approval or consent by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval or consent to or of any similar or subsequent acts or requests. Unless otherwise provided in this Agreement, approvals, consents or other actions of the City shall be given or undertaken, as applicable, by the Planning Director or, if it relates to the Affordable Housing Site, by the MOHCD Director. Any consent or approval required by the Board of Supervisors, Mayor and/or a City Commission may be given or withheld in the sole discretion of the Board, Mayor or Commission, respectively.

[Remainder of Page Intentionally Blank;
Signature Page Follows]

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

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:_____
Richard Hillis
Director of Planning

Approved on _____
Board of Supervisors Ordinance No. _____

Approved as to form:
David Chiu, City Attorney

By:_____
Keith Nagayama
Deputy City Attorney

Consented to by:

Mayor's Office of Housing and Community Development

By:_____
Eric Shaw, Director

DEVELOPER

98 FRANKLIN STREET, LLC, a California limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

Request Letter

{See Attached}

J. ABRAMS LAW, P.C.

538 Hayes Street
San Francisco, CA 94102

Jim Abrams
jabrams@jabramslaw.com
415-999-4402

VIA EMAIL

March 15, 2023

San Francisco Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, California 94103
Attn: Rich Hillis, Director

Re: Application for Development Agreement for the 98 Franklin Street Development Project, Administrative Code § 56.4

Dear Director Hillis:

98 Franklin Street, LLC ("Project Sponsor") submits this letter application for a Development Agreement pursuant to San Francisco Administrative Code Section 56.4 with respect to the 98 Franklin Street Development Project (the "Project"). The Project is located on the east side of Franklin Street, between Oak and Market Streets (Assessor's Block 0836, Lots 008, 009, and 013).

In May 2020, the Planning Commission approved various resolutions and motions (collectively, the "Approvals") related to the Project, which involves construction of a new 36-story mixed use building reaching a height of approximately 365 feet (approximately 397 feet including rooftop screen/mechanical equipment) with about 345 dwelling units, approximately 84,815 gross square feet of school use floor area, approximately 3,229 gross square feet of retail space, 306 Class 1 and 57 Class 2 bicycle parking spaces, and three below-grade levels to accommodate up to 111 vehicle parking spaces for the residential and school uses. The Approvals require the Project to restrict 20% of the Project's dwelling units as affordable.

Project Sponsor now proposes to modify the Project through execution of a Development Agreement and amendments to certain of the Approvals. As more fully described in the Project's application to amend its Section 309 Downtown Project Authorization, the principal change would increase the applicable height limit from 365 feet to 400 feet, which would allow the Project to include up to 385 dwelling units.

In exchange for the proposed height increase and other amendments to the Approvals, the Development Agreement would require the Project to provide public benefits in excess of the existing Planning Code as follows:

- Dedication of Land Exceeding Current Code Requirements. The Development Agreement would change the Project's method of affordable housing compliance under Planning Code Sections 249.33 and 415 *et seq*. to land dedication. Specifically, Project Sponsor would purchase and dedicate a site (currently proposed as 600 Van Ness Avenue) to the City for purposes of constructing an 100% affordable housing project. The land would be dedicated at no cost to the City. As currently entitled, the 600 Van Ness site accommodates far more than 35% of the number of units in the principal 98 Franklin project, as required by Planning Code Section 249.33. More specifically, as amended, the Project would include up to 385 units, 35% of which is 135 units. As currently entitled, the 600 Van Ness project includes 168 units, or 33 more units than required by Planning Code Section 249.33's land dedication provision.

I am available to answer any questions you might have and otherwise look forward to working with you and your staff on this request.

Sincerely,

James Abrams, Esq.
Authorized Agent

cc: Nick Foster, San Francisco Planning Department
Christy Alexander, San Francisco Planning Department
Anne Taupier, Mayor's Office of Economic & Workforce Development
Leigh Lutenski, Mayor's Office of Economic & Workforce Development

EXHIBIT B

Conditions of Approval

The Conditions of Approval for the Project are set forth in San Francisco Planning Commission Motion No. _____ (Downtown Project Authorization), approved on _____, 2023. This Motion is incorporated by reference, modified, and superseded in part the Conditions of Approval in Motion No. 20728, approved on May 28, 2020.

EXHIBIT C

Schedule of Impact Fees (subject to Section 2.1.2 of this Agreement)

Planning Code Section	Title
411A	Transportation Sustainability Fee
414A	Residential Child Care Impact Fee
416	Market and Octavia Affordable Housing Fee of One Million Dollars ($1,000,000) [this amount is an absolute value and not subject to change under Section 2.1.2]
421	Market and Octavia Community Infrastructure Impact Fee
424	Van Ness & Market Neighborhood Infrastructure Fee (for avoidance of doubt, the entirety of Van Ness & Market Affordable Housing Fee under Planning Code Section 424 is waived)
425	Van Ness & Market Community Facilities Fee
429	Public Art

EXHIBIT D

Legal Description

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

Parcel I:

Beginning at a point on the Northwesterly line of Market Street, distant thereon 76 feet and 9-3/4 inches Northeasterly from the Northerly line of Page Street; running thence Northeasterly along said line of Market Street 27 feet and 1-3/8 inches; thence Northerly and parallel with the Easterly line of Franklin Street 214 feet and 1 inch to the Southerly line of Oak Street; thence at a right angle Westerly 44 feet; thence at a right angle Southerly 118 feet; thence at a right angle Easterly 22 feet; thence at a right angle Southerly 112 feet and 5/8 inch to the Northwesterly line of Market Street and the point of beginning.

Being a part of Western addition Block No. 71. Parcel II:

Beginning at a point on the Northwesterly line of Market Street, distant thereon Southwesterly 326 feet and 7-1/8 inches from the intersection of said Northwesterly line of Market Street with the Westerly line of Van Ness Avenue; thence Southwesterly along said Northwesterly line of Market Street 27 feet, and 1-3/8 inches; thence Northerly and parallel with Van Ness Avenue 127 feet and 10-3/4 inches; thence at a right angle Easterly 22 feet; thence at a right angle Southerly and parallel with Van Ness Avenue 112 feet and 5/8 inches to the Northwesterly line of Market Street and the point of beginning.

Being a part of Western Addition Block No. 71. Parcel III:

Beginning at the point of intersection of the Southerly line of Oak Street with the Easterly line of Franklin Street; running thence Southerly along said line of Franklin Street 125 feet; thence at a right angle Easterly 97 feet, 9 inches; thence at a right angle Northerly 125 feet to the Southerly line of Oak Street; thence at a right angle Westerly 97 feet, 9 inches to the Easterly line of Franklin Street and the point of beginning.

Being a part of Western Addition Block No. 71.
APN: Lot 008, Block 0836, Lot 009, Block 0836, Lot 013, Block 0836 APN: 0836-008, 0836-009, 0836-013

EXHIBIT E

Form of Assignment and Assumption Agreement

This instrument is exempt from Recording Fees (CA Govt. Code § 27383) RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: [ASSIGNEE: _____ _____ _____ Attn: _____]	
APN(s): [_____]	SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Assignment**") is made and entered into as of _____ __, 20__ (the "**Effective Date**") by and between _____, a _____ ("**Assignor**"), and _____, a _____ ("**Assignee**").

RECITALS

A. Reference is hereby made to that certain Development Agreement between the City and County of San Francisco, a municipal corporation (the "**City**"), acting by and through its Planning Department, and _____, a _____, dated as of _____ __, 202_ and recorded in the Official Records on _____ __, 202_ as Document No. _____ [DESCRIBE ANY AMENDMENTS] (collectively, the "**Agreement**"). All initially capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Agreement.

B. Pursuant to section 8.1 of the Agreement, Developer has the right to Transfer all or any portion of its right, title and interest in and to all or part of the Project Site to any Person without the City's consent, provided that Developer contemporaneously transfers to the Transferee all of its right, title and interest under the Agreement with respect to the Project Site or such part thereof, as more particularly described therein.

C. Pursuant to section 8.4 of the Agreement, upon the execution and delivery of any Assignment and Assumption Agreement, Developer shall be automatically released from any liability or obligation under the Agreement to the extent Transferred under such Assignment and Assumption Agreement.

D. Assignor is "Developer" under the Agreement with respect to the [entire] [portion of the] Project Site described on Exhibit A attached hereto (the "**Transferred Property**").

E. Contemporaneously herewith, Assignor has Transferred to Assignee Assignor's right, title and interest in and to the Transferred Property.

F. Assignor has agreed to assign to Assignee, and Assignee has agreed to assume, all of Assignor's right, title and interest under the Agreement [with respect to the Transferred Property], all as more particularly described in this Assignment.

AGREEMENT

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

1. Assignment of Agreement. Subject to the terms and conditions of this Assignment, Assignor hereby assigns to Assignee as of the Effective Date all of Assignor's right, title and interest under the Agreement [with respect to the Transferred Property], [, all as more particularly described on Exhibit B] (collectively, the "**Assigned Rights and Obligations**"). [For the avoidance of doubt, Assignor retains all of Assignor's right, title and interest under the Agreement other than the Assigned Rights and Obligations.]

2. Assumption of Agreement. Subject to the terms and conditions of this Assignment, Assignee hereby assumes as of the Effective Date the Assigned Rights and Obligations and agrees to observe and fully perform all of the duties and obligations of Assignor under the Agreement with respect to the Assigned Rights and Obligations and to be subject to all of the terms and conditions of the Agreement with respect to the Assigned Rights and Obligations. Assignor and Assignee acknowledge and agree that Assignee is "Developer" under the Agreement [with respect to the Transferred Property].

3. Indemnifications. Assignee hereby consents to and expressly reaffirms any and all indemnification, reimbursement, hold harmless and defense obligations of Developer set forth in the Agreement [to the extent applicable to Assignee and the Transferred Property], including section 3.10 of the Agreement, including resulting from any disputes between Assignee and Assignor.

4. Assignee's Covenants. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Agreement; and (b) Assignee shall not sue the City in connection with any disputes between Assignor and Assignee arising from this Assignment or the Agreement, including any failure to complete all or any part of the Project by Assignor or Assignee, except to the extent caused by the negligence or willful misconduct of any of the City Parties.

5. Modifications. Assignor and Assignee acknowledge and agree that any modification of any provision of the Agreement that constitutes a modification of the Assigned Rights and Obligations must be in a writing signed by a person having authority to do so on behalf of each of Assignor and Assignee. For the avoidance of doubt, (i) the approval of Assignee shall not be required for any modification of the Agreement that does not constitute a modification of the Assigned Rights and Obligations and (ii) Assignee shall not have the right to modify the Agreement except as provided in the first sentence of this Section 5. Any modification of any provision of this Assignment must be in a writing signed by a person having authority to do so on behalf of each of Assignor and Assignee.

6. Further Assignment; Binding on Successors. Without limiting any requirements under the Agreement, including article 8 thereof, Assignee shall not assign this Assignment without obtaining the prior written approval of Assignor, provided that to the extent that Assignee Transfers any of the Assigned Rights and Obligations in accordance with the Agreement to any Person, Assignee shall (without the

requirement of any approval hereunder) contemporaneously assign this Assignment to such Person. This Assignment shall run with the Transferred Property, and all of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective heirs, successors and assigns.

7. Notices. The notice address for Assignee under section 9.10 of the Agreement as of the Effective Date shall be, subject to change as set forth therein:

_____
_____
_____
Attn: _____

with copy to:

_____
_____
_____
Attn: _____

8. Counterparts. This Assignment 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.

9. Governing Law. This Assignment and the legal relations of Assignor and Assignee 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.

10. Attorneys' Fees. Should legal action be brought by Assignor or Assignee against the other for a default under this Assignment or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its "reasonable attorneys' fees and costs" (as such phrase is defined in the Agreement) from the non-prevailing party.

11. Severability. If any term, provision, covenant or condition of this Assignment is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Assignment shall continue in full force and effect, except to the extent that enforcement of the remaining provisions of this Assignment would be unreasonable or grossly inequitable under all the circumstances or would frustrate the fundamental purpose of this Assignment or the Agreement.

12. Entire Agreement. Without limiting the Agreement or agreements executed in connection therewith or any separate agreements with respect to the Transferred Property between Assignor and Assignee, this Assignment contains all of the representations and warranties and the entire agreement between Assignor and Assignee with respect to the subject matter of this Assignment. Any prior correspondence, memoranda, agreements, warranties or representations between Assignor and Assignee relating to such subject matter are incorporated into and superseded in total by this Assignment. Notwithstanding the foregoing, this Assignment shall not change or supersede the Agreement or agreements executed in connection therewith, which remain in full force and effect according to their terms. No prior drafts of this Assignment or changes from those drafts to the executed version of this Assignment shall be introduced as evidence in any litigation or other dispute resolution proceeding by Assignor, Assignee or any other Person, and no court or other body shall consider those drafts in interpreting this Assignment.

13. No Waiver. The waiver or failure to enforce any provision of this Assignment shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

14. Construction of Assignment. Assignor and Assignee have mutually negotiated the terms and conditions of this Assignment, which have been reviewed and revised by legal counsel for each of Assignor and Assignee. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Assignment. Wherever in this Assignment the context requires, references to the masculine shall be deemed to include the feminine and the neuter and vice-versa, and references to the singular shall be deemed to include the plural and vice versa. Unless otherwise specified, whenever in this Assignment, including its Exhibits, reference is made to any Recital, Article, Section, Exhibit, Schedule or defined term, the reference shall be deemed to refer to the Recital, Article, Section, Exhibit, Schedule or defined term of this Assignment. Any reference in this Assignment to a Recital, an Article or a Section includes all subsections and subparagraphs of that Recital, Article or Section. Section and other headings and the names of defined terms in this Assignment are for the purpose of convenience of reference only and are not intended to, nor shall they, modify or be used to interpret the provisions of this Assignment. Except as otherwise explicitly provided herein, the use in this Assignment of the words "including", "such as" or words of similar import when accompanying any general term, statement or matter shall not be construed to limit such term, statement or matter to such specific terms, statements or matters. In the event of a conflict between the Recitals and the remaining provisions of this Assignment, the remaining provisions shall prevail. Words such as "herein", "hereinafter", "hereof", "hereby" and "hereunder" and the words of like import refer to this Assignment, unless the context requires otherwise. Unless the context otherwise specifically provides, the term "or" shall not be exclusive and means "or, and, or both".

15. Recordation. Assignor and Assignee shall record this Assignment in the Official Records against the Transferred Property promptly following the recordation of the instrument conveying title to the Transferred Property to Assignee.

[Signatures on following page]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the Effective Date.

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

ACKNOLWEDGED:

City and County of San Francisco, a municipal corporation

By: _____
Planning Director

EXHIBIT A

TRANSFERRED PROPERTY

[To be provided]

EXHIBIT B

ASSIGNED RIGHTS AND OBLIGATIONS

[To be provided if applicable]

EXHIBIT F

Form of Assignment and Assumption Agreement for the City's Acquisition of the Affordable Housing Site

EXHIBIT F

ASSIGNMENT AGREEMENT FOR PURCHASE AND SALE AGREEMENT
(*Property Address*)

This Assignment Agreement (the "**Agreement**") is entered into as of _____ _____, 2023, by and between **[RELATED CALIFORNIA]** ("**Assignor**") and the City and County of San Francisco, a municipal corporation ("**Assignee**" or "**City**"), with reference to the following facts:

A. Assignor is the owner of a portion of certain real property located at 98 Franklin Street in San Francisco, California, and intends to construct a new 38-story mixed-use building that includes approximately 385 dwelling units, 84,991 square feet of school use floor area, 2,978 square feet of retail use floor area, 316 Class 1 and 60 Class 2 bicycle parking spaces, and three below-grade levels to accommodate up to 110 vehicle parking spaces (the "**Principal Project**").

B. San Francisco Planning Code ("**Planning Code**") Section 415 *et seq*. requires residential projects to comply with certain requirements to create affordable housing in San Francisco. On May 21, 2020, the City's Planning Commission approved Resolutions 20708 through 20713; and on May 28, 2020, the Planning Commission approved Motions 20726 through 20728 (collectively, the "**Initial Approvals**") for the Principal Project. In accordance with Planning Code Section 249.33(b)(16), the Initial Approvals restrict 20% of the Project's Dwelling Units as affordable.

C. On November 21, 2022, 98 Franklin, LLC submitted to the Planning Department a request to enter into a development agreement to, among other things (i) permit a land dedication to the City of the Property (defined below) at no cost to the City ("**Affordability Requirement**"), (ii) waive all but one million dollars ($1,000,000.00) of the Principal Project's applicable Market and Octavia Area Plan and Upper Market Neighborhood Commercial District Affordable Housing Fee under Planning Code Section 416, and (iii) waive one hundred percent (100%) of the Principal Project's applicable Van Ness and Market Affordable Housing Fee pursuant to Planning Code Section 424 ("**Development Agreement**"). Pursuant to that Assignment and Assumption Agreement dated [DATE], 98 Franklin, LLC has assigned to Assignor the obligations of the Development Agreement to perform the Affordability Requirement.

D. Assignor, as Buyer, and _____, a _____("**Seller**"), as Seller, entered into that certain Purchase and Sale Agreement dated as of _____, 2023 (the "**Purchase Agreement**") pursuant to which Assignor agreed to purchase from Seller certain real and personal property located at [*Insert Address of Affordable Site:* _____], San Francisco, California, as more particularly described in the Purchase Agreement (the "**Property**"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Purchase Agreement.

E. By a letter dated _____, 2023 (the "**MOHCD Letter**"), from the Mayor's Office of Housing and Community Development ("**MOHCD**"), the City verified the Property as acceptable for dedication pursuant to the Development Agreement described above. Assignor and Assignee are entering into this Agreement in order to facilitate satisfaction of the Affordability Requirement for the Principal Project under the Development Agreement through a transfer to the

City of the Property, which will be under the jurisdiction of MOHCD. The City acknowledges that Assignee's acceptance of the Property to satisfy the Affordability Requirement for the Principal Project has induced Assignor to purchase the Property and, absent such acceptance, Assignor would not have otherwise entered into the Purchase Agreement.

F. Assignor and Seller are prepared to close escrow pursuant to the Purchase Agreement ("**Closing**"). At Closing, Assignor shall designate Assignee as Permitted Assignee pursuant to Section _____ of the Purchase Agreement and Seller shall transfer title to the Property to Assignee pursuant to the Deed and the other Seller Closing Deliverables.

G. Assignor desires to assign, and Assignee desires to assume, as Permitted Assignee under Section ____ of the Purchase Agreement, all of Assignor's rights, interest and obligations under the Purchase Agreement that relate to the period immediately before the Closing, from and after the Closing, or survive the Closing including, but not limited to, the right to be named in the Deed and the other Seller Closing Deliverables, and the obligation to execute and deliver the Assignment and Assumption Agreement, but expressly excluding (i) the obligation of Assignor to deliver the balance of the Purchase Price or pay any other closing costs at Closing, and (ii) the indemnification, defense and hold harmless obligations of Assignor set forth in Section ____ of the Purchase Agreement, which each shall remain the obligations of Assignor (the "**Assigned Rights and Obligations**"), effective as of the Closing Date (the **"Effective Date"**).

H. On _____, 2023, the City's Board of Supervisors and the Mayor approved Ordinance No. _____, authorizing the City's Real Estate Division and the Mayor's Office of Housing and Community Development (or successor agencies) to enter into the Agreement and to accept the Property, without further action by the Board of Supervisors.

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

1. Assignment and Assumption. As of the Effective Date, Assignor hereby assigns and delegates to Assignee the Assigned Rights and Obligations. As of the Effective Date, Assignee hereby accepts and assumes such Assigned Rights and Obligations.

2. City Commitment to Take Title. If Assignor and Seller have each satisfied all conditions to consummate the purchase and sale of the Property required under the Purchase Agreement, and Assignor and Seller are prepared to proceed with the Closing, the City hereby covenants and agrees that it will accept title to the Property pursuant to recordation of the Grant Deed in substantially the form attached to the Purchase Agreement upon authorization of the Closing by Assignor and Seller. Notwithstanding the foregoing, the City shall not be obligated to accept title to the Property at Closing solely if the City is prohibited from accepting title to the Property as a result of an order issued by a court of law which prohibits Seller's ability to convey title or the City's ability to accept title to the Property due to a lawsuit filed by an unrelated third-party. For purposes of clarity, the City shall not be permitted to refuse acceptance of title to the Property simply because there is litigation seeking to prevent Seller's ability to convey or the City's ability to accept title to the Property; rather, there must be an order issued by a court of law which expressly prevents such transfer to or acceptance by the City.

To the extent the City is in default of its obligation to accept title to the Property as provided herein, Assignor shall have all rights and remedies available to it at law or in equity including, without limitation, the right to seek specific performance and/or the right to bring an action against the City seeking any and all damages, liabilities and expenses incurred by Assignor as a result of the City's breach of its obligations set forth in this Agreement.

3. Indemnity. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), arising out of Assignor's obligations under the Purchase Agreement prior to the Effective Date, including the indemnification, defense and hold harmless obligations of Assignor set forth in Section ___ of the Purchase Agreement, which shall remain the obligations of Assignor.

4. Notices. All notices, consents, directions, approvals, instructions, requests and other communications regarding this Agreement or the Purchase Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (a) sent via electronic mail (if e-mail address is provided below) and deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, or (b) hand delivered. All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor and Assignee may designate a new address for purposes of this Section by notice to the other signatories to this Agreement.

If to Assignor:

_____

_____

_____

_____

Attn: _____

E-Mail: _____

If to Assignee:

City and County of San Francisco
Real Estate Division
25 Van Ness, #400
San Francisco, CA 94102
Attn: Director
E-Mail: andrico.penick@sfgov.org

With Copy to:

Mayor's Office of Housing and Community Development
1 South Van Ness, Fifth Floor
San Francisco, CA 94103
Attn: Director
E-Mail: eric.shaw@sfgov.org

5. Government Requirements.

A. Assignor understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Assignor hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

B. Through its execution of this Agreement, Assignor acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Assignor becomes aware of any such fact during the term of this Agreement, Assignor shall immediately notify City.

C. Through its execution of this Agreement Assignor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from any department of the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Assignor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $100,000 or more. Assignor further acknowledges that the (i) prohibition on contributions applies to Assignor; each member of Assignor's board of directors, and Assignor's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Assignor; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Assignor; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Assignor is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Assignor certifies that Assignor has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

6. Unconditional Approval of the Affordability Requirement. Notwithstanding anything to the contrary in the MOHCD Letter, the City hereby acknowledges and agrees that the transfer of title to the Property to the City in accordance with this Agreement shall be deemed to be the unconditional acceptance of the dedication of the Property pursuant to the Development Agreement and full satisfaction of the land dedication with respect to the Principal Project.

7. Miscellaneous.

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

B. This Agreement contains the entire agreement between the parties pertaining to the terms hereof and all prior written or oral negotiations, understandings and agreements are merged herein.

C. Subject to the terms of the Purchase Agreement, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Except as otherwise provided herein, nothing in this Agreement shall be construed to give any person or entity (other than Assignor and Assignee and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

D. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. This Agreement may be executed by facsimile or email, and a copy distributed by facsimile or by email as a pdf shall be deemed an original.

[***SIGNATURES ON THE NEXT PAGE***]

IN WITNESS WHEREOF, the undersigned hereby execute this Agreement as of the date first written above.

"ASSIGNOR"

[RELATED CALIFORNIA], a California limited liability company

By:_____
Name:_____
Title:_____

"ASSIGNEE"

City and County of San Francisco, a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

Recommended by:

Mayor's Office of Housing and Community Development

By: _____
Eric D. Shaw
Director of the Mayor's Office of Housing and Community Development

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____
Deputy City Attorney